

RESOLUTION NO. 13-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, RESCINDING RESOLUTION NO. 07-49 AND DIRECTING CITY STAFF TO RESUME PROCESSING OF THE APPLICATION OF AVENIDA SAN JUAN PARTNERSHIP FOR GENERAL PLAN AMENDMENT (GPA) 06-428, ZONING AMENDMENT (ZA) 06-429, TENTATIVE PARCEL MAP (TPM) 2005-229, SITE PLAN PERMIT (SPP) 06-430, CONDITIONAL USE PERMIT (CUP) 06-431, AND VARIANCE (VAR) 07-045 FOR THE REAL PROPERTY LOCATED AT 404 EAST AVENIDA SAN JUAN

WHEREAS, prior to 1993 the 2.85-acre parcel of land located at 404 Avenida San Juan (herein, the "Subject Property") had a General Plan land use designation of medium-low density residential and a zoning classification of R1B1, which general plan and zoning categories allowed a density of development that, subject to compliance with other applicable City land use ordinances and regulations, would have permitted subdivision of the Subject Property into 4 or more lots and development of those lots with single-family homes; and

WHEREAS, on May 6, 1993, the City Council adopted its Resolution No. 93-32 certifying Environmental Impact Report (EIR) 92-04 and adopting Comprehensive General Plan Update 92-05 which, among other things, re-designated the Subject Property as very low density residential, which designation would allow a maximum of 1 single-family home to be developed thereon; and

WHEREAS, on February 21, 1996, the City Council adopted its Ordinance No. 1172 approving Zoning Amendment 93-14 to conform the City's Zoning Code to the comprehensive changes made to the City's General Plan in 1993 and, among other things, change the zoning classification for the Subject Property from R1B1 to Residential Very Low (RVL), which RVL designation would allow a maximum of 1 single-family home to be developed thereon; and

WHEREAS, on September 1, 2006, Thomas J O'Keefe, partner of Avenida San Juan Partnership, submitted an application to the City for approval of GPA 06-428, ZA 06-429, TPM 2005-229, SPP 06-430, CUP 06-431, VAR 07-045 to allow the Subject Property to be subdivided into 4 lots and developed with 4 single-family homes; and

WHEREAS, given the proposed project's non-compliance with the 1993 General Plan and 1996 Zoning Code revisions the City staff, Planning Commission, and City Council suspended consideration of the technical merits of Avenida San Juan Partnership's application pending a determination as to whether the City Council would entertain further changes to the density restrictions in the General Plan and Zoning Code; and

WHEREAS, on July 24, 2007, after conducting a duly noticed public hearing and considering the recommendations of the City staff, the City's Planning Commission, and the evidence and arguments submitted by staff, the applicant, and members of the general public, the City Council adopted its Resolution No. 07-49 denying Avenida San Juan Partnership's

application; and

WHEREAS, on February 1, 2008, Avenida San Juan Partnership filed a Verified First Amended Complaint for Damages for Violations of Civil Rights, Injunction Against Violation of Civil Rights, Inverse Condemnation, Declaratory Relief, and Writ of Administrative Mandate against the City and the City Council members who voted in favor of Resolution No. 07-49 in the Orange County Superior Court ((OCSC Case No. 30-2008-00101411); and

WHEREAS, on September 10, 2009, the Honorable Nancy Wieben Stock, Judge of the Orange County Superior Court, issued a Statement of Decision with respect to Avenida San Juan Partnership's Fifth Cause of Action for Writ of Administrative Mandate, an accompanying Minute Order, and an Order Granting and Issuing Writ of Administrative Mandate [CCP §1094.5] (the "Writ of Mandate"). The Writ of Mandate ordered the City Council to vacate and rescind Resolution No. 07-49. The Minute Order clarified that "the Court's orders are narrowly drawn and do not extend to encompass any directives that should be interpreted as inviting or causing the parties to violate CEQA [the California Environmental Quality Act, Public Resources Code §21000 *et seq.*], local laws or any other requirements that would [be] associated with continued action on Plaintiff's requests before the City of San Clemente"; and

WHEREAS, the City Council determined that it would appeal the Writ of Mandate and, accordingly, on October 27, 2009, the City filed a Return to Writ of Mandate and Request for Stay Pending Appeal requesting that the deadline for compliance with the Writ of Mandate be stayed until the City's appeal could be heard. On December 8, 2009, the Honorable David T. McEachen, Judge of the Superior Court, granted the City's Request for Stay of the Writ of Mandate; and

WHEREAS, on November 11, 2009, the Honorable David T. McEachen granted the City's Motion for Summary Adjudication as to Avenida San Juan Partnership's First, Second, and Fourth Causes of Action (for violation of California Civil Code Section 52.1(b) and for declaratory and injunctive relief), granted the City's Motion for Summary Adjudication as to the individual City Council member defendants only as to Avenida San Juan Partnership's Third Cause of Action (for Inverse Condemnation), granted the City's Motion for Summary Adjudication with respect to Avenida San Juan Partnership's claim for punitive damages, and denied the City's Motion for Summary Adjudication as to Avenida San Juan Partnership's Third Cause of Action (for Inverse Condemnation). Pursuant to such orders, the matter proceeded to a "Phase 2" trial on December 14, 2009, on Avenida San Juan Partnership's Third Cause of Action (for Inverse Condemnation) against the City; and

WHEREAS, on February 1, 2010, after conclusion of the "Phase 2" trial, the Honorable David T. McEachen issued a Statement of Decision and Judgment finding and determining, *inter alia*, that the City had inversely condemned Avenida San Juan Partnership's land and awarding damages to Avenida San Juan Partnership in the sum of \$1,316,937 plus interest at the legal rate from July 24, 2007, plus reasonable attorney's fees, expert witness fees, and costs, as more particularly set forth therein; and

WHEREAS, on March 30, 2010, and April 2, 2010, the Honorable David T. McEachen issued post-judgment orders (1) granting the City's motion to tax costs in part and setting the amount of Avenida San Juan Partnership's recoverable costs at \$23,644.30, (2) granting Avenida San Juan Partnership's motion for prejudgment interest in part and setting the amount of

recoverable prejudgment interest at \$105,769.22, and (3) granting Avenida San Juan Partnership's motion for attorney's fees in part and setting the amount of recoverable attorney's fees at \$227,150; and

WHEREAS, on April 6, 2010, the Honorable David T. McEachen issued a further order denying the City's motion for new trial as to the February 1, 2010, Statement of Decision and Judgment but modifying the Judgment pursuant to Code of Civil Procedure §662 to provide the City with the opportunity to comply with the Writ of Mandate and thereby avoid the obligation to pay just compensation for the regulatory taking of Plaintiff's land, as more particularly set forth therein; and

WHEREAS, the City filed a Notice of Appeal from the Writ of Mandate, the Judgment (as modified), and the post-judgment orders and Avenida San Juan Partnership filed a Notice of Cross-Appeal from the Judgment (as modified) and the orders granting Summary Adjudication (in part) and denying Avenida San Juan Partnership's motion for attorney's fees (in part); and

WHEREAS, on December 14, 2011, the California Court of Appeal, Fourth Appellate District, Division 3, issued its Opinion affirming the trial court judgment in part and reversing in part. In brief, and as more particularly set forth in its Opinion, the Court of Appeal affirmed the trial court's issuance of the Writ of Mandate, affirmed the trial court's determination that the City's actions constituted wrongful "spot zoning" and, if not rescinded, would constitute a regulatory taking of Avenida San Juan Partnership's land, affirmed the trial court's post-judgment orders with respect to costs and attorney's fees, reversed the trial court's determination of the amount of inverse condemnation damages and remanded the case to the trial court for a retrial on the damages issue, affirmed the trial court's April 6, 2010, order modifying the Judgment to allow the City the opportunity to comply with the Writ of Mandate and thereby avoid the obligation to pay just compensation and granted the City thirty (30) days after a revised final judgment is entered on the inverse condemnation damages issue to either comply with the Writ of Mandate or elect to pay damages, ordered that the amount of prejudgment interest be recalculated after the retrial on the damages issue is concluded, and determined that Avenida San Juan Partnership was entitled to recover its attorney's fees and costs incurred on appeal; and

WHEREAS, on January 20, 2012, the City filed a Petition for Review with the California Supreme Court. On February 6, 2012, Avenida San Juan Partnership filed an Answer to the City's Petition for Review and a Request for Review of Additional Issue (relating to the trial court's and Court of Appeal's orders allowing the City to comply with the Writ of Mandate and thereby avoid the obligation to pay inverse condemnation damages). On March 14, 2012, the California Supreme Court denied the Petition for Review; and

WHEREAS, on May 17, 2012, Avenida San Juan Partnership filed a Petition for Writ of Certiorari with the United States Supreme Court (relating to the trial court's and Court of Appeal's orders allowing the City to comply with the Writ of Mandate and thereby avoid the obligation to pay inverse condemnation damages). On October 1, 2012, the United States Supreme Court denied the Petition for Writ of Certiorari; and

WHEREAS, on April 9, 2012, Avenida San Juan Partnership filed a motion in the Orange County Superior Court seeking an order granting it \$121,660 in attorney's fees incurred on appeal, which motion is pending at this time; and

WHEREAS, the City Council continues to believe that it had legitimate land use reasons for attempting to limit development of the Subject Property to 1 single-family home, that there were legitimate reasons for imposing density restrictions on development of the Subject Property greater than those that apply to the other residential lots in the neighborhood, and that imposition of the RVL general plan and zoning designation on the Subject Property was not wrongful “spot zoning,” including without limitation considerations related to the severe topography of the Subject Property at street level, the irregular configuration of the Subject Property and its limited street frontage, the need for extensive grading of the Subject Property in order to construct/install what would be a steep private driveway that would be needed to access homesites on the upper portions of the land; the need for extensive retaining walls in excess of standard wall height limits and the creation of a “tunnel effect” for the access driveway; and

WHEREAS, notwithstanding the City’s continued belief in the legitimacy of its challenged land use decisions, the courts have rejected the City’s justifications for imposing RVL land use restrictions on the Subject Property and have given the City the choice of either rescinding those restrictions or paying inverse condemnation damages (plus interest and additional attorney’s fees) and the City is not prepared to incur this significant additional liability; and

WHEREAS, based upon the foregoing, the City and Avenida San Juan Partnership have each negotiated and approved a Stipulation for Entry of Judgment and [Proposed] Judgment (the “Stipulation”) that will dispose of all of the remaining issues in the pending litigation, and pursuant to the Stipulation the City Council is obligated to comply with the Writ of Mandate by rescinding Resolution No. 07-49;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA HEREBY RESOLVES AS FOLLOWS:

SECTION 1. City Council Resolution No. 07-49 is hereby rescinded and shall be of no further force and effect.

SECTION 2. From and after the date of the City Council’s adoption of this Resolution, City staff is instructed to resume the processing of Avenida San Juan Partnership’s application for approval of its proposed 4-lot subdivision and development of the Subject Property that was pending as of July 24, 2007, in accordance with the medium-low residential General Plan land use designation and R1B1 Zoning Code classification that applied to the Subject Property prior to the approval and adoption of the General Plan Update 92-05 and Zoning Amendment 93-14 in 1993 and 1996, respectively. In this regard, since Avenida San Juan Partnership’s application is consistent with the General Plan land use designation and Zoning classification that applied to the Subject Property prior to 1993/1996, Avenida San Juan Partnership shall not be required to obtain a General Plan Amendment or Zone Change in order to obtain approval of its development. In addition, since the requirement for approval of a conditional use permit applies only in the RVL zone, not the (former) R1B1 zone, Avenida San Juan Partnership shall not be required to obtain approval of a conditional use permit.

SECTION 3. Except as expressly set forth in Section 2 of this Resolution, all applicable federal, state, and local laws, ordinances, regulations, and official policies that would otherwise apply to development of the Subject Property shall apply to the processing, consideration, and approval of and City’s issuance of development and building permits for

Avenida San Juan Partnership's proposed development project.

SECTION 4. The City Clerk shall certify to the passage of this Resolution and enter the same in the City's Official Book of Resolutions.

APPROVED, ADOPTED and SIGNED this ____ day of _____, 2013.

ATTEST:

CITY CLERK of the City of
San Clemente, California

MAYOR of the City of
San Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF SAN CLEMENTE)

I, **JOANNE BAADE**, City Clerk of the City of San Clemente, California, hereby certify that Resolution No. ____ , having and duly passed and adopted at a regular meeting of the City Council held on the ____ day of _____, 20 __, and said Resolution was passed and adopted by the following stated vote, to wit:

AYES:

NOES:

ABSENT:

CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:

City Attorney

1 RUTAN & TUCKER, LLP
Jeffrey M. Oderman (State Bar No. 63765)
2 611 Anton Boulevard, Fourteenth Floor
Costa Mesa, California 92626-1931
3 Telephone: (714) 641-5100
Facsimile: (714) 546-9035
4 Attorneys for Defendants
5 CITY OF SAN CLEMENTE, et al.

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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

10
11 AVENIDA SAN JUAN PARTNERSHIP, a
partnership,
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Plaintiff,
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vs.
14 CITY OF SAN CLEMENTE, a municipal
corporation,
15
Defendant.
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Case No. 30-2008-00101411
Assigned for all purposes to Hon. Judge David
T. McEachen, Dept. C21
**STIPULATION FOR ENTRY OF
JUDGMENT AND [PROPOSED]
JUDGMENT**

17
18 Plaintiff AVENIDA SAN JUAN PARTNERSHIP (“Plaintiff”) and Defendant CITY OF
19 SAN CLEMENTE (“Defendant”), by and through their respective attorneys of record, stipulate to
20 the final resolution and settlement of all outstanding disputes arising out of this litigation and to
21 the entry of judgment in this matter as set forth herein. Plaintiff and Defendant are sometimes
22 hereinafter individually referred to as a “Party” and collectively as the “Parties.”

23 RECITALS:

24 The Parties enter into this Stipulation based on the following Recitals, which each of the
25 Parties agrees are true and correct:

26 A. On February 1, 2008, Plaintiff filed its Verified First Amended Complaint for
27 Damages for Violations of Civil Rights, Injunction Against Violation of Civil Rights, Inverse
28 Condemnation, Declaratory Relief, and Writ of Administrative Mandate against Defendant and

1 against current San Clemente City Council member LORI HARNER DONCHAK aka LORI H.
2 DONCHAK and former San Clemente City Council members JOSEPH L. ANDERSON, JR. aka
3 JOE ANDERSON, JAMES G. DAHL, aka JIM DAHL, STEVEN C. KNOBLOCK aka STEVE
4 KNOBLOCK, and GEORGE WAYNE EGGLESTON aka G. WAYNE EGGLESTON. On June
5 12, 2009, Plaintiff filed a voluntary Request for Dismissal of the entire action (without prejudice)
6 with respect to Mr. Knoblock. As set forth in Paragraph 11 of this Stipulation below, the Parties
7 agree that the remaining individual defendants shall be voluntarily dismissed with a waiver of
8 costs prior to the time the Court enters Judgment pursuant to this Stipulation. Defendant and the
9 current and former individual City Council members named as Defendants in Plaintiff's First
10 Amended Complaint, etc., are sometimes hereinafter collectively referred to as the "Defendants."

11 B. On September 10, 2009, the Honorable Nancy Wieben Stock, Judge of the Orange
12 County Superior Court, issued a Statement of Decision with respect to Plaintiff's Fifth Cause of
13 Action for Writ of Administrative Mandate, an accompanying Minute Order, and an Order
14 Granting and Issuing Writ of Administrative Mandate [CCP §1094.5] (the "Writ of Mandate").
15 The Writ of Mandate ordered the City Council to vacate and rescind its Resolution No. 07-49,
16 adopted on July 24, 2007. The Minute Order clarified that "the Court's orders are narrowly drawn
17 and do not extend to encompass any directives that should be interpreted as inviting or causing the
18 parties to violate CEQA [the California Environmental Quality Act, Public Resources Code
19 §21000 *et seq.*], local laws or any other requirements that would [be] associated with continued
20 action on Plaintiff's requests before the City of San Clemente." On October 27, 2009, Defendants
21 filed their Return to Writ of Mandate and Request for Stay Pending Appeal. On December 8,
22 2009, the Honorable David T. McEachen, Judge of the Superior Court, granted Defendants'
23 Request for Stay of the Writ of Mandate.

24 C. On November 11, 2009, the Honorable David T. McEachen granted Defendants'
25 Motion for Summary Adjudication as to Plaintiffs' First, Second, and Fourth Causes of Action
26 (for violation of California Civil Code Section 52.1(b) and for declaratory and injunctive relief),
27 granted Defendants' Motion for Summary Adjudication as to the individual City Council member
28 Defendants only as to Plaintiffs' Third Cause of Action (for Inverse Condemnation), granted

1 Defendants' Motion for Summary Adjudication with respect to Plaintiffs' claim for punitive
2 damages, and denied Defendants' Motion for Summary Adjudication as to Plaintiffs' Third Cause
3 of Action (for Inverse Condemnation) as to Defendant City of San Clemente. The matter
4 proceeded to a "Phase 2" trial on December 14, 2009, on Plaintiffs' Third Cause of Action (for
5 Inverse Condemnation) against Defendant City of San Clemente.

6 D. On February 1, 2010, after conclusion of the "Phase 2" trial, the Honorable David
7 T. McEachen issued a Statement of Decision and Judgment finding and determining, *inter alia*,
8 that Defendant City had inversely condemned Plaintiff's land and awarding Plaintiff damages in
9 the sum of \$1,316,937 plus interest at the legal rate from July 24, 2007, plus reasonable attorney's
10 fees, expert witness fees, and costs, as more particularly set forth therein.

11 E. On March 30, 2010, and April 2, 2010, the Honorable David T. McEachen issued
12 post-judgment orders (1) granting Defendant City's motion to tax costs in part and setting the
13 amount of Plaintiff's recoverable costs at \$23,644.30, (2) granting Plaintiff's motion for
14 prejudgment interest in part and setting the amount of recoverable prejudgment interest at
15 \$105,769.22, and (3) granting Plaintiff's motion for attorney's fees in part and setting the amount
16 of Plaintiff's recoverable attorney's fees at \$227,150.

17 F. On April 6, 2010, the Honorable David T. McEachen issued a further order
18 denying Defendant City's motion for new trial as to the February 1, 2010, Statement of Decision
19 and Judgment but modifying the Judgment pursuant to Code of Civil Procedure §662 to provide
20 the City with the opportunity to comply with the Writ of Mandate and thereby avoid the obligation
21 to pay just compensation for the regulatory taking of Plaintiff's land, as more particularly set forth
22 therein.

23 G. Defendants filed a Notice of Appeal from the Writ of Mandate, the Judgment (as
24 modified), and the post-judgment orders and Plaintiff filed a Notice of Cross-Appeal from the
25 Judgment (as modified) and the orders granting Summary Adjudication (in part) and denying
26 Plaintiff's motion for attorney's fees (in part).

27 H. On December 14, 2011, the California Court of Appeal, Fourth Appellate District,
28 Division 3, issued its Opinion affirming the trial court judgment in part and reversing in part. In

1 brief, and as more particularly set forth in its Opinion, the Court of Appeal affirmed the trial
2 court's issuance of the Writ of Mandate, affirmed the trial court's determination that Defendant
3 City's actions, if not rescinded, would constitute a regulatory taking of Plaintiff's land, affirmed
4 the trial court's post-judgment orders with respect to costs and attorney's fees, reversed the trial
5 court's determination of the amount of inverse condemnation damages and remanded the case to
6 the trial court for a retrial on the damage issue, affirmed the trial court's April 6, 2010, order
7 modifying the Judgment to allow the City the opportunity to comply with the Writ of Mandate and
8 thereby avoid the obligation to pay just compensation and granted the City thirty (30) days after a
9 revised final judgment is entered on the inverse condemnation damages issue to either comply
10 with the Writ or elect to pay damages, ordered that the amount of prejudgment interest be
11 recalculated after the retrial on the damages issue is concluded, and determined that Plaintiff was
12 entitled to recover its attorney's fees and costs incurred on appeal. The Parties hereby agree that
13 the Court of Appeal's December 14, 2011, Opinion, and all orders and judgments subsumed
14 therein, shall remain binding on the Parties and those in privity with the Parties pursuant to the
15 doctrines of res judicata, collateral estoppel, and law of the case.

16 I. On January 20, 2012, Defendants filed a Petition for Review with the California
17 Supreme Court. On February 6, 2012, Plaintiff filed an Answer to Defendants' Petition for
18 Review and a Request for Review of Additional Issue (relating to the trial court's and Court of
19 Appeal's orders allowing Defendant City to comply with the Writ of Mandate and thereby avoid
20 the obligation to pay inverse condemnation damages). On March 14, 2012, the California
21 Supreme Court denied the Petition for Review.

22 J. On May 17, 2012, Plaintiff filed a Petition for Writ of Certiorari with the United
23 States Supreme Court (relating to the trial court's and Court of Appeal's orders allowing
24 Defendant City to comply with the Writ of Mandate and thereby avoid the obligation to pay
25 inverse condemnation damages). On October 1, 2012, the United States Supreme Court denied
26 the Petition for Writ of Certiorari.

27 K. On April 9, 2012, Plaintiff filed a motion in the Orange County Superior Court
28 seeking an order granting Plaintiff \$121,660 in attorney's fees incurred on appeal. That motion is

1 pending at this time.

2 L. Defendant has determined to comply with the Writ of Mandate rather than
3 proceeding to a re-trial on the damages issue and paying inverse condemnation damages and
4 interest after the damages amount is redetermined. Plaintiff and Defendant have agreed to resolve
5 all other remaining issues arising out of the pending litigation on the terms and conditions set forth
6 herein.

7 STIPULATION:

8 Based upon the foregoing Recitals, which are incorporated into this Stipulation by this
9 reference, Plaintiff and Defendant hereby stipulate and agree as follows:

10 1. Within thirty (30) days after the full execution and delivery of this Stipulation by
11 the attorneys of record for Plaintiff and Defendant, Defendant shall comply with the Writ of
12 Mandate by rescinding City Council Resolution No. 07-49, adopted July 24, 2007.

13 2. Upon Defendant's rescission of City Council Resolution No. 07-49, Defendant
14 shall resume the processing of Plaintiff's 4-lot single-family residential development application
15 for approval of Tentative Parcel Map (TPM) 2005-832, General Plan Amendment (GPA) 06-428,
16 Zoning Amendment (ZA) 06-429, Site Plan Permit (SPP) 06-430, Conditional Use Permit (CUP)
17 06-431, and Variance (VAR) 07-045 (collectively, "Plaintiff's Application").

18 3. In reviewing and acting upon Plaintiff's Application, Defendant shall be required to
19 apply the R1B1 General Plan and Zoning designations for Plaintiff's land that were in effect prior
20 to the City's adoption of its 1993 comprehensive General Plan Update (City Council Resolution
21 No. 93-32) and its 1996 comprehensive Zoning Ordinance Update (City Council Ordinance No.
22 1172), such that there will be no requirement for Plaintiff to obtain City approval of a General
23 Plan Amendment or Zone Change for development of 4 single-family residential lots as previously
24 proposed by Plaintiff.

25 4. As stated in Judge Wieben Stock's September 10, 2009, Minute Order, except as
26 expressly referred to in Paragraph 3 above nothing in this Stipulation or the Judgment to be
27 entered pursuant to this Stipulation shall be interpreted as inviting or causing the Parties to violate
28 CEQA [the California Environmental Quality Act, Public Resources Code §21000 *et seq.*], local

1 laws or any other requirements that would [be] associated with continued action on Plaintiff's
2 Application.

3 5. Defendant shall not be obligated to pay damages for the regulatory "taking" of
4 Plaintiff's land.

5 6. Defendant shall not be obligated to pay either prejudgment or post-judgment
6 interest in this matter as long as Defendant complies with Paragraph 8 below. If Defendant fails to
7 comply with Paragraph 8 below, then post-judgment interest shall accrue from the date the Court
8 enters the stipulated Judgment.

9 7. Upon the full execution and delivery of this Stipulation by the attorneys of record
10 for Plaintiff and Defendant's compliance with the provisions of Paragraph 1 above, Plaintiff and
11 Defendant shall cooperate and submit the [Proposed] Judgment in this matter to the Orange
12 County Superior Court in substantially the form set forth in Exhibit "A" hereto and thereafter
13 Plaintiff and Defendant shall cooperate in causing said Judgment (with such non-substantive
14 revisions and corrections that the Court may require to be made in order to have such [Proposed]
15 Judgment signed and entered) to be signed and entered.

16 8. Within thirty (30) days after entry of the Judgment in this matter Defendant shall
17 pay to Plaintiff the sum of Three Hundred Seventy-Two Thousand Four Hundred Fifty-Four
18 Dollars and Thirty Cents (\$372,454.30) in full and final satisfaction and payment of all attorney's
19 fees and costs owing by Defendants to Plaintiff arising out of this litigation and pursuant to the
20 trial court's Judgment (as modified), post-judgment orders, Court of Appeal Opinion, and
21 otherwise. This sum shall be paid to Plaintiff by way of a cashier's check made payable to
22 "Everett L. Skillman, and Thomas J. O'Keefe as majority partner of Avenida San Juan
23 Partnership." Said cashier's check shall be physically handed to Everett L. Skillman at the office
24 of Rutan & Tucker LLP in Costa Mesa, California.

25 9. Each Party agrees to be irrevocably bound by this Stipulation and the Judgment and
26 waives its right to appeal from the Judgment or any other writ or order issued in this litigation.

27 10. Each Party agrees to cooperate with each other Party to this Stipulation to
28 accomplish the purposes hereof.

1 11. The Parties agree that Defendants JOSEPH L. ANDERSON, JR. AKA JOE
2 ANDERSON, JAMES G. DAHL, AKA JIM DAHL, LORI HARNER DONCHAK, AKA LORI
3 H. DONCHAK, AND GEORGE WAYNE EGGLESTON, AKA G. WAYNE EGGLESTON shall
4 be voluntarily dismissed with a waiver of costs (using a fully executed California Judicial Form
5 CIV-110) prior to the time the Court enters the stipulated Judgment.

6 AVENIDA SAN JUAN PARTNERSHIP

7 Dated: January __, 2013

8 By: _____

Thomas J. O'Keefe

9 Its: General Partner

10 APPROVED AS TO FORM & CONTENT:

11 _____
12 Everett L. Skillman, Esq.
13 Attorney for Plaintiff AVENIDA SAN JUAN
14 PARTNERSHIP

15 CITY OF SAN CLEMENTE

16 Dated: January __, 2013

17 By: _____

Robert Baker

18 Its: Mayor

19 APPROVED AS TO FORM & CONTENT:
20 RUTAN & TUCKER, LLP

21 By:  _____
22 Jeffrey M. Odernan

23 Attorneys for Defendants CITY OF SAN CLEMENTE,
24 JOSEPH L. ANDERSON, AKA JOE ANDERSON,
25 JAMES G. DAHL, AKA JIM DAHL, LORI HARNER
26 DONCHAK, AKA LORI H. DONCHAK, AND GEORGE
27 WAYNE EGGLESTON, AKA G. WAYNE EGGLESTON
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

AVENIDA SAN JUAN PARTNERSHIP, a
partnership,

Plaintiff,

vs.

CITY OF SAN CLEMENTE, a municipal
corporation,

Defendants.

Case No. 30-2008-00101411

Assigned for all purposes to Hon. Judge David
T. McEachen, Dept. C21

[PROPOSED] JUDGMENT

Plaintiff AVENIDA SAN JUAN PARTNERSHIP (“Plaintiff”) and Defendant CITY OF
SAN CLEMENTE (“Defendant”) have submitted to the Court a Stipulation for Entry of Judgment
and [Proposed] Judgment (the “Stipulation”). Pursuant to the Stipulation, Defendant has complied
with this Court’s September 10, 2009, Order Granting and Issuing Writ of Administrative
Mandate [CCP §1094.5] (the “Writ of Mandate”).

Accordingly, based upon the Stipulation, Defendant’s compliance with the Writ of
Mandate, and for good cause shown, the Court hereby enters judgment in this matter as follows:

1. Defendant shall resume the processing of Plaintiff’s 4-lot single-family residential
development application for approval of Tentative Parcel Map (TPM) 2005-832, General Plan
Amendment (GPA) 06-428, Zoning Amendment (ZA) 06-429, Site Plan Permit (SPP) 06-430,
Conditional Use Permit (CUP) 06-431, and Variance (VAR) 07-045 (collectively, “Plaintiff’s

1 Application”).

2 2. In reviewing and acting upon Plaintiff’s Application, Defendant shall be required to
3 apply the R1B1 General Plan and Zoning designations for Plaintiff’s land that were in effect prior
4 to the City’s adoption of its 1993 comprehensive General Plan Update (City Council Resolution
5 No. 93-32) and its 1996 comprehensive Zoning Ordinance Update (City Council Ordinance No.
6 1172), such that there will be no requirement for Plaintiff to obtain City approval of a General
7 Plan Amendment or Zone Change for development of 4 single-family residential lots as previously
8 proposed by Plaintiff.

9 3. As stated in this Court’s September 10, 2009, Minute Order issued in conjunction
10 with the Writ of Mandate, except as expressly referred to in Paragraph 2 above nothing in this
11 Judgment shall be interpreted as inviting or causing any of the parties to violate CEQA [the
12 California Environmental Quality Act, Public Resources Code §21000 *et seq.*], local laws or any
13 other requirements that would [be] associated with continued action on Plaintiff’s Application.

14 4. Defendant shall not be obligated to pay damages for the regulatory “taking” of
15 Plaintiff’s real property that was the subject of this action.

16 5. Defendant shall not be obligated to pay either prejudgment or post-judgment
17 interest in this matter as long as Defendant complies with Paragraph 6 below. If Defendant fails to
18 comply with Paragraph 6 below, then post-judgment interest shall accrue from the date the court
19 enters the stipulated Judgment.

20 6. Within thirty (30) days after entry of this Judgment, Defendant shall pay to Plaintiff
21 the sum of Three Hundred Seventy-Two Thousand Four Hundred Fifty-Four Dollars and Thirty
22 Cents (\$372,454.30) in full and final satisfaction and payment of all attorney’s fees and costs
23 owing by Defendant to Plaintiff arising out of this litigation. This sum shall be paid to Plaintiff by
24 way of a cashier’s check made payable to “Everett L. Skillman, and Thomas J. O’Keefe as
25 majority general partner of Avenida San Juan Partnership.” Said cashier’s check shall be

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1 physically handed to Everett L. Skillman at the office of Rutan & Tucker LLP in Costa Mesa,
2 California.

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4 Dated: _____
5 _____
6 Judge of the Superior Court
7 of the State of California
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