



AGENDA REPORT
SAN CLEMENTE CITY COUNCIL MEETING
 Meeting Date: April 16, 2013

Agenda Item 66
Approvals:
 City Manager PJS
 Dept. Head _____
 Attorney _____
 Finance JW

Department: Public Works / Engineering Division
Prepared By: Zachary Ponsen, Senior Civil Engineer *OB*

Subject: **APPROVE FINAL PARCEL MAP 2009-141, KRAMER SUBDIVISION, 323 WEST AVENIDA VALENCIA.**

Summary: Tentative Parcel Map 2009-141 was approved by the City Council on March 15, 2011. Warren and Lorraine Kramer, the Subdividers of Final Parcel Map 2009-141, have submitted the Final Parcel Map for City Council approval. Final Parcel Map 2009-141 subdivides one 38,333 square-foot lot into two residential parcels. The Subdivider has paid the development fees and satisfied all Conditions of Approval that are required prior to Final Parcel Map approval. The Sewer Connection and Water Acreage Fees are to be paid prior to issuance of building permits for Parcel 2. The Conditions of Approval for the developer to dedicate water rights have been addressed and are offered for dedication on the Final Map. The Conservation Easement Deed required by the Conditions of Approval has been reviewed and approved by the City Attorney and is ready for simultaneous recordation with the Final Parcel Map. The developers and the City Attorney are finalizing the Deed Restriction for Parcel 1 as required per Condition of Approval Number 20. The Final Parcel Map shall not be signed by the City Engineer until the Deed Restriction is completed to the satisfaction of the City Attorney.

Recommended Action: STAFF RECOMMENDS THAT the City Council:

1. Accept on behalf of the City of San Clemente the water rights as dedicated on the Final Parcel Map;
2. Approve the Final Parcel Map 2009-141 as it conforms to the requirements set forth in the Subdivision Map Act and the previously approved Tentative Parcel Map;
3. Authorize the City Engineer to sign the Final Parcel Map upon confirmation by the City Attorney that the Deed Restriction for Parcel 1 is complete;
4. Authorize the Mayor to sign the Deed Restriction and Conservation Easement Deed; and
5. Authorize the City Clerk to sign and submit the Final Parcel Map, Deed Restriction, and Conservation Easement Deed for recordation with the County of Orange Recorder's Office.

Fiscal Impact: None.

Attachments: Location Map
Conservation Easement Deed

Notification: None.

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RECORDING REQUESTED BY

WHEN RECORDED MAIL TO

NAME RUTAN & TUCKER, LLP
Attn: Jeffrey A. Goldfarb, City Attorney

MAILING ADDRESS 611 Anton Boulevard, Suite 1400

CITY, STATE ZIP CODE Costa Mesa, CA 92626

No recording fee is due for this instrument pursuant to Government Code §27383.

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

CONSERVATION EASEMENT DEED

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of the _____ day of _____, 2013, by Warren G. Kramer, III and Lorraine J. Kramer, husband and wife ("Grantor"), in favor of the City of San Clemente, a municipal corporation ("Grantee"), with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property located at 323 West Avenida Valencia, in the City of San Clemente, County of Orange, State of California, and more particularly described in Exhibit "A" attached hereto and incorporated by this reference (the "Property").

B. Grantor applied to Grantee for approval of a tentative parcel map ("Tentative Parcel Map 2009-141"). The application for Tentative Parcel Map 2009-141 was approved by the City of San Clemente on March 15, 2011, by Resolution No. 11-14, and concurrently with the recordation of this Conservation Easement Grantor is recording a final parcel map subdividing the Property into two parcels, referenced as "Parcel 1" and "Parcel 2". Grantor currently owns Parcel 1 and Parcel 2.

C. A portion of the Property (the "Easement Area") is located within or immediately adjacent to a designated coastal canyon. The location of the Easement Area is (i) more particularly described on Exhibit "B-1" and incorporated by this reference, and (ii) depicted on the diagram attached hereto as Exhibit "B-2" and incorporated by this reference. The Easement Area contains coastal sage and provides a high quality habitat for wildlife and native species (collectively, the "Conservation Values"). An existing gazebo and dirt pathway leading to the gazebo are currently located in the Easement Area (the "Easement Area Improvements"). In addition, the approved development plans contemplated installation of overflow drainage devices (the "Overflow Drainage Devices") on Parcels 1 and 2 and in the Easement Area and Grantor reserves the right to install, maintain, repair or replace the Overflow Drainage Devices as depicted on the approved development plans.

D. Grantee is authorized to hold easements pursuant to California Civil Code § 815.3. Specifically, Grantee is a governmental entity identified in California Civil Code § 815.3(b) and otherwise

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authorized to acquire and hold title to real property.

E. Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein to preserve and protect in perpetuity the Conservation Values of the Easement Area in accordance with the terms of this Conservation Easement.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the State of California, including California Civil Code § 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over and across the Easement Area.

1. Purposes. The purposes of this Conservation Easement are to ensure the Easement Area will be retained forever in its natural condition and to prevent any use of the Easement Area that will impair or interfere with the Conservation Values of the Easement Area. Grantor intends that this Conservation Easement will confine the use of the Easement Area to such activities that are consistent with those purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats.

A final, approved copy of the Low-Effect Habitat Conservation Plan, and any amendments thereto approved by Grantee, shall be kept on file at the offices of Grantee. The Low-Effect Habitat Conservation Plan is incorporated by this reference into this Conservation Easement as if fully set forth herein.

2. Grantee's Rights. To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee, provided that in no event shall Grantee have any obligations hereunder or any liability to Grantor or any third party for a failure to enforce Grantee's rights hereunder:

(a) To enforce Grantor's obligation to preserve and protect the Conservation Values of the Easement Area.

(b) To enter the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, the Low-Effect Habitat Conservation Plan, and to implement at Grantee's sole discretion mitigation activities that have not been implemented, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Easement Area.

(c) To prevent any activity on or use of the Easement Area that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Easement Area that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Conservation Easement.

(d) To require that all mineral, air and water rights as Grantee deems necessary to preserve and protect the biological resources and Conservation Values of the Easement Area shall remain a part of and be put to beneficial use upon the Easement Area, consistent with the purposes of this Conservation Easement.

(e) All present and future development rights appurtenant to, allocated, implied, reserved or inherent in the Easement Area; such rights are hereby terminated and extinguished, and may not be used on

or transferred to any portion of the Easement Area, nor any other property adjacent or otherwise.

3. Prohibited Uses. Any activity on or use of the Easement Area that is inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantor's agents, and third parties are expressly prohibited:

(a) Unseasonable watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may adversely affect the purposes of this Conservation Easement, except as otherwise specifically provided in the Low-Effect Habitat Conservation Plan.

(b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways.

(c) Grazing or other agricultural activity of any kind.

(d) Recreational activities, including, but not limited to, horseback riding, biking, hunting or fishing, except as such activities are consistent with the purposes of this Conservation Easement, and recreational activities (if any) as specifically provided in the Low-Effect Habitat Conservation Plan.

(e) Commercial or industrial uses.

(f) Any legal or de facto division, subdivision or partitioning of the Conservation Easement.

(g) Construction, reconstruction, erecting or placement of any building, billboard or sign, footpath, or any other structure or improvement of any kind, except as otherwise specifically provided in the Low-Effect Habitat Conservation Plan; provided however, Grantor is permitted to retain the Easement Area Improvements and shall be permitted to access and use the Easement Area Improvements. Any expansion of those Easement Area Improvements is prohibited. In addition, Grantor may install, maintain, repair or replace the Overflow Drainage Devices in the Easement Area as depicted on the approved development plans.

(h) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials.

(i) Planting, introduction or dispersal of non-native or exotic plant or animal species.

(j) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, loam, soil, sands, gravel, rocks or other material on or below the surface of the Property, or granting or authorizing surface entry for any of these purposes.

(k) Except as permitted under Section 3 (g), altering the surface or general topography of the Easement Area, including building roads or trails, paving or otherwise covering the Easement Area with concrete, asphalt or any other impervious material, except as otherwise specifically provided in the Low-Effect Habitat Conservation Plan; provided however, Grantor shall be permitted to engage in such activities as necessary to maintain the Easement Area Improvements.

(l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (1) fire breaks, (2) maintenance of existing foot trails or roads, (3) prevention or treatment of disease, or as otherwise specifically provided in the Low-Effect Habitat Conservation Plan.

(m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Easement Area, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters.

(n) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral rights or water rights for the Easement Area; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Easement Area.

(o) Engaging in any use or activity that may violate, or may fail to comply with, any relevant federal, state, or local laws, regulations, and policies applicable to Grantee, the Easement Area, or the use or activity in question.

4. Grantor's Duties.

(a) Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Easement Area or that are otherwise inconsistent with this Conservation Easement. In addition, Grantor shall undertake all necessary actions to perfect and defend rights of Grantee and third-party beneficiaries under Section 2 of this Conservation Easement.

(b) Grantor shall not transfer, encumber, sell, lease, or otherwise separate the mineral, air or water rights for the Easement Area, or change the place or purpose of use of the water rights, without first obtaining the written consent of Grantee, which Grantee may withhold at its sole and absolute discretion. Grantor shall not abandon or allow the abandonment of, by action or inaction, any of Grantor's right, title or interest in and to any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Easement Area including, without limitation: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Easement Area; or (iv) any water from wells that are in existence or may be constructed in the future on the Easement Area.

(c) Upon any sale or transfer of Parcel 1 to a third party, Grantor shall grant an access easement in favor of such third party which permits access to the Easement Improvements. Such access easement shall run with the land and be appurtenant to Parcel 1.

5. Reserved Rights. Grantor reserves to itself, and to its successors and assigns, all rights accruing from Grantor's ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Easement Area that are not prohibited or limited by, and are consistent with the purposes of, this Conservation Easement, including Grantor's right to use, access, repair, replace and maintain the Easement Area Improvements as set forth in Section 3(g) and (k) above.

6. Grantee's Remedies. If Grantee determines that a violation of the terms of this Conservation Easement has occurred or is threatened, Grantee shall have the right, but not the obligation, to give written notice to Grantor of such violation and demand in writing the cure of such violation. If Grantor fails to cure the violation within thirty (30) days after receipt of written notice and demand from Grantee, or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within the thirty

(30)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce this Conservation Easement, to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Conservation Values of the Easement Area, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief, including, but not limited to, the restoration of the Easement Area to the condition in which it existed prior to any violation or injury. Without limiting the liability of Grantor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Easement Area.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damage to the Conservation Values of the Easement Area, Grantee may pursue its remedies under this Conservation Easement without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of the terms of this Conservation Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to, the remedies set forth in Civil Code § 815, *et seq.* The failure of Grantee to discover a violation or to take legal action to prevent, enjoin, or remedy a violation or successive violations shall not bar Grantee from taking or constitute a waiver of Grantee's right to take such action at a later time or for a future violation.

If at any time in the future Grantor or any successor in interest or subsequent transferee uses or threatens to use the Property for purposes inconsistent with or in violation of this Conservation Easement then, notwithstanding Civil Code § 815.7, the California Attorney General has standing as an interested party in any proceeding affecting this Conservation Easement.

6.1. Costs of Enforcement. All costs incurred by Grantee, where Grantee is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by negligence or breach of this Conservation Easement shall be borne by Grantor.

6.2. Grantee's Discretion. Enforcement of the terms of this Conservation Easement by Grantee shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any rights of Grantee under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

6.3. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from (i) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes; or (ii) acts by Grantee or its employees.

7. [This section intentionally left blank.]

8. Access. This Conservation Easement does not convey a general right of access to the public.

9. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property. Grantor agrees that Grantee shall not have any duty, liability, or responsibility for the operation, upkeep or maintenance of the Easement Area, the monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Easement Area. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement, including permits and approvals required from Grantee acting in its regulatory capacity, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, orders and requirements.

9.1. Taxes; No Liens. Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, if any, and shall furnish Grantee with satisfactory evidence of payment, if any, upon request. Grantor shall keep the Property free from any liens (other than a security interest that is expressly subordinated to this Conservation Easement, as provided in Section 14 (k)), including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Property.

9.2. Hold Harmless. Except for Grantee's gross negligence or willful misconduct, Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, council members, employees, agents, contractors, attorneys, and representatives and the heirs, personal representatives, successors and assigns of each of them (each an "Indemnified Party" and, collectively, "Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation, reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (a) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of Grantee or any of its employees; (b) the obligations specified in Sections 4, 9, and 9.1; and (c) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Indemnified Party or reimburse Grantee for all charges incurred for services in defending the action or proceeding.

9.3. Extinguishment. If circumstances arise in the future that render the purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

9.4. Condemnation. The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined at California Code of Civil Procedure Section 1240.680 notwithstanding California Code of Civil Procedure Sections 1240.690 and 1240.700.

10. Transfer of Conservation Easement. This Conservation Easement may be assigned or transferred by Grantee but Grantee shall give Grantor at least thirty (30) days prior written notice of the transfer. Grantee may assign or transfer its rights under this Conservation Easement only to an entity or

organization authorized to acquire and hold conservation easements pursuant to Civil Code § 815.3 (or any successor provision then applicable) or the laws of the United States. Grantee shall require the assignee to record the assignment in the county where the Property is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way.

11. Transfer of Property. Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Property, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the Low-Effect Habitat Conservation Plan and any amendment(s) to that document. Grantor further agrees to give written notice to Grantee of the intent to transfer any interest at least thirty (30) days prior to the date of such transfer. Grantee shall have the right to prevent subsequent transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it). If Grantor proposes to transfer fee title to the Property to the then Grantee of this Conservation Easement, and if the doctrine of merger would apply and extinguish the Conservation Easement by operation of law upon such transfer, then the transfer shall be subject to the prior written approval of Grantee, which approval shall not be unreasonably withheld or delayed. The failure of Grantor to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

12. Notices. Any notice, demand, request, consent, approval, or other communication that Grantor or Grantee desires or is required to give to the other shall be in writing, with a copy to each of the Signatory Agencies, and be served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

To Grantor: Warren G. Kramer, III and Lorraine J. Kramer
323 West Avenida Valencia
San Clemente, CA 92672

With a Copy to: Charles S. Krolikowski, Esq.
Newmeyer & Dillion, LLP
895 Dove Street, 5th Floor
Newport Beach, CA 92660

To Grantee: City of San Clemente
Attn: William Cameron, City Engineer
910 Calle Negocio, Suite 100
San Clemente, CA 92673

With a Copy to: Jeffrey A. Goldfarb, City Attorney
Rutan & Tucker, LLP
611 Anton Boulevard, Suite 1400
Costa Mesa, CA 92626

Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, five (5) days after deposit into the United States mail.

13. Amendment. This Conservation Easement may be amended only by mutual written agreement of Grantor and Grantee. Any such amendment shall be consistent with the purposes of this Conservation

Easement and California law governing conservation easements and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the county in which the Property is located, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor.

14. Additional Provisions.

(a) Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of California, disregarding the conflicts of law principles of such state.

(b) Liberal Construction. Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of Civil Code § 815, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to any other persons or circumstances.

(d) Entire Agreement. This instrument (including its exhibits and any Low-Effect Habitat Conservation Plan incorporated by reference in it) sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with Section 13.

(e) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors; No Third Party Beneficiaries. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Property. There are no third party beneficiaries of Grantee's rights under this Conservation Easement.

(g) Termination of Rights and Obligations. A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Property, except that liability for acts, omissions or breaches occurring prior to transfer shall survive transfer.

(h) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(i) No Hazardous Materials Liability. Grantor represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Property, or transported to or from or affecting the Property. Without limiting the obligations of Grantor under Section 9.2, except for Grantee's gross negligence or misconduct, Grantor hereby releases and agrees to

indemnify, protect and hold harmless the Indemnified Parties (defined in Section 9.2) from and against any and all Claims (defined in Section 9.2) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Property at any time, except any Hazardous Materials placed, disposed or released by Grantee, its employees or agents. This release and indemnification includes, without limitation, Claims for injury to or death of any person or physical damage to any property; and the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Indemnified Party or reimburse Grantee for all charges incurred for services of the Attorney General in defending the action or proceeding.

Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Grantee any of the following:

- (1) The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*; hereinafter, "CERCLA"); or
- (2) The obligations or liabilities of a person described in 42 U.S.C. § 9607(a) (3) or (4); or
- (3) The obligations of a responsible person under any applicable Environmental Laws; or
- (4) The right to investigate and remediate any Hazardous Materials associated with the Property; or
- (5) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.

The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et seq.*; hereinafter, "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. § 6901, *et seq.*; hereinafter, "HTA"); the Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*; hereinafter, "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 25300, *et seq.*; hereinafter "HSA"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee that activities upon and use of the Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(j) Warranty. Grantor represents and warrants that Grantor is the sole owner of the Property; there are no outstanding mortgages, liens, encumbrances or other interests in the Property (including, without limitation, mineral interests) which have not been expressly subordinated to this Conservation Easement, and that the Property is not subject to any other conservation easement or interest that is adverse to this Conservation Easement.

(k) Additional Interests. Grantor shall not grant any additional easements, rights of way or other interests in the Easement Area (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish any water or water right associated with the Easement Area, without first obtaining the written consent of Grantee. Grantee may withhold such consent in its sole discretion if Grantee determines that the proposed interest or transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Conservation Values of the Easement Area. This Section 14(k) shall not limit the provisions of Section 2(d) or 3(n), nor prohibit transfer of a fee or leasehold interest in the Property that is subject to this Conservation Easement and complies with Section 11.

(l) Recording. Grantor shall record this Conservation Easement in the Official Records of the County in which the Property is located concurrently with recordation of the final parcel map creating Parcels 1 and 2, and Grantee may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

14. Counterparts. This Conservation Easement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall comprise but a single instrument.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF Grantor has executed this Conservation Easement Deed the day and year first above written.

GRANTOR:

BY: _____
Warren G. Kramer, III

By: _____
Lorraine J. Kramer

GRANTEE:

CITY OF SAN CLEMENTE

BY: _____
Bob Baker
Mayor

DATE: _____

GG-104

State of California)
County of Orange)

On _____, 2013, before me, _____, Notary Public,
(insert name and title of the officer)

personally appeared Warren G. Kramer, III, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacities, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 _____

(Seal)

State of California)
County of Orange)

On _____, 2013, before me, _____, Notary Public,
(insert name and title of the officer)

personally appeared Lorraine J. Kramer, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacities, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 _____

(Seal)

State of California)
County of Orange)

On _____, 2013, before me, _____, Notary Public,
(insert name and title of the officer)

personally appeared Bob Baker, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacities, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 _____

(Seal)

EXHIBIT "A"

Legal Description of the Property

EXHIBIT "A"

Legal Description of the Property

All that certain real property located in the City of San Clemente, County of Orange, State of California described as follows:

Parcels 1 and 2 of Parcel Map No. 2009-141, recorded in Book ____, Pages ____ through ____, inclusive, of Parcel Maps in the Official Records of Orange County, California.

EXHIBIT "B-1"

Legal Description of Easement Area

TOAL ENGINEERING, INC.
139 AVENIDA NAVARRO
SAN CLEMENTE, CALIFORNIA 92672
(949) 492-8586
FAX (949) 498-8625

JOB 14134 Kramer
SHEET NO. 1 OF 2
CALCULATED BY JJD DATE 08/06/2012
CHECKED BY - DATE -
SCALE _____

EXHIBIT 'B-1' - LEGAL DESCRIPTION
EASEMENT FOR CONSERVATION PURPOSES
Portion of Parcel 2 of Parcel Map 2009-141
(P.M.B. _____)
San Clemente, California

In the City of San Clemente, County of Orange, State of California being all of Parcel 2 of Parcel Map 2009-141, as shown on a Map recorded in Book _____, Pages _____ through _____, inclusive, of Parcel Maps, in the Office of the County Recorder of said Orange County,

EXCEPTING THEREFROM that portion of said Parcel 2 more particularly described as follows:

BEGINNING at the most Northeasterly corner of said Parcel 2; thence along the Southeasterly line of said Parcel 2 South 43°49'15" West 78.55 feet; thence leaving said Southeasterly line North 81°26'07" West 17.14 feet to the beginning of a tangent curve concave Southerly and having a radius of 35.00 feet; thence Westerly along said curve through a central angle of 17°59'54", an arc length of 10.99 feet; thence South 80°33'59" West 17.80 feet; thence North 54°35'58" West 9.55 feet to the beginning of a tangent curve concave Northeasterly and having a radius of 13.00 feet; thence Northwesterly along said curve through a central angle of 30°46'24", an arc length of 6.98 feet; thence North 23°49'34" West 3.07 feet to the beginning of a tangent curve concave Southwesterly and having a radius of 10.00 feet; thence Northwesterly along said curve through a central angle of 71°11'09", an arc length of 12.42 feet; thence South 84°59'17" West 3.94 feet to the beginning of a tangent curve concave Southerly and having a radius of 23.00 feet; thence Westerly along said curve through a central angle of 22°42'13", an arc length of 9.11 feet; thence South 62°17'04" West 8.51 feet to the Northwesterly line of said Parcel 2; thence along said Northwesterly line North 40°38'39" East 72.09 feet to a point on the Southerly right-of-way of Avenida Valencia as shown on said Parcel Map, said right-of-way being a non-tangent curve concave Northerly and having a radius of 180.00 feet, a radial line to said point bears South 21°44'51" West; thence Easterly along said right-of-way and said curve through a central angle of 31°15'54", an arc length of 98.22 feet to the **POINT OF BEGINNING**.

Also as shown on Exhibit 'B-2' attached hereto and by this reference made a part hereof.



Prepared by me or under my
direction on: _____


OLAV S. MEUM LS 4384

66-80

TOAL ENGINEERING, INC.
 139 AVENIDA NAVARRO
 SAN CLEMENTE, CALIFORNIA 92672
 (949) 492-8586
 FAX (949) 498-8625

JOB 14134 Kramer
 SHEET NO. 2 OF 2
 CALCULATED BY J. DOUGLAS DATE 08/06/2012
 CHECKED BY - DATE -
 SCALE 1"=50'

LEGEND

- P.O.B. POINT OF BEGINNING
- EASEMENT LIMITS
-  EASEMENT AREA

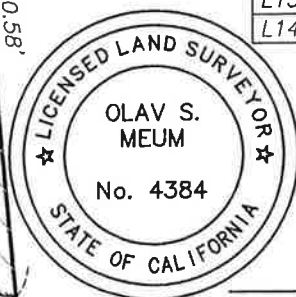
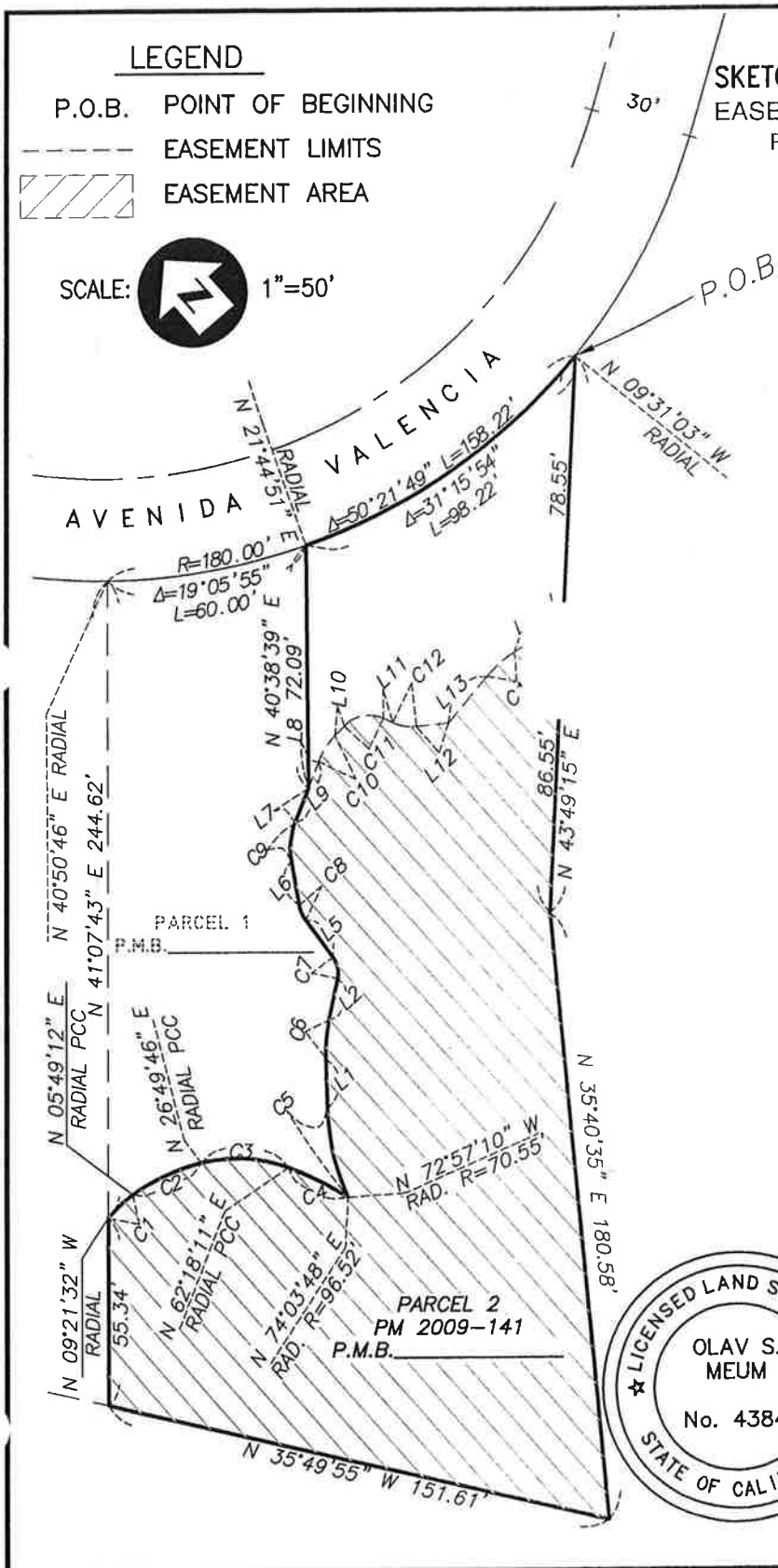
SCALE:  1"=50'

**SKETCH TO ACCOMPANY LEGAL DESCRIPTION
 EASEMENT FOR CONSERVATION PURPOSES**

Portion of Parcel 2 of Parcel Map 2009-141
 (P.M.B. _____)
 San Clemente, California

CURVE TABLE			
Curve	Radius	Delta	Length
C1	38.23'	15°10'44"	10.13'
C2	61.73'	21°00'34"	22.64'
C3	42.20'	35°28'25"	26.13'
C4	96.52'	11°45'37"	19.81'
C5	70.55'	22°10'13"	27.30'
C6	47.00'	13°49'52"	11.35'
C7	8.00'	47°53'48"	6.69'
C8	11.00'	25°59'21"	4.99'
C9	21.00'	31°08'37"	11.41'
C10	23.00'	22°42'13"	9.11'
C11	10.00'	71°11'09"	12.42'
C12	13.00'	30°46'24"	6.98'
C13	35.00'	17°59'54"	10.99'
C14	11.00'	11°52'16"	2.28'
C15	11.00'	14°07'04"	2.71'
C16	285.00'	11°39'09"	57.96'
C17	70.55'	07°46'16"	9.57'
C18	70.55'	07°38'54"	9.42'
C19	70.55'	14°31'19"	17.88'
C20	70.55'	29°56'29"	36.87'

LINE TABLE		
Number	Bearing	Length
L1	N 39°13'03" E	15.10'
L2	N 53°02'55" E	12.60'
L3	INTENTIONALLY DELETED	
L4	INTENTIONALLY DELETED	
L5	N 05°09'07" E	13.71'
L6	N 31°08'27" E	13.33'
L7	N 62°17'04" E	10.86'
L8	N 62°17'04" E	8.51'
L9	N 62°17'04" E	19.37'
L10	N 84°59'17" E	3.94'
L11	N 23°49'34" W	3.07'
L12	N 54°35'58" W	9.55'
L13	N 80°33'59" E	17.80'
L14	N 81°26'07" W	17.14'



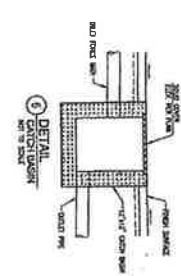
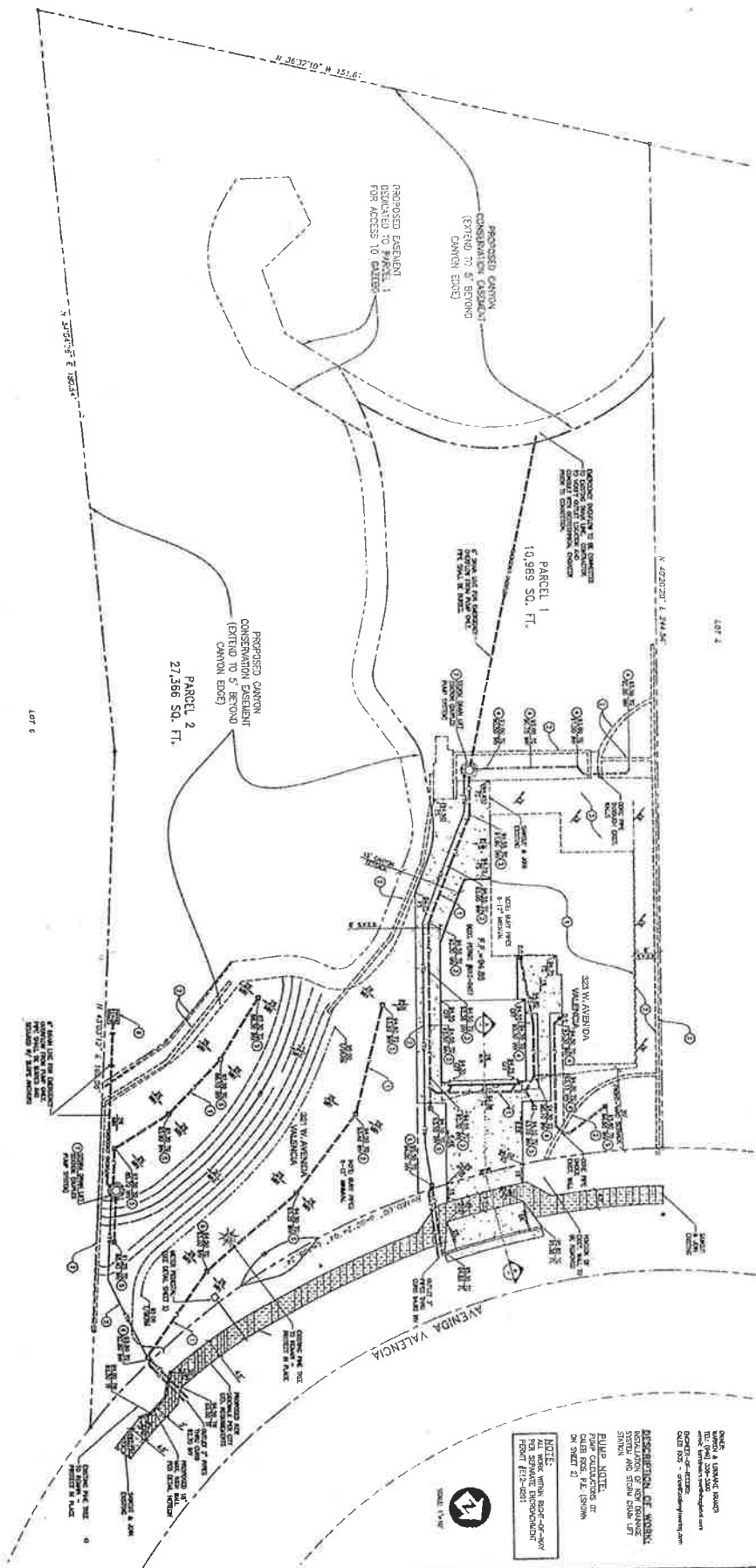
Prepared by me or under my direction on: _____

OLAV S. MEUM LS 4384

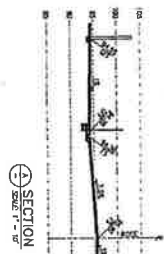
66-21

EXHIBIT "B-2"

Depiction of the Easement Area



- CONSTRUCTION NOTES:**
1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF SAN CLEMENTE, CALIFORNIA.
 2. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF SAN CLEMENTE, CALIFORNIA.
 3. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF SAN CLEMENTE, CALIFORNIA.
 4. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF SAN CLEMENTE, CALIFORNIA.
 5. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF SAN CLEMENTE, CALIFORNIA.
 6. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF SAN CLEMENTE, CALIFORNIA.
 7. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF SAN CLEMENTE, CALIFORNIA.
 8. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF SAN CLEMENTE, CALIFORNIA.
 9. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF SAN CLEMENTE, CALIFORNIA.
 10. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF SAN CLEMENTE, CALIFORNIA.



- REVISIONS:**
- | NO. | DATE | BY | APP. | DESCRIPTION |
|-----|------|----|------|-------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

DESCRIPTION OF WORK:
 IMPROVEMENTS TO EXISTING DRAINAGE SYSTEM AND STORM WATER COLLECTION SYSTEM.
 SEE SHEET 2 FOR CONTINUATION.

FLAP NOTE:
 FLAP VALVES SHALL BE 12\"/>

TOAL ENGINEERING, INC.
 Civil Engineers, Land Planners, Lead Surveyors
 1250 Avenida Marina, San Clemente, Calif. 92672
 Ph: 949-432-8588 Fax: 949-432-8620

DRAINAGE IMPROVEMENT PLAN
 323 W. AVENIDA VALENCIA (LOT 5, TRACT 697)
 SAN CLEMENTE, CALIFORNIA

PREPARED FOR: WARREN K. KRAMER

66-23

