



## **AGENDA**

### **REGULAR MEETING OF THE CITIZENS' BOND OVERSIGHT COMMITTEE (CBOC)**

**JANUARY 7, 2010, 6:45pm  
CITY COUNCIL CHAMBERS**

**A. CALL TO ORDER**

**B. ROLL CALL**

Chairman John Harper  
Vice Chair E.J. Constantine  
Val Dodd  
Rob Ferguson  
Angelo Lombardo  
Scott Looney  
Kevin Murphy

**C. ORAL COMMUNICATIONS**

**D. CONSENT CALENDAR**

1. Approval of Citizen's Bond Oversight Committee Minutes – Regular Meeting of December 10, 2009.

**E. DISCUSSION ITEMS**

1. Consideration of Proposed Projects for Use of Measure Y Bond Proceeds

**F. COMMITTEE/STAFF COMMENTS**

**G. ADJOURNMENT TO Thursday March 12, 2010, 6:00pm**

The City of San Juan Capistrano complies with the Americans with Disabilities Act. Persons with special needs should call Kathleen Springer at (949) 443-6321 at least 48 hours in advance to enable the City to make reasonable arrangements to ensure accessibility.

**AGENDA REPORT**

January 7, 2010

**TO:** Citizens' Bond Oversight Committee**FROM:** Cindy Russell, Assistant City Manager**SUBJECT:** Consideration of Proposed Projects for Use of Measure Y Bond Proceeds.

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**RECOMMENDATION:**

By Motion, report to the City Council the Committee's findings on whether the expenditure of bond proceeds for the following projects:

- Northwest Open Space Park – Phase I
- Habitat Restoration Grant Matching Funds,
- Acquisition of the 132 acre RMV Riding Park and adjacent property

conforms to the purposes stated in the Measure Y Ordinance 940

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**SITUATION:****Summary and Recommendation:**

The Citizens' Bond Oversight Committee (CBOC) appointed on December 1, 2009 is charged with reviewing recommendations to the Council for expenditure of bond proceeds, and to report on whether such expenditures conform to the purposes stated in the Ordinance. The Committee will also review the audits and reports of expenditures of bond proceeds, and will inform the public concerning the same.

To date, the City Council has identified three projects to be funded from general obligation bonds to be issued pursuant to Measure Y. As provided in Measure Y, the CBOC will review the proposed projects and report to the City Council their findings on whether or not these projects conform to the purposes stated in the Ordinance. The following projects have been identified for review by the CBOC:

- Northwest Open Space Park – Phase I
- Habitat Restoration Grant Matching Funds,
- Acquisition of the 132 acre RMV Riding Park and adjacent property.

Each project is outlined in this report and includes information regarding how the project conforms to the purposes stated in Measure Y. Additionally, information requested by the

CBOC at their December 10, 2009 meeting as well as correspondence received as of Monday December 21, 2009 has been included.

Staff recommends that the CBOC review the projects and report to the City Council their findings as to whether the proposed projects conform to the purposes stated in Ordinance 940 and the Measure Y ballot language based on the findings identified in this report.

**Background:**

**Project #1 Northwest Open Space Park – Phase I**

**Project Description** - On February 3, 2009, the City Council identified the Northwest Open Space (NWOS) Park – Phase I (Attachment 1) as its first project for funding from bonds to be issued pursuant to Measure Y. The projected cost of the project is \$2,962,000. The project includes:

- Community Gardens (about 2.5 acres with about 200 garden plots)
- Enhanced Swanner property citrus grove (about 2.0 acres with pathways and presentation/education area)
- Group picnic area (about 4.0 acres with 22 to 24 picnic areas with barbeque grills and picnic tables, and limited recreation including a softball backstop for "pick-up" games, two volleyball courts, and three horseshoe pits),
- Accessory improvements including park entry with signage, access drives, parking area, restrooms, and similar improvements.

The project originally included a Dog Park that has since been separated from the Phase I park project.

**Findings of Conformance** – this project conforms to the purposes stated in Measure Y as follows:

1. The groups picnic area and accessory improvements will enhance and improve the City's existing open space land to provide additional recreational amenities such as parks, sports fields and general access to the NWOS open space area.
2. The enhancement of the existing citrus grove preserves a historic agricultural area for our community as well as providing access to educational opportunities for our residents.
3. The Community Garden will expand the opportunities for the community to access the NWOS open space area and participate in the agricultural experience that is such a large of part of our community culture.

**Project #2 Habitat Restoration Grant Fund Matching Funds**

**Project Description** – On July 7, 2009, the City Council approved a portion of the recent Shea acquisition (Identified as the Phase I Habitat Restoration Area) to focus the City's habitat restoration efforts and Measure M grant funding applications (Attachment 2). The City Council also approved a 25% match for each \$1 million in grant funds applied for

**Findings of Conformance** – this use of the Measure Y bond proceeds conforms to the purposes stated in Measure Y by enhancing and improving natural areas, hillsides and wildlife.

**Project #3 – Acquisition of 132 acres of Rancho Mission Viejo (RMV) property**

**Project Description** - On August 18, 2009, the City Council entered into a purchase and sale agreement with Rancho Mission Viejo (RMV) to acquire approximately 132 acres of the RMV property immediately adjacent to the eastern boundary of the City for \$27.5 million. The property commonly referred to as the "original ranch headquarters and lemon grove area next to Ortega Highway" and the "rodeo or polo grounds" south of Ortega Highway from the City Limit to La Pata Road. The property, which will be annexed into the City, will be forever restricted for equestrian uses, sports fields, habitat and agricultural uses that are in use today, including the continuation of the Annual Rancho Mission Viejo Rodeo. The agreement also provides for the potential for a permanent equestrian facility. There would be no residential, commercial or industrial uses allowed on the property, except for the potential equestrian facility. The property also includes the original ranch headquarters location along Ortega Highway including structures such as the Joe Tow residence, old shop, and pole barn. This area also includes a 3.7 Acre Lemon grove, consisting of 700 trees.

The PSA provides for a six-month escrow period, and for the annexation of the property by the City to occur after the close of escrow. The property is to be acquired with the proceeds of bonds to be issued under the authorization provided by the voters with their support of Measure Y in November 2008. Based on bond counsel review, the City and RMV have determined that the best course of action would be to process the annexation during the escrow period so that the annexation of the property, close of escrow, and transfer of title to the City occur in that order, but concurrently. On October 6, 2009, the City Council approved the implementation agreement that

- 1) confirms RMV's consent to and agreement to cooperate with the annexation process during the escrow period
- 2) establishes an agreed-upon timeline for the annexation process and the close of escrow
- 3) revises the PSA and escrow instructions consistent with the agreed-upon timeline

and requirements of LAFCO for the processing of the annexation of the property to the City

- 4) provides for reimbursement to RMV of its costs incidental to the revised annexation and escrow closing process.

**Findings of Conformance** – this project conforms to the purposes stated in Measure Y as follows:

1. The acquisition of the property will provide a variety of additional recreational and equestrian facilities for the residents of this community to use and enjoy.
2. The property borders along two existing open space areas currently owned by and within the City. By removing future development from the parcels being acquired, the open space, natural areas, creeks and streams on existing City-owned parcels will be further preserved, protected and enhanced.
3. This property, a well-known premier venue for open space events in Southern California such as English horse shows, Western horse shows, Rodeo, soccer tournaments, antique car shows, dog shows, and various other youth athletic events has always been and will now continue to be associated with the City. Many of the events, especially the youth athletic events, are well attended and enjoyed by members of the City's community.

At their meeting on December 10, 2009, the CBOC requested copies of the PSA (Attachment 3), Implementation Agreement (Attachment 4), and the ability to receive an abstract of the redacted license and lease agreements (Attachment 5). Additionally, staff provided the CBOC with a copy of the appraisal (Attachment 6), LAFCO Annexation Application and LAFCO staff report dated December 9, 2009 (Attachment 7) and all correspondence received by the City as of the preparation of this staff report (Attachment 8).

Additionally, the CBOC members have had the opportunity to tour the parcels to be acquired from RMV.

**NOTIFICATION:**

Roy Byrnes  
Lennie DeCaro  
Brad Gates  
Kim Lefner  
Jim Reardon  
Clint Worthington

**RECOMMENDATION:**

By Motion, report to the City Council the Committee's findings on whether the expenditure of bond proceeds for the following projects:

- Northwest Open Space Park – Phase I
- Habitat Restoration Grant Matching Funds,
- Acquisition of the 132 acre RMV Riding Park and adjacent property

conforms to the purposes stated in the Measure Y Ordinance 940

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Respectfully Submitted,



Cindy Russell  
Assistant City Manager

Attachments (All attachments available at the City Clerk's office or at [www.sanjuancapistrano.org](http://www.sanjuancapistrano.org))

1. Project #1 – NWOS Phase 1 Park – Staff Report dated February 3, 2009
2. Project #2 – Habitat Restoration Grant Matching – Staff Report dated July 7, 2009
3. Project #3 – RMV Acquisition, Purchase and Sale Agreement
4. Project #3 – RMV Acquisition, LAFCO Implementation Agreement
5. Project #3 – RMV Acquisition, Abstracts of License and Lease Agreements
6. Project #3 – RMV Acquisition, Appraisal (Redacted)
7. Project #3 – RMV Acquisition, LAFCO Annexation Application, LAFCO staff report dated December 9, 2009
8. Project #3 – RMV Acquisition – Correspondence received as of Monday December 21, 2009



**D1**

**December 10, 2009  
CITIZENS BOND OVERSIGHT COMMITTEE MINUTES  
REGULAR MEETING**

**A. CALL TO ORDER**

Assistant City Manager Cindy Russell called the regular meeting of the Citizens Bond Oversight Committee Meeting to order at 6:30pm

**B. ROLL CALL**

BOND OVERSIGHT COMMITTEE MEMBERS PRESENT: E.J. Constantine, Val Dodd, Rob Ferguson, John Harper, Angelo Lombardo, Scott Looney, Kevin Murphy

**C. COMMITTEE MEMBER INTRODUCTIONS**

Each Committee Member gave a brief description of themselves and their background.

**D. ELECTION OF COMMITTEE CHAIR AND VICE CHAIR**

Nomination of John Harper for Chairman – Motion was made by Kevin Murphy, seconded by Val Dodd, and carried unanimously, 7-0.

Nomination of E.J. Constantine for Vice Chair – Motion was made by E.J. Constantine, seconded by Scott Looney and carried unanimously, 7-0.

**E. ORAL COMMUNICATIONS**

- Sam Allevato, Council Member and City resident, expressed thanks to the Committee for volunteering their time.
- Jim Reardon, City resident, spoke to thank the Committee for volunteering and made a plea to the Committee to maintain independence. Stated the importance of making their own decisions and not rely on recommendations from staff.
- Kim Leffner, City resident, spoke to thank the Committee for volunteering and expressed concerns with the City purchasing property outside of City limits and then annexing it.

- Lennie DeCaro, City resident, submitted letter to bond counsel requesting clarification. Bond counsel must look at validity of bonds being spent on property that is in the City. Referenced Sacks v. City of Oakland. Recent decision sued City of Oakland for failure to spend bond money appropriately. Stated that there is no assurance property will be annexed.
- Clint Worthington, City resident, thanked members for volunteering their time. Committee is to be five members instead of seven. Suggested that the City Council needs to renote the committee seats and begin the process again.

## F. NEW BUSINESS

### 1. REVIEW OF BALLOT MEASURE Y, COMMITTEE DUTIES, RESPONSIBILITIES

AND BY-LAWS: Staff Report presented by Cindy Russell, Assistant City Manager, regarding Measure Y by-laws, Committee responsibilities and duties. Omar Sandoval, City Attorney, provided report regarding Brown Act requirements of the Committee members Discussion of five (5) members vs. seven (7) members. Finding by the Citizens Bond Oversight Committee that seven (7) members is not a problem.

Committee Action: Motion was made by Committee Member Murphy, seconded by Committee Member Lombardo, and carried 7-0, to allow for a seven (7) member committee.

### 2. CONSIDERATION OF PROPOSED PROJECTS FOR USE OF MEASURE Y BOND

PROCEEDS: Staff report presented by Cindy Russell, Assistant City Manager, regarding three (3) possible projects for use of Measure Y Bond proceeds. The three (3) projects include: Northwest Open Space Park – Phase I, Habitat Restoration Grant Matching Funds, and Acquisition of the 132 acre RMV Riding Park and adjacent property.

- Northwest Open Space Park – Phase I: No public comment. Committee member Ferguson asked if property was in City limits. Committee requested to read original staff report and review maps of the property.
- Habitat Restoration Grant Matching Funds: City Council approved a 25% match for each million dollar in grant funds applied for.

#### Public Comments on Item b:

- Kim Leffner concerned that there may not be enough funds after purchase of RMV property. Cautioned committee to investigate details of Measure M funding.
- Acquisition of the 132 acre RMV Riding Park and Adjacent Property: Cost of the property is 27.5 million dollars. Property will be annexed into the City. No residential, commercial, or industrial uses allowed in the property with the exception of the equestrian facility. It may be a City owned and operated stable, but not yet

decided. Committee members requested to review purchase of sale agreement (PSA) and LAFCO packet. Kurt Yeager, Bond Counsel, clarified that deed restrictions are not obligations to use each of the permitted uses specifically allowed. LAFCO has already approved annexation. Arrange a tour of the Rancho Mission Viejo property.

Public Comments on Item c:

- Lennie DeCaro, City resident, has been in contact with LAFCO, objected to the annexation, and will be appealing it. Suggested that the committee read the 169 page PSA. Pre-zone done with notice of exemption. She objected to general plan amendment and pre-zone. LAFCO still subject to appeal. \$90,000 resulted because of annexation. Bond funds are to be used for property currently in the City. Concerned property being purchased is not in the City and is to be annexed after purchase. Bond funds not to be used for administrative salaries. Will forward her paperwork to City Clerk's office.
  - Clint Worthington, City resident, stated that Rancho Mission Viejo (RMV) will be removing 700 trees from the property within one year but the City does not have the funds to fill in the 3.7 acre area where the trees will be removed.
  - Kim Keffner, City resident, commenting on Mr. Worthington's statement, removing and not replacing the trees, is not preserving agricultural. Expressed concern regarding the commercial equestrian facility. There is a reason they used the word "commercial."
  - Jim Reardon, City resident, informing committee that the things the City is doing elsewhere in open space is not relevant to decisions being put before them. The acquisition of the property will not benefit the public. It will be strictly for private use and private organizations. Concerned RMV will become another Kinoshita Farm which is open space that is closed to the public.
  - Brad Gates, City resident, complimented committee members for taking on the responsibility of sitting on the Committee. Suggested the Committee take a tour of the property to understand the acquisition. He has received many compliments in considering RMV for acquisition.
3. CONSIDERATION OF MEETING DAY AND TIME: Staff report presented by Cindy Russell, Assistant City Manager, to schedule a regular meeting date quarterly. Proposed regular meeting dates include: March 12, 2010; June 10, 2010; September 9, 2010; December 9, 2010.

Committee Action: Motion was made by Committee Member Dodd to approve regular meeting dates and times as mentioned above, seconded by Committee Member Constantine, and approved, 7-0.

**G. COMMITTEE/STAFF COMMENTS**

Discussion of scheduling another meeting on January 7, 2010 at 6:45pm to discuss

recommendations to be made to City Council. Committee to possibly divide into sub-committees to research the different proposed projects. Committee interested in exact termination date of lease on RMV property. City Attorney confirmed there is a termination date, but did not disclose the date at that time because it is not yet public lands. City Attorney will consult with seller for parameters on what can be disclosed. City Attorney clarified there is only one (1) lease and one (1) license agreement. Vice-Chair Constantine requested no discussion from the audience during the meetings while an individual is speaking at the podium or while a Committee Member is speaking.

#### **H. ADJOURNMENT**

Chairman Harper adjourned the meeting to Thursday January 7, 2010 at 6:45pm.

ATTACHMENT 1  
PROJECT #1 – NWOS PHASE 1 PARK

**MEMORANDUM**

**TO:** Dave Adams, City Manager

**FROM:** Steven Apple, AICP, Community Development Director

**SUBJECT:** Consideration of the Northwest Open Space Conceptual Land Use Plan Alternative #1; the Allocation of a Portion of Bond Funding for Phase 1 Park Improvements; and Initiating the Public Review Process.

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**RECOMMENDATION**

By motion:

1. Concur with the Open Space Committee and endorse Alternative 1A, Northwest Open Space Conceptual Land Use Plan providing for certain community park improvements on approximately 10 acres of City open space; and,
2. Allocate \$2,962,000 for design and construction of the Phase 1 Northwest Open Space park improvements, with said amount to be potentially reduced through grants; and,
3. Initiate the public review process and direct the City's Design Review Committee; Cultural Heritage Commission; Parks, Recreation & Equestrian Commission; and Planning Commission each conduct one public meeting to review and comment on the proposed phase 1 land use plan.

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**SITUATION**

With the November 4, 2008 voter approval of the of Open Space Bond, the City Council may now move forward with the planning process for potential phase 1 park improvements to the Northwest Open Space area.

**Background**

On October 24, 2005, the City Council, in a joint session with the Planning Commission, created the Open Space Committee and directed that the Committee to (1) review and make recommendations on the preservation and/or acquisition of additional open space, including identifying lands to be acquired and funding strategies for acquisition; and, (2) develop a planning strategy for land use and infrastructure within City open space and funding strategies for future planning and environmental work.

With the November 2008 voter approval of Measure Y, the City Council is now authorized to issue bonds up to a maximum of \$30 million to pursue open space acquisition and park improvements.

City staff have been working on the development of conceptual plans for the Northwest Open Space in order to determine how that site may be developed to balance habitat restoration efforts, especially along Trabuco Creek, with potential community park improvements. With the completion of the City-wide, habitat and protected species mapping, staff have determined that both objectives can be well accommodated. In conjunction with the Open Space Committee and Planning Sub-committee, staff has prepared a conceptual land use plan for phase 1 improvements to the Northwest Open Space.

### **Phase 1, Northwest Open Space Improvements**

During prior review of conceptual land use plans for the Northwest Open Space, the Open Space Committee provided guidance to City staff on the range of uses appropriate to this area. The purpose of engaging in land use planning for the City's present open space is to determine whether the City's park and recreation needs can be effectively addressed while minimizing impacts to natural habitat and protected species, a requirement for the City open space to qualify for Measure "M" grant funding. Based on the conceptual design completed to date, staff concludes that the City has the opportunity and ability to implement Phase 1 improvements without any direct impacts to existing or proposed natural habitat. The Phase 1 conceptual land use plan for the Northwest Open Space proposes to develop park improvements on approximately 10 acres of the 60± acre site with the following:

- Community Gardens (about 2.5 acres with about 200 garden plots).
- Enhanced Swanner property citrus grove (about 2.0 acres with pathways and presentation/education area).
- Group picnic area (about 4.0 acres with 22 to 24 picnic areas with barbeque grills and picnic tables, and limited recreation including a softball backstop for "pick-up" games, two volleyball courts, and three horseshoe pits).
- Dog park (about 1.0 acre situated between Camino Capistrano and Interstate-5)
- Accessory improvements including park entry with signage, access drives, parking area, restrooms, and similar improvements.

A copy of the Alternative 1A, Conceptual Land Use Plan, Northwest Open Space is provided as an enclosure.

### **Open Space Bond Fund Allocation**

The recent voter approval of the \$30 million bond provides the City with the resources to begin implementation of the first phase of public improvements to the Northwest Open Space. The conceptual land use plan intentionally includes only those uses that are appropriate to the property setting and do not include active recreation (e.g. athletic fields or equestrian facilities that could be provided on other existing or future open space lands).

Staff estimates that the total cost of phase 1 improvements to the Northwest Open Space would be approximately \$2.962 million or roughly 9.8% of the total bonding capacity of \$30

million (see Attachment 1, Cost Estimate for Phase 1 Improvements for Alternative 1A, Northwest Open Space Conceptual Land Use Plan).

The cost estimate for phase 1 improvements may be marginally reduced through qualifying grants, especially for the Swanner Property Citrus Grove. The City has retained Derek Ostensen & Associates to pursue all potentially qualifying grants for the park improvements. In addition, State Park Bond grants provide a potential source of funding pending resolution of the State budget and financial situation.

### **Public Review Process**

Section 9-2.337 of the Title 9, Land Use Code, entitled "Public improvement plans and outside agency development review" establishes the general framework for the review of public improvement plans (see Attachment 2, Section 9-2.337, Public improvement plans and outside agency development review). As part of the public review process, the City would review the proposed project for compliance with the California Environmental Quality Act (CEQA).

City Council has discretion as to which Commissions and Boards should review and comment on the proposed phase 1 improvement plans. Given the nature and scope of planned improvements, it would be appropriate for the conceptual land use plan to be subject to public review by the City's Design Review Committee, Cultural Heritage Commission, Park, Recreation & Equestrian Commission, and Planning Commission. In the interest of maintaining momentum in the process, City Council could direct those advisory Commissions/Committees to complete their review and provide comments at a single meeting. Staff has prepared an expedited tentative review schedule using a single meeting approach for each of the Commissions (see Attachment 3, Phase 1 Conceptual Land Use Plan, Tentative Review Schedule.) This will allow the community and City Council to have benefit of an expedited yet full public review process prior to the City Council potentially taking action to authorize preparation of bid documents as early as May of 2009. At that meeting, staff would comprehensively present all Commission and Committee comments, focusing specifically on potential differences of opinion.

### **FINANCIAL CONSIDERATIONS**

The City would use a portion of the Measure Y open space bond funds, supplemented by available grant funding, for the construction of phase 1 improvements to the Northwest Open Space with a total estimated cost of \$2.962 million. The cost estimate is based on the conceptual design and a worst case scenario that assumes irrigation would be provided by the City's potable water system which would require payment of water capacity charges. If all irrigation for the Northwest Open Space phase 1 improvements can be provided by the existing groundwater wells, the cost estimate could be reduced significantly (roughly \$100,000).

The City would seek potential grant funds to reduce that cost. Annual park maintenance costs are estimated by staff to be approximately \$72,500 (2009 dollars) and include

irrigation and potable water, electricity, minor facility repairs, solid waste removal, landscape maintenance (mowing, trimming, fertilization, etc.), and similar costs.

### COMMISSION REVIEW

At their January 12, 2009 meeting the Open Space Committee recommended that the City Council endorse Alternative 1A, Northwest Open Space Conceptual Land Use Plan; allocate a maximum of \$2.56 million for design and construction of park improvements but include permanent restroom facilities; and initiate the public review process for the conceptual land use plan. Restroom facilities with contingency and design add approximately \$340,000 to the total cost estimate based on the City's experience with the Los Rios Park Plan. Committee members posed a number of questions or raised issues which are addressed in an attachment (see Attachment 4, Response to Open Space Committee Jan. 12, 2009 Questions).

### PUBLIC NOTIFICATION

As part of the formal public review process, the City will provide public notification to adjoining property owners and interested parties as required by Title 9, Land Use Code and City Council policy.

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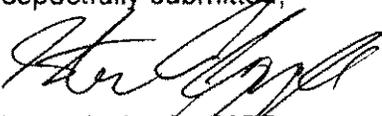
### RECOMMENDATION

By motion:

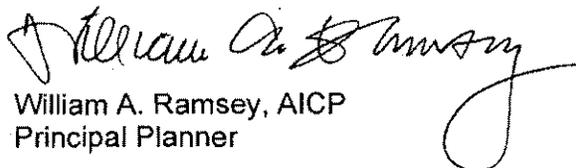
1. Concur with the Open Space Committee and endorse Alternative 1A, Northwest Open Space Conceptual Land Use Plan providing for certain community park improvements on approximately 10 acres of City open space; and,
2. Allocate \$2,962,000 for design and construction of the Phase 1 Northwest Open Space park improvements, with said amount to be potentially reduced through grants; and,
3. Initiate the public review process and direct the City's Design Review Committee; Cultural Heritage Commission; Parks, Recreation & Equestrian Commission; and Planning Commission each conduct one public meeting to review and comment on the proposed phase 1 land use plan.

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Respectfully submitted,

  
Steven A. Apple, AICP  
Community Development Director

Prepared by:

  
William A. Ramsey, AICP  
Principal Planner

Enclosure: Alternative 1A, Conceptual Land Use Plan, Northwest Open Space

Attachments:

1. Cost Estimate for Phase 1 Improvements for Alternative 1A, Northwest Open Space Conceptual Land Use Plan.
2. Section 9-2.337, Public improvement plans and outside agency development review.
3. Phase 1 Conceptual Land Use Plan, Northwest Open Space, Tentative Review Schedule.
4. Response to Open Space Committee Jan. 12, 2009 Questions

**CAPITAL COST ESTIMATE FOR IMPROVEMENTS**  
**NORTHWEST OPEN SPACE, ALTERNATIVE 1A, CONCEPTUAL DEVELOPMENT PLAN**  
**PHASE 1 IMPROVEMENTS**  
**CITY OF SAN JUAN CAPISTRANO, CA**  
**JANUARY 2009**

NO	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	TOTAL
<b>A PARK ENTRANCE</b>					
	Site grading & preparation (10 acres @ 18 inch depth)	24,200	CY	\$4.25	\$102,850
	Bio-retention/water quality	2,000	SF	\$6.00	\$12,000
	Irrigation water line (2" Schedule 40 PVC)	1,800	LF	\$15.00	\$27,000
	Irrigation (2" water meter & backflow preventer)	1	EA	\$35,000.00	\$35,000
	Fire hydrant waterline (8" C900, Class 150)	450	LF	\$28.50	\$12,825
	Fire hydrant	1	EA	\$3,200.00	\$3,200
	Security lighting	12	EA	\$1,200.00	\$14,400
	Equestrian fencing / wooden guard rails	1,200	LF	\$25.00	\$30,000
	Park entrance signs	1	EA	\$2,000.00	\$2,000
	Security gates	1	EA	\$1,200.00	\$1,200
	Street trees (36" box)	12	LF	\$750.00	\$9,000
	Shrubs and ground cover	9,500	SF	\$8.00	\$76,000
	Access drive (4" decomposed granite over 8" A.B.)	54,000	SF	\$3.50	\$189,000
	Access drive redwood header	2,200	LF	\$2.50	\$5,500
	Park entrance concrete driveway apron (6" conc. over 10" A.B.)	2,000	SF	\$3.65	\$7,300
<b>SUBTOTAL PARK ENTRANCE IMPROVEMENTS</b>					<b>\$627,275</b>
<b>B COMMUNITY GARDENS</b>					
	Site grading and preparation	(included under A Park Entrance)			
	Perimeter fencing (5'-0" chain link)	1,200	LF	\$3.75	\$4,500
	Pathway (4" decomposed granite over 4" A.B.) 5'-0" width	3,250	LF	\$2.75	\$8,938
	Trellis cover & seating area	650	SF	\$50.00	\$32,500
	Bench seating under trellis	6	EA	\$650.00	\$3,900
	Irrigation water line (2" Schedule 40 PVC)	2,200	LF	\$15.00	\$33,000
	Irrigation hose bibs	40	EA	\$250.00	\$10,000
	Irrigation (2" water meter & backflow preventer)	1	EA	\$35,000.00	\$35,000
	Drinking fountain	1	EA	\$4,000.00	\$4,000
	Domestic water line (2" Schedule 40 PVC)	1,800	LF	\$15.00	\$27,000
	Domestic water (2" water meter & backflow preventer)	1	EA	\$35,000.00	\$35,000
	Garden plot delineation (cedar or redwood edger)	150,000	LF	\$1.25	\$187,500
	Composting area (fencing and pad)	1	EA	\$2,500.00	\$2,500
	Signage	1	EA	\$1,000.00	\$1,000
	Landscape buffer along SCRRA railroad (36" and 48" box)	22	EA	\$650.00	\$14,300
<b>SUBTOTAL COMMUNITY GARDENS IMPROVEMENTS</b>					<b>\$399,138</b>
<b>C SWANNER PROPERTY, CITRUS GROVE</b>					
	Site grading and preparation	(included under A Park Entrance)			
	New/replacement orange trees (Valencia variety)	120	EA	\$500.00	\$60,000
	Pathway (4" D.G. over 4" A.B.) 10'-0" width	3,250	LF	\$2.75	\$8,938
	Seating/presentation area (4" D.G. over 4" A.B.)	8,000	SF	\$2.75	\$22,000
	Seating/presentation area benches	12	EA	\$650.00	\$7,800
	Drinking fountain	1	EA	\$4,000.00	\$4,000
	Signage	1	EA	\$1,000.00	\$1,000
	Domestic water line (2" Schedule 40 PVC)	150	LF	\$15.00	\$2,250
	Domestic water (2" water meter & backflow preventer)	1	EA	\$35,000.00	\$35,000
<b>SUBTOTAL SWANNER PROPERTY IMPROVEMENTS</b>					<b>\$140,988</b>

D GROUP PICNIC AREA

Site grading and preparation	(included under A Park Entrance)		
Bio-retention/water quality	10,000 SF	\$6.00	\$60,000
Sewer connection to MNWD (jack & bore)	1 LS	\$8,000.00	\$8,000
Sewer lines extension	380 LF	\$100.00	\$38,000
Sewer manhole	1 EA	\$7,000.00	\$7,000
Irrigation water line (2" Schedule 40 PVC)	5,000 LF	\$15.00	\$75,000
Irrigation (2" water meter & backflow preventer)	1 EA	\$35,000.00	\$35,000
Turf (Marathon sod)	40,000 SF	\$1.25	\$50,000
Landscaping (trees, shrubs, and groundcover)	45,000 SF	\$4.00	\$180,000
Sewer line extension (6-inch PVC)	300 LF	\$22.00	\$6,600
Sewer cleanout	4 EA	\$780.00	\$3,040
Sewer lateral connection to existing mainline	1 EA	\$750.00	\$750
Sewer connection under OCTA railroad (jack & bore)	1 EA	\$10,000.00	\$10,000
Bike Rack	2 EA	\$400.00	\$800
Volleyball courts	2 SF	\$5,000.00	\$10,000
Softball backstop (portable)	1 EA	\$2,276.00	\$2,276
Horseshoe pits	3 EA	\$500.00	\$1,500
Domestic water line (2" Schedule 40 PVC)	500 LF	\$15.00	\$7,500
Domestic water (2" water meter & backflow preventer)	1 EA	\$2,600.00	\$2,600
Drinking fountains	2 EACH	\$4,000.00	\$8,000
Trash & recycling receptacles	24 EACH	\$550.00	\$13,200
Signage	1 EA	\$1,000.00	\$1,000
Parking (80 spaces) (4" decomposed granite over 8" A.B.)	53,570 SF	\$3.50	\$187,495
Restrooms (two handicapped accessible)	1 LS	\$300,000.00	\$300,000
Landscape buffer along SCRRA railroad (36" and 48" box)	36 EA	\$650.00	\$23,400

**SUBTOTAL GROUP PICNIC AREA IMPROVEMENTS** **\$1,031,161**

E DOG PARK

Site grading and preparation	(included under A Park Entrance)		
Perimeter fencing (5'-0" chain link)	850 LF	\$3.75	\$3,188
Pathway (4" decomposed granite over 4" A.B.) 5'-0" width	20 LF	\$2.75	\$55
Domestic water line (2" Schedule 40 PVC)	50 LF	\$15.00	\$750
Domestic water (2" water meter & backflow preventer)	1 EA	\$35,000.00	\$35,000
Drinking fountain w/ integrated dog water bowl	1 EACH	\$4,000.00	\$4,000
Turf (Marathon sod)	32,000 SF	\$1.25	\$40,000
"Mutt-mil" dispensers	3 EA	\$350.00	\$1,050
Signage	1 EA	\$1,000.00	\$1,000
Parking (22 spaces) (4" decomposed granite over 8" A.B.)	7,400 SF	\$3.50	\$25,900

**SUBTOTAL DOG PARK IMPROVEMENTS** **\$110,943**

**SUBTOTAL PHASE 1 PARK IMPROVEMENTS** **\$2,209,504**

10% contingency \$220,950

**TOTAL PHASE 1 PARK IMPROVEMENTS** **\$2,430,454**

Construction survey	1 LS	\$30,000.00	\$30,000
CEQA review	1 LS	\$35,500.00	\$35,500
Preliminary park design	1 LS	\$45,000.00	\$45,000
Design / construction documents	8% Total Phase 1 Park Improvements		\$194,436
Construction mobilization	5% Total Phase 1 Park Improvements		\$121,523
SWPPP (construction water quality)	1 LS	\$40,000.00	\$40,000
Archeological monitoring	1 LS	\$45,000.00	\$45,000
Native American monitoring	1 LS	\$20,000.00	\$20,000

**TOTAL PHASE 1 IMPROVEMENTS** **\$2,961,913**

Footnote: The cost estimate of \$35,000 for the installation of a 2 inch water meter and back-flow preventer includes water capacity/storage, inspection, and similar Utility Department charges.

ANNUAL MAINTENANCE COSTS

Irrigation and potable water costs (i.e. metered water delivery)	1 LS	\$30,000.00	\$30,000
Electricity (i.e. security lighting, irrigation controllers)	1 LS	\$2,500.00	\$2,500
Minor facility repairs (i.e. fencing, recreational equip., barbecues, etc.)	1 LS	\$10,000.00	\$10,000
Solid waste removal (i.e. waste receptacles)	1 LS	\$5,000.00	\$5,000
Landscape maintenance (i.e. mowing, trimming, fertilizer, etc.)	1 LS	\$25,000.00	\$25,000

**TOTAL ANNUAL MAINTENANCE COSTS, PHASE** **\$72,500**

TITLE 9. LAND USE\*

CHAPTER 2 ADMINISTRATION\*

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**Sec. 9-2.337. Public improvement plans and outside agency development review.**

(a) Projects proposed within the City limits by other agencies. To the extent that projects proposed within the City's jurisdiction by other governmental agencies, or quasi-public agencies such as utility providers, are subject to the requirements of local agency review and approval, the City shall process all such proposals in accordance with the applicable provisions of this Code. For agencies that are exempt from local land use approval, the City may review such proposals and submit comments for consideration to the applicable agencies, as deemed appropriate.

(b) Consistency review of Capital Improvement Program. The Planning Commission shall annually review the City's Capital Improvement Program (CIP) for consistency with the General Plan, in accordance with California Government Code Section 65401, and shall forward its findings to the City Council prior to adoption of the CIP.

(c) Capital improvement projects proposed by the City shall be reviewed for conformance with applicable code requirements in accordance with this section, based on the nature and intensity of the proposed improvement project.

(d) Major capital improvement projects.

(1) For purposes of this section, a major capital improvement project shall mean a project that is determined by the Planning Director, in consultation with other affected department heads, to require review by one or more committees and/or commissions and the Planning Commission prior to approval by the City Council of design and/or construction documents, based on the project's potential to have environmental, aesthetic, and/or land use effects on the community.

(2) Typical examples of major capital improvement projects include but are not limited to the following:

(A) New or substantial alterations to parks, public buildings, community facilities, reservoirs, or bridges;

(B) New or substantial alterations to drainage structures which involve significant changes to grades, hillsides, habitats, or views;

(C) Street improvements which involve substantial expansion of right-of-way, removal of existing significant vegetation and/or facilities, and/or major changes to community character;

(D) Substantial changes to structures or streetscapes in the historic downtown area or to any structure listed in the Inventory of Historical and Cultural Landmarks or Buildings of Distinction list, as adopted by the City Council and amended from time to time;

(E) Design programs for city-wide features which are visible to the general public and contribute to community character, such as bus benches and shelters; trash enclosures; way-finding, entryway, or other community-wide signage; trailhead improvements; and similar features.

(3) Review procedure for major capital improvement projects.

(A) Environmental review shall be conducted pursuant to CEQA and the City's CEQA Guidelines.

(B) The Planning Director may forward major capital improvement projects to city boards, committees and commissions for technical and design review and input, prior to scheduling such projects for review by the Planning Commission and City Council.

(C) The Planning Commission shall conduct a public meeting on a proposed major capital improvement project with notice given pursuant to Section 9-302(g); shall review project plans for conformity with the General Plan, consistency with the Land Use Code, surrounding community and Design Guidelines, and other applicable City requirements; and shall forward a recommendation to the City Council.

(D) The City Council shall conduct a public meeting on the proposed major capital improvement project with notice given pursuant to Section 9-2.302(g), and shall take action to approve, conditionally approve, modify, defer, or deny the project.

(e) Minor capital improvement projects.

(1) For purposes of this section, a minor capital improvement project shall mean a project that may be reviewed and approved administratively, based on a determination by the Planning Director, in consultation with other affected department heads, that the project has been designed and conditioned so as to result in minimal effects on the environment or community, including the visual or aesthetic environment.

(2) Typical examples of minor capital improvement projects include, but are not limited to the following: alterations to existing facilities resulting in exterior design changes; roadway or trail improvements or extensions within existing rights-of-way with minor changes to landscaping, lighting, fencing, walls, or other design features; replacement or renovation of damaged facilities or structures resulting in exterior design changes; small additions to existing structures resulting in exterior design changes; individual signs; and construction or demolition of small structures resulting in site or building design changes.

(3) Review process for minor capital improvement projects.

(A) The Planning Director or designee may approve a minor capital improvement project for consistency with the General Plan, this Code, and other applicable land use and design requirements.

(B) Environmental review shall be conducted pursuant to CEQA and the City's CEQA Guidelines, if required.

(C) Prior to rendering a decision, the Planning Director may forward a minor capital improvement project to the Design Review Committee for review and recommendations regarding any changes to structures, lighting, landscaping, or other design issues; to the Park Recreation and Trail Commission for review and recommendations regarding any changes to parks or trails; and/or to the Cultural Heritage Commission for review and recommendations regarding any changes to historic districts or buildings.

(D) If deemed appropriate by the Planning Director, public notice of the action may be given pursuant to Section 9-2.302(h).

(f) Exempt capital improvement projects. For purposes of this section, capital improvement projects may be deemed to be exempt from review pursuant to the land use code if they will have no impact to land use, the environment, or the visual appearance of the community. Examples of exempt capital improvement projects include but are not limited to the following: feasibility and planning studies; emergency projects; street and trail improvements within existing rights-of-way with no aesthetic design impacts; pipeline installation, repair and maintenance; minor alterations to utilities; alterations and repairs to parking lots; small habitat restoration projects as defined in Section 15333 of the CEQA Guidelines; and similar projects as determined by the Planning Director in consultation with other affected department heads.

(g) The City Engineer, in consultation with the Planning Director, shall ensure that final plans and specifications for any capital improvement project are in conformance with applicable design requirements of this Code and any conditions of approval, prior to construction.

(h) Time period for approval. Once approved by the reviewing authority, capital improvement project approval shall remain effective until such time as the project is constructed or the City Council takes action to modify or delete the project from the Capital Improvement Program. (§ 2 Exh. A (part), Ord. 938, eff. July 3, 2008)

[<< previous](#) | [next >>](#)

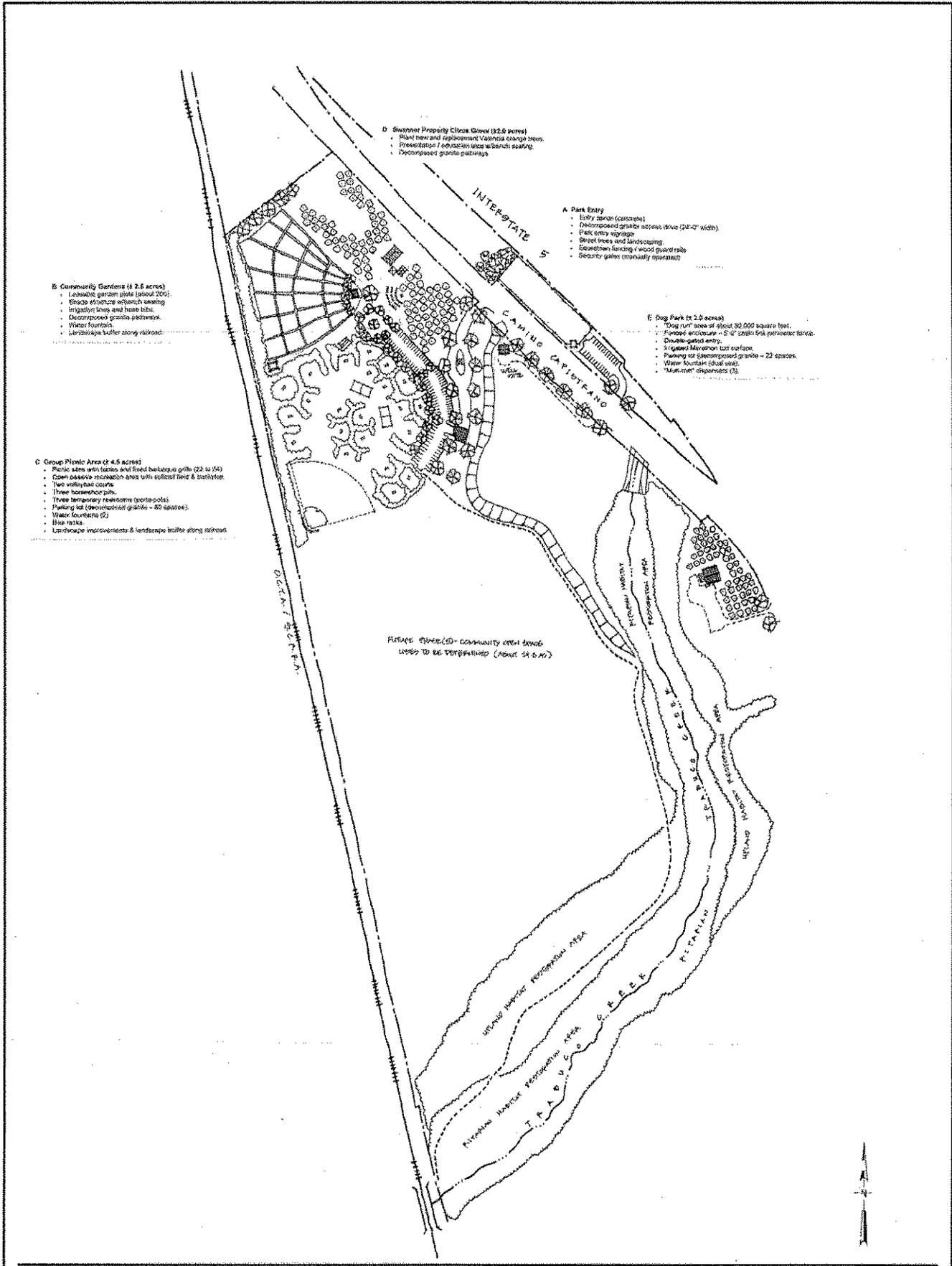
Northwest Open Space, Phase 1 Improvements  
 Tentative Project Review Schedule

Task	Tentative Date
City Council initiates the public review process	Tuesday, February 03, 2009
Development Advisory Board (DAB) review of the conceptual land use plan	Wednesday, February 18, 2009
Staff completes preliminary design and refinements to the Phase 1 improvement plan	Wednesday, April 01, 2009
Staff completes CEQA review and posts environmental determination	Thursday, April 09, 2009
Design Review Committee review	Tuesday, April 07, 2009
Park, Recreation & Equestrian Commission review	Monday, April 20, 2009
Cultural Heritage Commission review	Tuesday, April 28, 2009
Planning Commission review	Tuesday, April 28, 2009
City Council review, approval & authorization to prepare construction & bid documents	Tuesday, May 05, 2009

**Response to Open Space Committee Jan. 12, 2009 Questions**

<b>Question/Issue</b>	<b>Response</b>
The project lacks an overall comprehensive plan. The City shouldn't piece-meal the planning for the project.	Land acquisition and larger scale planning for the Northwest Open Space will take a number of years to accomplish. The current approach allows the City to pursue the first phase of park planning and improvements to meet current community needs, while conducting larger scale park planning and open space conservation and restoration.
The report includes only capital costs, not operating costs.	The Open Space Committee agenda report included maintenance costs. Those costs have now also been incorporated into the capital cost estimate spreadsheet.
Need to include contingency funds in the cost estimate.	The cost estimate prepared by staff has consistently included an 8% contingency, which based on the construction level of detail, should be adequate.
The City needs to be timely to not lose grant opportunities.	The City's grant consultant is managing and preparing the Measure "M" Grant application process, and investigating other potential grant funding opportunities.
Need to consider all costs now.	The cost estimate for the phase 1 improvements to the Northwest Open Space include all estimated capital costs and annual maintenance/operating costs.
Need to consider and other Agency permits.	Based on the current concept being considered, the City would be required to secure the following permits: <ul style="list-style-type: none"> <li>• a Section 401 clean water certification from the San Diego Regional Water Quality Control Board (SDRWQCB),</li> <li>• an encroachment permit from Orange County Transportation Authority (OCTA) to "jack &amp; bore" a sewer line connection under the railroad.</li> </ul>
The trail connection to the east is critical in providing connectivity between City open space and the Trabuco Creek open space corridor.	Trail connection to the east up Trabuco Creek will be included as a subsequent phase in the Northwest Open Space improvements.
Permanent restrooms need to be provided that have close proximity to the group picnic area.	The cost estimate provides for the construction of permanent restrooms similar to those being constructed at the Los Ríos Community Park.
The orientation of the ball field should be reversed so balls are being hit away from the picnic areas.	The ball field orientation and distance to picnic areas make it virtually impossible for anyone to hit the picnic areas. Reversing the orientation would result in foul balls to easily hit picnic areas.
The cost estimates need to be fine-tuned.	The cost estimates were reviewed and evaluated by Public Works, Community Development, and Utilities Department staff and have been developed to a construction level of detail. Following the development of preliminary design plans, the estimates will be re-evaluated and adjusted as necessary.
The cost estimates need to be "tightened"	The cost estimate hopefully over-estimates costs and as part of the development of preliminary design plans, staff will be able to fine-tune and reduce the capital cost estimate.

Is sod/turf a good choice for the surface of the proposed "Dog Park".	The proposed Dog Park is patterned after the Laguna Beach Dog Park. Marathon sod or St. Augustine turf provide a durable, and fairly easy-to-maintain dog run area.
Cultural resources are a concern.	The area around the Northwest Open Space is "culturally-rich". The ancient Acjachamen village of Putuidem (CA-ORA-855) was located in this general area. A recently certified EIR states, " <i>The village of Putuidem was located at the confluence of Oso and Trabuco Creeks, and is represented by archaeological site CA-ORA-855 and possibly also by CA-ORA-1338, CA-ORA-1040, and other adjacent sites.</i> " Although the limits of the village have not been precisely mapped, the village likely occupied the land area adjoining the creek confluence. The area immediately adjoining the confluence has been developed with J. Serra High School, Silverado Senior Living, Sycamore Commons (now the JSHS campus), Kaiser Permanente, and the Camino Health Care Center. In the case of each project, cultural site surveys were completed, monitoring was conducted, and impacts to resources were mitigated. Those project's improvements are much more intensive and likely located more central to the site of the village of Putuidem. The proposed passive park improvements to the north end of the Northwest Open Space are more distant from Putuidem than those projects, and certainly much less intensive. There will likely be cultural resources/artifacts encountered on the NWOS site, and the impacts to those resources can and will be mitigated, as they have been with the prior projects.
The City should seek all available grants and State bond funds.	Staff will work toward securing funding support from all available State, Federal, and non-profit organization grant programs.



**D. Swanner Property Citrus Grove (32.0 acres)**

- Plant new and replacement citrus grove trees
- Preservation / education area with orchard seating
- Decomposed granite pathways

**A. Park Entry**

- Entry plaza (concrete)
- Decomposed granite access drive (14'-0" wide)
- Park entry signage
- Shrub trees and landscaping
- Equine fencing / wood guardrails
- Security gates (manually operated)

**E. Dog Park (2.0 acres)**

- Dog run area of about 30,000 square feet
- Fenced enclosure - 3'-0" chain link perimeter fence
- Double-gated entry
- 3 (green) Marathon turf surface
- Parking on decomposed granite - 22 spaces
- Water fountain (dog use)
- Manure dispensers (3)

**B. Community Gardens (4.2.6 acres)**

- Layoutable garden plots (about 200)
- Shade structure with bench seating
- Irrigation lines and hose bibs
- Decomposed granite sidewalks
- Water fountains
- Landscape buffer along railroad

**C. Group Picnic Area (4.5 acres)**

- Public tables with benches and fixed beverage grills (22 to 54)
- Open passive recreation area with softest floor & amphitheater
- Two walking and cycling
- Three horseback riding
- Three temporary restrooms (porta-potties)
- Parking lot (decomposed granite - 30 spaces)
- Water fountains (2)
- Blue rocks
- Landscape improvements & landscape buffer along railroad

FUTURE PLANNED COMMUNITY OPEN SPACE  
 NEEDS TO BE DEVELOPED (ABOUT 14.5 AC)

Northwest Open Space - Alternative 1A  
 Phase 1, Conceptual Park Land Use Plan

Community Development Department  
 City of San Juan Capistrano, California

Scale 1" = 100'-0"  
 January 2009



ATTACHMENT 2

PROJECT #2 – HABITAT RESTORATION GRANT MATCH  
STAFF REPORT DATED JULY 7, 2009

7/7/2009

## AGENDA REPORT

# G2a

**TO:** Joe Tait, Interim City Manager *OT*

**FROM:** Steven Apple, Community Development Director

**SUBJECT:** Consideration of Focusing Open Space Habitat Restoration Efforts and Associated Potential City Funding Component of Forthcoming Grant Application Opportunities.

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### RECOMMENDATION:

Confirm Open Space Committee recommendation to focus habitat restoration efforts within a specific Phase I vicinity and discuss potential City funding component of forthcoming grant application opportunities

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### SITUATION:

The City Council created the Northwest Area Strategies Ad Hoc Committee on Oct. 24, 2005 during a joint session with the Planning Commission. The committee was renamed the Open Space Committee by the City Council on Feb. 20, 2007. The Open Space Committee is charged with (a) reviewing and making recommendations on preservation and/or acquiring additional open space, including identifying areas to be acquired and funding strategies for acquisition, and (b) developing a strategy for how future planning for land use and infrastructure within the area should be accomplished, including funding strategies for future planning and environmental work.

In keeping with this charge, at the June 1, 2009 Open Space Committee meeting, Chaired by Mayor Mark Nielsen, the Committee recommended the City Council focus open space habitat restoration efforts within general areas of publicly owned lands as shown on Attachment 1. Major guiding principals included those areas already under City ownership, land of higher habitat value (such as clusters of higher quality native vegetation and drainage/riparian areas), and topographic areas of less interest to other potentially competing future open space users. Based on such considerations as topography, access to water, existing habitat, minimizing need for lengthy and expensive permits from other agencies, minimizing lengthy and expensive environmental reviews, etc., City staff will be working with our consultant, Mr. Derek Ostensen to further fine tune the specific boundaries within those areas identified on Attachment 1 labeled "Draft Phase I Restoration Area". At this time, we anticipate an initial focus on the southern approximately 40 acres of the recently City acquired Shea property and a fairly small (less than 1 acre) area immediately adjacent to the west of the Trabuco Creek Interstate 5 undercrossing. Note that the City Council will subsequently have the final authority and decision as to forthcoming more detailed grant application proposals. For example, staff anticipates requesting of the City Council in

the immediate future, and possibly as early as August, 2009, authorization to submit County of Orange Measure M grant application(s) for a more defined and specific project within the areas described above. Note that such projects will have an increased chance of success if funds are also offered by the City. In anticipation of this forthcoming grant authorization request of Council, and to provide advance, general direction to staff and the Open Space Committee, it may be prudent for Council to discuss potential City funding associated with these forthcoming grant applications. For example, for discussion purposes, assuming a 12.5% to 25% City match, for every \$1,000,000 in grant funds applied for, one would anticipate a match of City funds of \$125,000 to \$250,000. While no hard and fast percentage match has been established to date for Measure M grant funding requests, our educated guess is that a 25% match would be more competitive (as well as positively received) than a 12.5% match.

For further background, the following observations/comment should also be kept in mind and may be of help in the Council grant funding discussion:

1. To date, the City Council has identified approximately \$2.9 million in Measure Y bond funding for the Phase I NW Open Space Park project efforts with its passive community park/recreational uses, orchard improvements and community garden planning efforts well underway.
2. The financial (and land use) implications of the present Council consideration of the purchase of approximately 132 acres of the Rancho Mission Viejo Riding Park properties at the southwest corner of Ortega Highway and La Pata Avenue. For example, if this property is acquired, this area more logically lends itself to a more immediate use for equestrian and/or recreational field activities, potentially freeing up other open space properties for other uses. One option to consider is to leverage this acquisition to utilize a portion of these 132 acres in a revenue generating equestrian and/or recreational/sports field manner with such funds then potentially being used for open space related undertakings such as paying for bond debt service, land acquisitions, habitat restoration on other properties, etc.
3. The financial implications of the City's continued efforts to preserve and/or acquire additional open space areas.
4. Interested parties have brought to our attention potential future uses of other Open Space lands including but not limited to recreational/soccer fields, equestrian facilities, ground water recharge/steel head trout basin/pond, working orchard/farm, dog park, cemetery, etc (staff notes that any preliminary Council consensus comments on these concepts, while not required at this time, would be of great help to staff and the Open Space Committee in their forthcoming land use discussions.)
5. Resource Agencies in southern California generically estimate \$50,000 to \$55,000 per acre for a five year restoration effort, however our consultant has suggested a more specific NW Open Space restoration effort at a cost of approximately \$24,800 per acre (costs are usually front loaded, with annually decreasing expenditures.) This significantly lower cost assumes the use of volunteers and reasonably easy and inexpensive access to water (see attachment 2 for more details.) We also note that the City is presently involved in

a 17 acre habitat restoration project with annual labor maintenance costs of approximately \$2,500 per acre. The City contractor also provides repairs to irrigation, etc. at an additional cost. The biological monitoring, etc. for those 17 acres is approximately \$31,000 per year with a project manager cost of \$5,000, a lower figure than our consultant has initially indicated. Staff and our consultant will use this information to even further fine tune the draft budget on attachment 2, as well as look for ways to combine efforts for potential economies of scale. An additional update on this may be available at the Council meeting.

6. The reported Whispering Hills high end, "Cadillac version" habitat restoration efforts have been reported to cost in excess of \$100,000 per acre.
7. If (and some would say more likely as, not if) the water drought continues and we move into Stage 2 and then possibly Stage 3 and beyond water level shortages, the entire region would have significantly less access to many sources of water. Without as much water, lengthier and/or less successful habitat restoration efforts will occur; or potentially we could consider using increasingly more expensive water sources – this should not be interpreted as a reason to defer or to discontinue habitat restoration efforts at this time, but should be kept in mind.

### **FINANCIAL CONSIDERATIONS**

Council deliberations on financial considerations are a significant issue as detailed earlier in this agenda report.

### **NOTIFICATION**

The Open Space Committee discussed this topic at the June 1, 2009 meeting.

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### **RECOMMENDATION:**

Confirm Open Space Committee recommendation to focus habitat restoration efforts within a specific Phase I vicinity and discuss potential City funding component of forthcoming grant application opportunities

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Respectfully submitted,



Steven A. Apple, AICP,  
Community Development Director

Attachment(s):

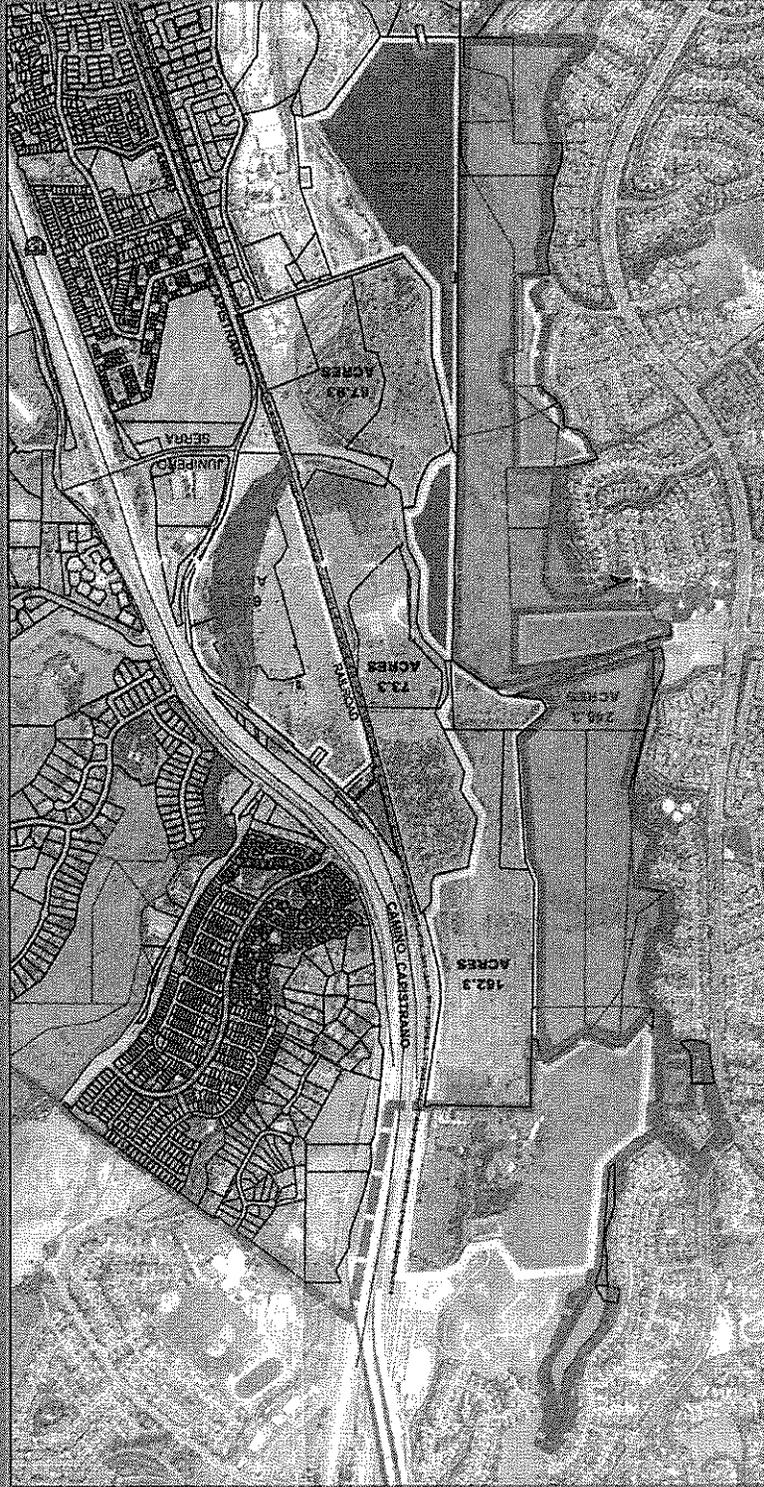
1. Northwest Open Space Draft Phase 1 Restoration Area
2. Preliminary Habitat Restoration budget from consultant

NORTHWEST OPEN SPACE OWNERSHIP MAP



**LEGEND**

- LAGUNA HEIGHTS HOA
- CRYSTAL CATHEDRAL
- HSIAC / WILLIAMS
- SADDLEBACK VALLEY CHRISTIAN SCH.
- CITY OPENSOURCE
- CITY BOUNDARY
- DRAFT OVERALL RESTORATION AREA 1
- DRAFT PHASE 1 RESTORATION AREA



DEREK OSTENSEN  
 AND ASSOCIATES  
 165 CUPERTINO SUITE A  
 LAGUNA BEACH, CA 92653  
 P: 949/883-8888

## Draft Phase 1 Restoration Budget | 39.71 acre Portion of the Shea Property

Item	Cost (\$)	Per	Frequency	Qty	Cost Per Year	Total Cost	Notes
<b>Invasives Removal</b>							
Stake flags	\$9.80	100	One-time	10	na	\$98.00	To identify and protect native plant communities
Assorted hand tools	\$7.00	1	One-time	80	na	\$560.00	Spades, shovels, rakes, scythes, etc.
Herbicide	\$69.34	acre	As needed	39.7	\$2,755.57	\$13,777.86	2 quarts per acre; roundup application; 5 years
Protective clothing	\$125.00	Person	One-time	2	na	\$250.00	Gloves, suits for application of Roundup.
Monitoring biologists	\$80.00	hour	5 years	400	\$6,400.00	\$32,000.00	5 years of invasive and volunteer labor monitoring.
Grow and Kill Labor	\$400.00	acre	5 years	39.7	\$15,884.00	\$79,420.00	5 cycles of grow and kill
Project Manager	\$65.00	hour	5 years	1600	\$20,800.00	\$104,000.00	320 hours per year over 5 years
<b>Total</b>						<b>\$230,105.86</b>	
<b>Habitat Revegetation</b>							
Monitoring biologist	\$800.00	acre	5 years	39.7	\$31,768.00	\$158,840.00	5 year assessment of restoration performance
Planting biologist	\$80.00	hour	2 years	80	\$6,400.00	\$12,800.00	Monitoring and instruction for planting
Cuttings and growing	\$3,500.00	acre	Annually	39.7	One-time	\$138,985.00	Tree of Life Nursery quote; site cuttings
500 Container plants	\$5.50	container	One-time	39.7	\$109,202.50	\$109,202.50	Plant palette will reflect existing native palette
Replacement planting	\$5.50	container	2 years	4766	\$26,213.00	\$32,505.00	4,766 plants will die based on 76% survival rate, 3,622 plants will survive next planting
Seedling sleeves	\$1.00	sleeve	One-time	total	\$19,870.00	\$19,870.00	One sleeve per plant over 39.71 acres
Restoration planting labor	\$500.00	acre	1 year	39.7	\$19,855.00	\$19,855.00	Planting of containers across entire site
Replacement planting labor	\$200.00	acre	1 year	39.7	\$7,942.00	\$7,942.00	Replacement of plants that did not survive during 2nd year
Restoration planting labor	Volunteer	hour	2 years	60	na	\$0.00	20-30 volunteers; Restoration Events
Hydroseed	\$500.00	acre	2 years	39.7	\$19,855.00	\$39,710.00	Two years of hydroseeding
Drip Irrigation	\$1,200.00	acre	One-time	39.7	\$2,000.00	\$47,652.00	Entire restoration area. Removal after 3 years
Drip Irrigation Labor	\$20,000.00	total	One-time	1	\$2,000.00	\$22,000.00	Installation of drip irrigation system
Irrigation Removal	\$10,000.00	total	One-time	1	na	\$10,000.00	Removal of drip irrigation system
Annual Water Costs	\$6,000.00	year	5 years	tbd	\$6,000.00	\$30,000.00	Rough estimate based on initial research
Project Manager	\$65.00	hour	5 years	1600	\$20,800.00	\$104,000.00	320 hours per year over 5 years
<b>Total</b>						<b>\$753,361.50</b>	

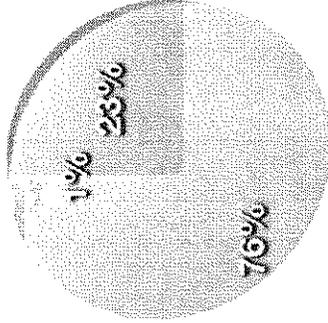
# Draft Phase 1 Restoration Budget | 39.71 acre Portion of the Shea Property

Item	Cost (\$)	Per	Frequency	Qty	Cost Per Year	Total Cost	Notes
<b>Administrative Expenses</b>							
Volunteer Coordinator	\$20.00	hour	Duration	200	\$800.00	\$4,000.00	Coordination of volunteers for project-related labor
Project-related costs	\$300.00	total	5 years	Misc	\$300.00	\$1,500.00	Maps, reports, mailing and other documentation

## Restoration Budget Allocation

Total \$5,500.00

Master Total \$988,967.36 Entire project over 5 years



- Invasives Removal
- Habitat Revegetation
- Administrative Expenses

ATTACHMENT 3

PROJECT #3 – RMV ACQUISITION  
PURCHASE AND SALE AGREEMENT  
(Redacted)

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**PURCHASE AND SALE AGREEMENT  
AND ESCROW INSTRUCTIONS**

BY AND BETWEEN

**RMV COMMUNITY DEVELOPMENT, LLC,**  
a California limited liability company, and  
**DMB San Juan Investment North, LLC,**  
a Delaware limited liability company

**("Seller")**

AND

**CITY OF SAN JUAN CAPISTRANO**  
a California municipal corporation

**("Buyer")**

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**PURCHASE AND SALE AGREEMENT  
AND ESCROW INSTRUCTIONS**

THIS PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (this "Agreement") is made and entered into as of \_\_\_\_\_, 2009, between **RMV COMMUNITY DEVELOPMENT, LLC**, a California limited liability company, and **DMB SAN JUAN INVESTMENT NORTH, LLC**, a Delaware limited liability company ("Seller" or "RMV"), and **CITY OF SAN JUAN CAPISTRANO**, a California municipal corporation ("Buyer" or "City"), with reference to the following:

A. Seller is the owner of the real property (the "Real Property") described on Exhibit A attached hereto. The Real Property consists of four (4) separate parcels designated as Parcel 7 (±70.572 acres), Parcel 8 (±18.403 acres), the Creek Open Space Parcel (±17.142 acres) and the La Pata Open Space Parcel (two parcels with ±25.417 acres combined), respectively.

B. Buyer regards the Real Property as the eastern gateway to the City of San Juan Capistrano, and the Real Property currently hosts about forty separate events during the year, held on approximately 112 days and accommodating more than 125,000 visitors, including participants and spectators, annually.

C. The Real Property is strategically located at the intersection of two major arterials, Ortega Highway and La Pata Avenue. Annual average daily traffic along Ortega Highway is currently approximately 27,000 ADT (as published by Caltrans for 2008) and this state highway is being expanded to accommodate current and future additional traffic. Visibility and access to the site are excellent and access will be improved further by a signalized intersection with the Ortega Highway widening project.

D. The Real Property is currently the site of the "Rancho Mission Viejo Riding Park", as well as certain agricultural and ranch-related uses, and Parcels 7 and 8 are currently entitled to allow for development of multiple uses including Urban Activity Center uses, single family residential units, and a community park. A grading permit has been obtained for Parcel 8.

E. Given its location, the Real Property can be developed independently of other parcels in the area – particularly since it is relatively flat and has water and electricity service in place.

F. Furthermore, given its strategic location, it is expected that the Real Property will increase substantially in value as development occurs in surrounding areas

G. Acquisition of the Real Property by Buyer would allow for: (1) preservation of a citrus grove and lands which reflect the agricultural and rural equestrian legacy of San Juan Capistrano; (2) retention of the Rancho Mission Viejo Riding Park as a venue for local equestrian activities including the annual Rancho Mission Viejo Rodeo which serves as a key fundraiser for charities in San Juan Capistrano and throughout South Orange County; (3) retention of a venue for local and regional sports and community events, for youths and adults; and (4) facilitation of planned Regional riding and hiking trails, and a Class 1 Bikeway on the Real Property.

H. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Real Property.

I. Seller and Buyer previously entered into a term sheet dated June 4, 2009 (the "Term Sheet") concerning the desired transaction.

J. Pursuant to the Term Sheet, Seller has delivered to Buyer certain information and documentation pertaining to the Real Property (collectively, the "Property Information") and a preliminary title report covering the Real Property (the "Title Report"), together with copies of all documents (collectively, the "Title Documents") referenced in the Title Report.

K. Buyer has carried out certain due diligence activities including reviewing the Property Information and Title Documents, inspecting the Real Property, and completing a Phase 1 study and/or other environmental reports.

L. Buyer has obtained an MAI appraisal of the Real Property at or above the Purchase Price (as defined below).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **BASIC TERMS AND DEFINITIONS; REFERENCES**

1.1 **Basic Terms and Definitions.**

(a) **Effective Date.** The effective date of this Agreement shall be the date set forth above ("**Effective Date**").

(b) **Closing Date.** The last day that Close of Escrow may occur shall be on that date that is one-hundred eighty (180) days from the Effective Date, at 1:00 p.m. (the "**Closing Date**").

(c) **Escrow Holder.** The escrow holder shall be Fidelity National Title Company ("**Escrow Holder**"), whose address is 1300 Dove Street, Suite 310, Newport Beach, California 92660, Escrow Officer: Natalie Priestley; Telephone: (949) 622-4911; Telecopier: (949) 221-4799.

(d) **Title Company.** The title company shall be Fidelity National Title Company ("**Title Company**") whose address is 1300 Dove Street, Suite 310, Newport Beach, California 92660, Title Coordinator: Steven Ball; Telephone: (949) 477-3608; Telecopier: (949) 221-4799.

1.2 **References.** All references to Exhibits refer to Exhibits attached to this Agreement and all such Exhibits are incorporated herein by reference. The words "herein," "hereof," "hereinafter" and words of similar import refer to this Agreement as a whole and not to any particular Section hereof.

2. **PURCHASE AND SALE.**

Subject to the terms and conditions of this Agreement, Seller agrees to sell, assign and transfer to Buyer and Buyer agrees to purchase from Seller, for the purchase price set forth in Section 3 hereof, all of Seller's right, title and interest in and to the following (collectively, the "**Property**");

2.1 The Real Property, together with the buildings/structures located thereon, and all other improvements located thereon (the buildings/structures and such other improvements are listed/shown on Exhibit B attached hereto and are referred to herein collectively as the ("**Improvements**")), except for any Improvements that are listed/shown on Exhibit B as being owned by the existing licensee and/or lessee (the "**Licensee**" and "**Lessee**", respectively); except as otherwise noted herein, all references hereinafter made to the Real Property shall be deemed to include all rights, privileges, easements and appurtenances benefiting the Real Property and/or the Improvements situated thereon, including, without limitation, all easements, rights-of-way and other appurtenances used or connected with the beneficial use or enjoyment of the Real Property;

2.2 All of Seller's interest in the license and lease affecting the Real Property as of the Close of Escrow (the "**License**" and "**Lease**", respectively), copies of which are included as Exhibits C and D attached hereto; and

Notwithstanding anything to the contrary contained herein, the term "Property" shall expressly exclude any Rents (as such term is defined in Section 10.1 hereof) or any other amounts payable by Licensee and Lessee under the License and Lease for periods prior to the Close of Escrow, any Rents or other

amounts payable by any former tenants of the Property, and any judgments, stipulations, orders, or settlements with any licensee and/or lessee under the License or Lease or former tenants of the Property (hereinafter collectively referred to as the "Excluded Property").

3. **PURCHASE PRICE.**

3.1 **Purchase Price.** The purchase price for the Property shall be Twenty-Seven Million Five Hundred Thousand Dollars (\$27,500,000.00) (the "Purchase Price").

3.2 **Payment of Purchase Price.** Provided all the conditions in Section 7.1 hereof have been satisfied or waived by Buyer, Buyer shall deposit in cash or current funds with Escrow Holder no later than 1:00 p.m. (California time) one (1) business day prior to the Closing Date (as defined in Section 1.1(b) hereof) an amount equal to the Purchase Price plus or minus applicable prorations pursuant to Section 10 hereof.

4. **PROPERTY INFORMATION; TITLE REVIEW; INSPECTIONS; CONFIDENTIALITY; RELOCATION RIGHTS.**

4.1 **Property Information.** A list of the Property Information previously provided by Seller to Buyer is set forth on Exhibit E attached hereto.

4.2 **Title; Title Policy.**

4.2.1 **Delivery of Title Report.** As noted above, Seller has previously delivered to Buyer the Title Report and other Title Documents covering the Real Property. Buyer acknowledges that Seller makes no representations or warranties, and Seller shall have no responsibility, with respect to the completeness of the Title Documents made available to Buyer.

4.2.2 **Title Conditions.** Except for the deeds of trust referenced in the Title Report as exception Nos. 26 and 27 which shall be removed prior to Closing of Escrow, Buyer shall take the Property subject to all existing conditions of (exceptions to) title as set forth in the Title Documents (collectively, the "Permitted Exceptions"). Buyer specifically acknowledges the Permitted Exception relating to property tax liens, including any assessments collected with taxes, and is aware that these liens include, but are not limited to, those assessments collected for the benefit of the Santa Margarita Water District ("**SMWD**") as reflected on the County's secured property tax bills. Buyer further specifically acknowledges the Permitted Exception relating to rights of the parties in possession of any portion of the Property, which rights are not disclosed by the public record. In that regard, Buyer has reviewed the Lease and License pertaining to the Property, namely, the lease held by The Oaks and the license held by Blenheim Facilities Management, LLC (copies of which were included with the Property Information provided by Seller and which are included as Exhibits C and D hereto), and is accepting the assignment of same in conjunction with its purchase of the Property.

4.2.3 **Delivery of Title Policy at Closing.** As a condition precedent to the Close of Escrow, the Title Company shall have issued and delivered to Buyer, or shall have committed to issue and deliver to Buyer, with respect to the Real Property, a Standard Coverage Owner's Policy of Title Insurance (2006 Form) (the "Title Policy") issued by the Title Company as of the date and time of the recording of the Deed (as such term is defined in Section 6.1 hereof) for the Real Property, in the amount of the Purchase Price insuring Buyer as owner of good, marketable and indefeasible fee simple title to the Real Property, subject only to the Permitted Exceptions.

4.3 **Inspections.**

4.3.1 **Inspections in General.** As noted above, as part of its due diligence activities carried out pursuant to the Term Sheet, Buyer has inspected the Real Property. Buyer shall provide Seller (at no cost to Seller) with a copy of the results of any tests and inspections made by Buyer upon

the Real Property, excluding only market and economic feasibility studies. To the extent any inspection or test disturbed the Real Property, and Buyer has not yet restored the Real Property to the same condition as existed before the inspection or test, Buyer shall do so. Buyer shall defend, indemnify Seller and hold Seller, Seller's trustees, officers, tenants, agents, contractors and employees and the Real Property harmless from and against any and all losses, costs, damages, claims, or liabilities, including but not limited to, mechanic's and materialmen's liens and Seller's attorneys' fees, arising out of or in connection with Buyer's, its agents, contractors, employees, or invitees entry upon or inspection of the Real Property.

4.3.2 **Environmental Inspections.** As part of its investigation, Buyer has had an environmental report prepared by EEI, Inc. dated July 21, 2009 (the "EEI Report") that examines the existing environmental conditions of Parcels 7 and 8. The information provided in the EEI Report, together with the materials provided directly by Seller to Buyer, are acknowledged by Buyer to be a part of Seller's disclosures to Buyer regarding the environmental conditions of the Property. Buyer shall deliver to Seller (at no cost to Seller) copies of the EEI Report and any other environmental reports made by Buyer relating to the Real Property.

4.3.3 **Condition/Suitability of Real Property.** Based upon its due diligence activities carried out to date, Buyer shall be deemed to be satisfied with all aspects of all the Real Property, including, without limitation, the condition and suitability of all the Real Property for Buyer's intended use, and Buyer shall be obligated to acquire the Real Property in accordance with the provisions of this Agreement.

4.4 **Confidentiality.** Prior to the Close of Escrow or in the event the Close of Escrow never occurs, the Property Information and all other information, other than matters of public record or matters generally known to the public, furnished to, or obtained through inspection of the Real Property by, Buyer, its affiliates, lenders, employees, attorneys, accountants and other professionals or agents relating to the Real Property, will be treated by Buyer, its affiliates, lenders, employees and agents as confidential, and will not be disclosed to anyone (except as reasonably required in connection with Buyer's evaluation of the Real Property) except to Buyer's consultants who agree to maintain the confidentiality of such information, and will be returned to Seller by Buyer if the Close of Escrow does not occur. The terms of this Agreement will not be disclosed to anyone prior to or after the Close of Escrow except to Buyer's and Seller's consultants who agree to maintain the confidentiality of such information and Seller and Buyer agree not to make any public announcements or public disclosures or communicate with any media with respect to the subject matter hereof without the prior written consent of the other party (in their sole and absolute discretion). The confidentiality provisions of this Section 4.4 shall not apply to any disclosures made by Buyer or Seller as required by law (including the disclosure required to be made by Buyer pursuant to California Government Code §54957.1(a)), by court order, or in connection with any subpoena served upon Buyer or Seller; provided Buyer and Seller shall provide each other with written notice before making any such disclosure.

4.5 **Relocation Rights Under License and Lease.** At Buyer's request, Seller has included in the License a provision whereby Licensee waives any right to relocation assistance or benefits (see Section 15 of License attached as Exhibit C hereto) which provision is acceptable to Buyer.

With regard to the Lease, prior to Close of Escrow, Seller shall attempt to obtain a waiver of relocation assistance and benefits from Lessee ("**Waiver of Relocation Rights**") substantially in the form of Exhibit S attached hereto. In the event Seller obtains said waiver from Lessee, Seller shall be relieved of any liability to Buyer regarding the provision of relocation assistance and benefits to Lessee. In the event Seller is unable to obtain said waiver, Buyer shall have the option of either (a) receiving an assignment of Seller's interest in the Lease at the Close of Escrow pursuant to Sections 2.2 and 6.1(b) hereof, in which case Seller shall also be relieved of any liability to Buyer regarding the provision of relocation assistance and benefits to Lessee, or (b) requiring that Seller deliver a notice of termination to Lessee ("**Notice of Lease Termination**") pursuant to Section 2 of the Lease, in which case Seller shall indemnify Buyer for the relocation assistance required to be paid by Buyer as a result of any legal action

brought by Lessee to recover its costs of relocation as a result of the termination of the Lease, provided however, in no event shall Seller be required to pay more than the actual cost of Lessee's relocation.

## 5. OPERATIONS AND RISK OF LOSS

5.1 Ongoing Operations. During the pendency of this Agreement, but subject to the limitations set forth below, Seller shall carry on its businesses and activities relating to the Real Property substantially in the same manner as it did before the date of this Agreement.

5.2 New Contracts. Seller will not enter into any contract that will be an obligation affecting the Real Property subsequent to the Close of Escrow (except contracts entered into in the ordinary course of business that are terminable without cause on 30-days' notice), without the prior consent of the Buyer, which shall not be unreasonably withheld or delayed.

5.3 Damage or Condemnation. Risk of loss resulting from any condemnation or eminent domain proceeding which is commenced or has been threatened against the Real Property before the Close of Escrow, and risk of loss to the Real Property due to fire, flood or any other cause before the Close of Escrow, shall remain with Seller. If before the Close of Escrow the Real Property or any portion thereof shall be materially damaged, or if the Real Property or any material portion thereof shall be subjected to a bona fide threat of condemnation or shall become the subject of any proceedings, judicial, administrative or otherwise, with respect to the taking by eminent domain or condemnation, then Buyer may elect not to acquire the Real Property by delivering written notice of such election to Seller within five (5) days after Buyer learns of the damage or taking, in which event Buyer shall no longer be obligated to purchase, and Seller shall no longer be obligated to sell, the Real Property. If the Closing Date is within the aforesaid 5-day period, then the Close of Escrow shall be extended to the next business day following the end of said 5-day period. If no such election is made, and in any event if the damage is not material, this Agreement shall remain in full force and effect, and the purchase contemplated herein, less any interest taken by eminent domain or condemnation, shall be effected with no further adjustment, and upon the Close of Escrow, Seller shall assign, transfer and set over to Buyer all of the right, title and interest of Seller in and to any awards that have been or that may thereafter be made for such taking. For purposes of this Section 5.3, the phrase(s) (i) "Material damage" or "Materially damaged" means damage reasonably exceeding ten percent of the Purchase Price of the Real Property, and (ii) "material portion" means any portion of the Real Property that has a "fair market value" exceeding 10% of the Purchase Price of the Real Property.

## 6. SELLER'S AND BUYER'S DELIVERIES

6.1 Seller's Deliveries into Escrow. No less than one (1) business day prior to the Closing Date, Seller shall deliver into Escrow (as such term is defined in Section 9 hereof) to the Escrow Holder the following:

(a) Deed. A grant deed (the "Deed") in the form attached hereto as Exhibit F, executed and acknowledged by Seller, conveying to Buyer Seller's title to the Real Property.

(b) Assignment of Lease and License and Bill of Sale. An Assignment of the Lease and License and Bill of Sale ("Assignment of Lease and License and Bill of Sale") in the form of Exhibit G attached hereto, executed by Seller.

(c) State Law Disclosures. Such disclosures and reports as are required by applicable state and local law in connection with the conveyance of the Real Property.

(d) Water Agreement. The Water Agreement (the "Water Agreement") substantially in the form of Exhibit H attached hereto, executed by Seller.

(e) **Rodeo License.** The Rodeo License Agreement (the "**Rodeo License Agreement**") substantially in the form of Exhibit I attached hereto, executed by Seller.

(f) **Conservation Easement.** If it has not been previously recorded by Seller as provided herein, the conservation easement (the "**Conservation Easement**") in the form of Exhibit J attached hereto, executed by Seller and The Reserve at Rancho Mission Viejo ("**The Reserve**").

(g) **FIRPTA.** A Foreign Investment in Real Property Tax Act affidavit executed by Seller substantially in the form of Exhibit K attached hereto.

(h) **Additional Documents.** Any additional documents that Escrow Holder or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

6.2 **Buyer's Deliveries into Escrow.** No less than one (1) business day prior to the Closing Date, Buyer shall deliver into Escrow to the Escrow Holder the following:

(a) **Purchase Price.** The Purchase Price, plus or minus applicable prorations, deposited by Buyer with the Escrow Holder in immediate, same-day federal funds wired for credit into the Escrow Holder's escrow account and deposited in Escrow Holder's escrow account no later than 1:00 p.m. (California time) one business day prior to the Closing Date.

(b) **Assignment of Lease and License and Bill of Sale.** An Assignment of Lease and License and Bill of Sale executed by Buyer.

(c) **State Law Disclosures.** Such disclosures and reports as are required by applicable state and local law in connection with the conveyance of the Real Property.

(d) **Water Agreement.** The Water Agreement executed by Buyer.

(e) **Rodeo License Agreement.** The Rodeo License Agreement executed by Buyer.

(f) **Additional Documents.** Any additional documents that Escrow Holder or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

6.3 **Closing Statements/Escrow Fees; Notices.** Concurrently with the Close of Escrow, Seller and Buyer shall deposit with the Escrow Holder executed closing statements consistent with this Agreement in the form required by the Escrow Holder and, Seller and Buyer shall execute at the Close of Escrow, and deliver to Licensee and Lessee immediately after the Close of Escrow, notices regarding the sale of the Real Property in substantially the form of Exhibit L attached hereto, or such other form as may be required by applicable state law.

6.4 **Post-Closing Deliveries.** Immediately after the Close of Escrow, to the extent in Seller's possession, Seller shall deliver to the offices of Buyer the original Lease and License.

## 7. **CONDITIONS TO BUYER'S AND SELLER'S OBLIGATIONS.**

7.1 **Conditions to Buyer's Obligations.** The Close of Escrow and Buyer's obligation to consummate the transaction contemplated by this Agreement are subject to the satisfaction of the following conditions for Buyer's benefit (or Buyer's waiver thereof, it being agreed that Buyer may waive any or all of such conditions) on or prior to the Closing Date or on the dates designated below for the satisfaction of such conditions:

(a) All of Seller's representations and warranties contained herein shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date, subject to any qualifications hereafter made to any of Seller's representations as provided for in Section 11.1 hereof;

(b) As of the Closing Date, Seller shall have performed its respective obligations hereunder and all deliveries to be made at Close of Escrow by Seller shall have been tendered;

(c) There shall exist no actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings, pending or threatened against Seller that would materially and adversely affect Seller's ability to perform its respective obligations under this Agreement;

(d) There shall exist no pending or threatened action, suit or proceeding with respect to Seller before or by any court or administrative agency which seeks to restrain or prohibit, or to obtain damages or a discovery order with respect to, this Agreement or the consummation of the transaction contemplated hereby; and

(e) As of the Closing Date, Seller shall have relocated the existing Freddie Love facility off of the Property.

(f) As of the Closing Date, if the Waiver of Relocation Rights has been executed by Lessee, Seller shall have delivered or caused to be delivered to Buyer a copy of said waiver. If Lessee has not executed said waiver and if Buyer has required Seller to deliver the Notice of Lease Termination to Lessee pursuant to Section 4.5 hereof, Seller shall deliver or cause to be delivered a copy of said notice to Buyer.

If, notwithstanding the nonsatisfaction of any such condition, the Close of Escrow occurs, there shall be no liability on the part of Seller for breaches of representations and warranties of which Buyer had knowledge as of the Close of Escrow.

## 7.2 Conditions to Seller's Obligations.

The Close of Escrow and Seller's obligations to consummate the transaction contemplated by this Agreement are subject to the satisfaction of the following conditions for Seller's benefit (or Seller's waiver thereof, it being agreed that Seller may waive any or all of such conditions) on or prior to the Closing Date or the dates designated below for the satisfaction of such conditions:

(a) All of Buyer's representations and warranties contained herein shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date;

(b) As of the Closing Date, Buyer has performed its obligations hereunder and all deliveries to be made at Close of Escrow by Buyer shall have been tendered including, without limitation, the deposit with Escrow Holder of the amounts set forth in Section 6.2(a) hereof;

(c) There shall exist no actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings, pending or threatened against Buyer that would materially and adversely affect Buyer's ability to perform its obligations under this Agreement; and

(d) There shall exist no pending or threatened action, suit or proceeding with respect to Buyer before or by any court or administrative agency which seeks to restrain or prohibit, or to obtain damages or a discovery order with respect to, this Agreement or the consummation of the transaction contemplated hereby.

8. **CLOSE OF ESCROW; POSSESSION.**

8.1 "Close of Escrow" shall mean and refer to Seller's receipt of the Purchase Price and the other amounts due Seller in accordance with the provisions of Section 9.1(b) below. The Escrow and Buyer's right to purchase the Real Property will terminate automatically if the Close of Escrow does not occur on or before 1:00 p.m. (California time) on the Closing Date.

8.2 Sole exclusive possession of the Real Property, subject only to the Permitted Exceptions (as defined in Section 4.2.2 hereof), shall be delivered to Buyer on the Closing Date.

9. **ESCROW.**

9.1 **Closing.** The escrow (the "**Escrow**") for the consummation of this transaction shall be established with Escrow Holder at the address indicated in Section 18.1 hereof by the deposit of an original signed copy of this Agreement with Escrow Holder contemporaneously with the execution hereof. This Agreement shall constitute both an agreement among Buyer and Seller and escrow instructions for Escrow Holder. If Escrow Holder requires separate or additional escrow instructions which it deems necessary for its protection, Seller and Buyer hereby agree promptly upon request by Escrow Holder to execute and deliver to Escrow Holder such separate or additional escrow instructions (the "**Additional Instructions**"). In the event of any conflict or inconsistency between this Agreement and the Additional Instructions, this Agreement shall prevail and govern, and the Additional Instructions shall so provide. The Additional Instructions shall not modify or amend the provisions of this Agreement unless otherwise agreed to in writing by Seller and Buyer.

On the Closing Date, provided that the conditions set forth in Sections 7.1 and 7.2 hereof have been satisfied or waived, Escrow Holder shall take the following actions in the order indicated below:

(a) With respect to all closing documents delivered to Escrow Holder hereunder, and to the extent necessary, Escrow Holder is authorized to insert into all blanks requiring the insertion of dates the date of the recordation of the Deed or such other date as Escrow Holder may be instructed in writing by Seller and Buyer;

(b) Deliver to Seller, in cash or current funds, the Purchase Price, plus or minus, as the case may be, the amounts determined in accordance with the provisions of Section 10 hereof, Buyer's signed counterparts of the Assignment of Lease and License and Bill of Sale, the Rodeo License Agreement, and conformed copies of the recorded Conservation Easement, Water Agreement and Deed;

(c) Record the Conservation Easement in the official records of Orange County;

(d) Record the Deed in the official records of Orange County;

(e) Record the Water Agreement in the official records of Orange County;

(f) Deliver to Buyer those items referred to in Section 6.1 hereof and conformed copies of the recorded Conservation Agreement, Water Agreement and Deed;

(g) Cause the Title Company to issue the Title Policy for the Real Property in accordance with the provisions of Section 4.2.3 hereof; and

(h) Deliver to Seller and Buyer a final closing statement which has been certified by Escrow Holder to be true and correct.

9.2 **Escrow and Title Charges.**

(a) Upon the Close of Escrow, escrow, title charges and other closing costs shall be allocated between Seller and Buyer as follows:

(i) Seller shall pay: (1) the premiums for the Title Policy, (2) the cost of recording the Conservation Easement, Water Agreement and Deed, and (3) one-half (½) of any escrow fees or similar charges of Escrow Holder.

(ii) Buyer shall pay one-half (½) of any escrow fees or similar charges of Escrow Holder and all sales, gross receipts, compensating, stamp, excise, documentary, transfer, deed or similar taxes or fees (City, County and State) payable in connection with the consummation of the transactions contemplated by this Agreement. If Buyer desires ALTA extended coverage for any Title Policy, Buyer shall pay the premiums and any additional costs (including any survey costs) for such coverage (additional to the premiums for standard coverage) and the cost of any endorsements to the Title Policy, if required by Buyer.

(iii) Buyer shall pay all costs incurred in connection with Buyer's updating or obtaining any surveys for the Real Property.

(iv) Except to the extent otherwise specifically provided herein, all other expenses incurred by Seller and Buyer with respect to the negotiation, documentation and closing of this transaction, including, without limitation, Buyer's and Seller's attorneys' fees, shall be borne and paid by the party incurring same.

(b) If the Close of Escrow does not occur by reason of Buyer's or Seller's default under this Agreement, then all escrow and title charges (including cancellation fees) shall be borne by the party in default.

9.3 **Procedures Upon Failure of Condition.** Except as otherwise expressly provided herein, if any condition set forth in Sections 7.1 or 7.2 hereof is not timely satisfied or waived for a reason other than the default of Buyer or Seller in the performance of its respective obligations under this Agreement:

(a) This Agreement, the Escrow and the respective rights and obligations of Seller and Buyer hereunder shall terminate (other than the indemnity and insurance obligations of Buyer set forth in Sections 4.3.1 and 14 hereof and the confidentiality provisions of Section 4.4 hereof which shall survive such termination) at the written election of the party for whose benefit such condition was imposed, which written election must be made (i) within two (2) business days after the date such condition was to be satisfied, or (ii) on the date the Close of Escrow occurs, whichever occurs first;

(b) Escrow Holder shall promptly return to Buyer all funds of Buyer in its possession, and to Seller and Buyer all documents deposited by them respectively, which are then held by Escrow Holder;

(c) Buyer shall return to Seller the Property Information and Buyer shall deliver to Seller all Work Product (as such term is defined in Section 18.3 hereof); and

(d) Any escrow cancellation and title charges shall be borne equally by Seller and Buyer.

10. **PRORATIONS.**

If the Purchase Price is received by Seller's depository bank in time to credit to Seller's account on the Closing Date, the day the Close of Escrow occurs shall belong to Buyer and all prorations

hereinafter provided to be made as of the Close of Escrow shall each be made as of the end of the day before the Closing Date. If the cash portion of the Purchase Price is not so received by Seller's depository bank on the Closing Date, then the day the Close of Escrow occurs shall belong to Seller and such proration shall be made as of the end of the day that is the Closing Date. In each such proration set forth below, the portion thereof applicable to periods beginning as of Close of Escrow shall be credited to Buyer or charged to Buyer as applicable and the portion thereof applicable to periods ending as of Close of Escrow shall be credited to Seller or charged to Seller as applicable.

10.1 **Collected Rent.** All rent (including, without limitation, all base rents, additional rents and retroactive rents, and expressly excluding Licensee/Lessee reimbursements for Operating Costs, as hereinafter defined) and all other income (and any applicable state or local tax on rent) (hereinafter collectively referred to as "**Rents**") collected under Lease and License in effect on the Closing Date shall be prorated as of the Close of Escrow. Uncollected Rent shall not be prorated and, to the extent payable for the period prior to the Close of Escrow, shall remain the property of Seller. Buyer shall apply Rent from Licensee and Lessee that are collected after the Close of Escrow first to Rents which were due to Seller on or before the Close of Escrow and second to Rents which are due to Buyer after the Close of Escrow. Any prepaid Rents for the period following the Closing Date shall be paid over by Seller to Buyer. Buyer will make reasonable efforts, without suit, to collect any Rents applicable to the period before the Close of Escrow including, without limitation, sending to Licensee and Lessee bills for the payment of past due Rents during the first twelve (12) month period following the Closing Date. Seller may pursue collection of any Rents that were past due as of the Closing Date, provided that Seller shall have no right to terminate the Lease or License or any occupancy under the Lease or License in connection therewith.

10.2 **Operating Costs and Additional Rent Reconciliation.** Seller, as landlord under the Lease and License, is entitled under certain circumstances to collect from Lessee and Licensee under the Lease and License additional rent to cover taxes, insurance, utilities (to the extent not paid directly by Licensee and Lessee), and other operating costs and expenses (collectively, "**Operating Costs**") in connection with the ownership, operation, maintenance and management of the Real Property. To the extent that any additional rent (including, without limitation, estimated payments for Operating Costs) is paid by Licensee and Lessee to the landlord under the Lease or License based on an estimated payment basis (monthly, quarterly, or otherwise) for which a future reconciliation of actual Operating Costs to estimated payments is required to be performed at the end of a reconciliation period, Buyer and Seller shall make an adjustment at the Close of Escrow for the applicable reconciliation period (or periods, if the Lease and License do not have a common reconciliation period) based on a comparison of the actual Operating Costs to the estimated payments at the Close of Escrow. If, as of the Close of Escrow, Seller has received additional rent payments in excess of the amount that Licensee and Lessee will be required to pay, based on the actual Operating Costs as of the Close of Escrow, Buyer shall receive a credit in the amount of such excess. If, as of the Close of Escrow, Seller has received additional rent payments that are less than the amount that Licensee and Lessee would be required to pay based on the actual Operating Costs as of the Close of Escrow, Seller shall receive a credit in the amount of such deficiency; provided, however, Seller shall not be entitled to the portion, if any, of such deficiency for which Seller received a credit at the Close of Escrow under clause (b) of Section 10.3 hereof. Operating Costs that are not payable by Licensee and Lessee either directly or reimbursable under the Lease or License shall be prorated between Seller and Buyer and shall be reasonably estimated by the parties if final bills are not available.

10.3 **Taxes and Assessments.** Real estate taxes and assessments imposed by any governmental authority ("**Taxes**") with respect to the Real Property for the relevant tax year in which the Real Property is being sold and that are not yet due and payable or that have not yet been paid and that are not (and will not be) reimbursable by Licensee and Lessee under the Leases as Operating Costs shall be prorated as of the Close of Escrow based upon the most recent ascertainable assessed values and tax rates and based upon the number of days Buyer and Seller will have owned the Real Property during such relevant tax year. Seller shall receive a credit for any Taxes paid by Seller and applicable to (a) any period after the Close of Escrow, and (b) any period before the Close of Escrow to the extent

reimbursable as Operating Costs by the existing Licensee or Lessee under the License and Lease and not yet received from such Licensee or Lessee.

10.4 **Utilities and Utility Deposits.** Utilities for the Real Property (excluding utilities for which payment is made directly by Licensee and Lessee), including water, sewer, electric, and gas, based upon the last reading of meters prior to the Close of Escrow, shall be prorated. Seller shall be entitled to a credit for all security deposits held by any of the utility companies providing service to the Real Property. Seller shall endeavor to obtain meter readings on the day before the Closing Date, and if such readings are obtained, there shall be no proration of such items and Seller shall pay at Close of Escrow the bills therefor for the period to the day preceding the Close of Escrow, and Buyer shall pay the bills therefor for the period subsequent thereto. If the utility company will not issue separate bills, Buyer will receive a credit against the Purchase Price for Seller's portion and will pay the entire bill prior to delinquency after Close of Escrow. If Seller has paid utilities no more than thirty (30) days in advance in the ordinary course of business, then Buyer shall be charged its portion of such payment at Close of Escrow. Buyer shall be responsible for making any security deposits required by utility companies providing service to the Real Property.

10.5 **Final Adjustment After Closing.** If final prorations cannot be made at the Close of Escrow for any item being prorated under this Section 10, then, provided Buyer or Seller identify any such proration ("**Post Closing Proration**") in writing before the Close of Escrow, Buyer and Seller agree to allocate such items on a fair and equitable basis as soon as invoices or bills are available and applicable reconciliation with tenants have been completed, with final adjustment to be made as soon as reasonably possible after the Close of Escrow (but in no event later than ninety (90) days after the Close of Escrow. Payments in connection with the final adjustment shall be due no later than ninety (90) days after the Close of Escrow. Seller shall have reasonable access to, and the right to inspect and audit, Buyer's books to confirm the final prorations for a period of one (1) year after the Close of Escrow. Notwithstanding anything to the contrary stated in this Section 10, except for any Post Closing Prorations (which must be determined and paid within ninety (90) days after the Close of Escrow), all prorations made under this Section 10 shall be final as of the Close of Escrow and shall not be subject to further adjustment (whether due to an error or for any other reason) after the Close of Escrow.

11. **SELLER'S REPRESENTATIONS AND WARRANTIES: AS-IS.**

11.1 **Seller's Representations and Warranties.** In consideration of Buyer's entering into this Agreement and as an inducement to Buyer to purchase the Real Property from Seller, Seller makes the following representations and warranties to Buyer:

(a) Seller has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by Seller is requisite to the valid and binding execution, delivery and performance of this Agreement.

(b) There is no agreement to which Seller is a party or to Seller's Actual Knowledge binding on Seller which would prevent Seller from consummating the transaction contemplated by this Agreement.

For purposes of this Section 11.1, the phrase "**To Seller's Actual Knowledge**" shall mean the actual (and not implied, imputed, or constructive) knowledge of Anthony R. Moiso, Donald L. Vodra and Richard Broming (whom the Seller represents are the asset managers for the Real Property), without any inquiry or investigation of any other parties.

The representations and warranties made by Seller in this Agreement shall survive the recordation of the Deed for a period of six (6) months and any action for a breach of Seller's representations or warranties must be made and filed within said six (6) month period. If, after the Effective Date, but before the Close of Escrow, Seller becomes aware of any facts or changes in circumstances that would cause any of its representations and warranties in this Agreement to be untrue at Close of Escrow, Seller shall notify Buyer in writing of such fact. In such case, or in the event Buyer obtains information which would cause

any of Seller's representations and warranties to be untrue at Close of Escrow, Buyer, as its sole and exclusive remedy, shall have the right to either (i) terminate this Agreement, and neither party shall have any rights or obligations under this Agreement (except for Sections 4.3.1, 18.3 and 18.5 which survive termination of this Agreement); or (ii) accept a qualification to Seller's representations and warranties as of the Close of Escrow and complete the purchase and sale of the Property without any rights to recovery for breach of the unqualified representation and warranty. Other than as set forth in the immediately preceding sentence, if Buyer proceeds with the Close of Escrow, Buyer shall be deemed to have expressly waived any and all remedies for the breach of any representation or warranty discovered by Buyer prior to the Close of Escrow.

11.2 **As-is.** As of the Effective Date, Buyer has:

(a) examined and inspected the Property and is satisfied with the physical condition, quality, quantity and state of repair of the Property in all respects and by proceeding with this transaction shall be deemed to have determined that the same is satisfactory to Buyer;

(b) reviewed the Property Information and all instruments, records and documents which Buyer deems appropriate or advisable to review in connection with this transaction, and Buyer, by proceeding with this transaction shall be deemed to have determined that the same and the information and data contained therein and evidenced thereby are satisfactory to Buyer;

(c) reviewed all applicable laws, ordinances, rules and governmental regulations (including, but not limited to, those relating to building, zoning and land use) affecting the development, use, occupancy or enjoyment of the Real Property, and Buyer, by proceeding with this transaction shall be deemed to have determined that the same are satisfactory to Buyer; and

(d) at its own cost and expense, made its own independent investigation respecting the Property and all other aspects of this transaction, and is relying thereon and on the advice of its consultants in entering into this Agreement, and Buyer, by proceeding with this transaction shall be deemed to have determined that the same are satisfactory to Buyer.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR SELLER'S REPRESENTATIONS AND WARRANTIES IN SECTION 11.1 OF THIS AGREEMENT AND ANY WARRANTIES OF TITLE CONTAINED IN THE DEED DELIVERED AT THE CLOSE OF ESCROW ("**SELLER'S WARRANTIES**"), THIS SALE IS MADE AND WILL BE MADE WITHOUT REPRESENTATION, COVENANT, OR WARRANTY OF ANY KIND (WHETHER EXPRESS, IMPLIED, OR, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, STATUTORY) BY SELLER. AS A MATERIAL PART OF THE CONSIDERATION FOR THIS AGREEMENT, BUYER AGREES TO ACCEPT THE PROPERTY ON AN "AS IS" AND "WHERE IS" BASIS, WITH ALL FAULTS, AND WITHOUT ANY REPRESENTATION OR WARRANTY, ALL OF WHICH SELLER HEREBY DISCLAIMS, EXCEPT FOR SELLER'S WARRANTIES. EXCEPT FOR SELLER'S WARRANTIES, NO WARRANTY OR REPRESENTATION IS MADE BY SELLER AS TO FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, DESIGN, QUALITY, CONDITION, OPERATION OR INCOME, COMPLIANCE WITH DRAWINGS OR SPECIFICATIONS, ABSENCE OF DEFECTS, ABSENCE OF HAZARDOUS OR TOXIC SUBSTANCES, ABSENCE OF FAULTS, FLOODING, OR COMPLIANCE WITH LAWS AND REGULATIONS INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO HEALTH, SAFETY, AND THE ENVIRONMENT. BUYER ACKNOWLEDGES THAT BUYER HAS ENTERED INTO THIS AGREEMENT WITH THE INTENTION OF MAKING AND RELYING UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC USE, COMPLIANCE, AND LEGAL CONDITION OF THE PROPERTY AND THAT BUYER IS NOT NOW RELYING, AND WILL NOT LATER RELY, UPON ANY REPRESENTATIONS AND WARRANTIES MADE BY SELLER OR ANYONE ACTING OR CLAIMING TO ACT, BY, THROUGH OR UNDER OR ON SELLER'S BEHALF CONCERNING THE PROPERTY. ADDITIONALLY, BUYER AND SELLER HEREBY AGREE THAT (A) EXCEPT FOR SELLER'S WARRANTIES, BUYER IS TAKING THE PROPERTY "AS IS" WITH ALL LATENT AND PATENT DEFECTS AND THAT EXCEPT FOR SELLER'S WARRANTIES, THERE IS NO WARRANTY BY SELLER THAT THE PROPERTY IS FIT FOR A PARTICULAR PURPOSE, (B) EXCEPT FOR

SELLER'S WARRANTIES, BUYER IS SOLELY RELYING UPON ITS EXAMINATION OF THE PROPERTY, AND (C) BUYER TAKES THE PROPERTY UNDER THIS AGREEMENT UNDER THE EXPRESS UNDERSTANDING THAT THERE ARE NO EXPRESS OR IMPLIED WARRANTIES (EXCEPT FOR THE LIMITED WARRANTIES OF TITLE SET FORTH IN THE DEED AND SELLER'S WARRANTIES).

WITH RESPECT TO THE FOLLOWING, BUYER FURTHER ACKNOWLEDGES AND AGREES THAT SELLER SHALL NOT HAVE ANY LIABILITY, OBLIGATION OR RESPONSIBILITY OF ANY KIND AND THAT SELLER HAS MADE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND:

1. THE CONTENT OR ACCURACY OF ANY REPORT, STUDY, OPINION OR CONCLUSION OF ANY SOILS, TOXIC, ENVIRONMENTAL OR OTHER ENGINEER OR OTHER PERSON OR ENTITY WHO HAS EXAMINED THE PROPERTY OR ANY ASPECT THEREOF;
2. THE CONTENT OR ACCURACY OF ANY OF THE ITEMS (INCLUDING, WITHOUT LIMITATION, THE PROPERTY INFORMATION) DELIVERED TO BUYER PURSUANT TO BUYER'S REVIEW OF THE CONDITION OF THE PROPERTY; OR
3. THE CONTENT OR ACCURACY OF ANY PROJECTION, FINANCIAL OR MARKETING ANALYSIS OR OTHER INFORMATION GIVEN TO BUYER BY SELLER OR REVIEWED BY BUYER WITH RESPECT TO THE PROPERTY.

BUYER ALSO ACKNOWLEDGES THAT THE REAL PROPERTY MAY OR MAY NOT CONTAIN ASBESTOS AND, IF THE REAL PROPERTY CONTAINS ASBESTOS, THAT BUYER MAY OR MAY NOT BE REQUIRED TO REMEDIATE ANY ASBESTOS CONDITION IN ACCORDANCE WITH APPLICABLE LAW.

BUYER IS A SOPHISTICATED REAL ESTATE INVESTOR AND IS, OR WILL BE AS OF THE CLOSE OF ESCROW, FAMILIAR WITH THE REAL PROPERTY AND ITS SUITABILITY FOR BUYER'S INTENDED USE. THE PROVISIONS OF THIS SECTION 11.2 SHALL SURVIVE INDEFINITELY ANY CLOSING OR TERMINATION OF THIS AGREEMENT AND SHALL NOT BE MERGED INTO THE DOCUMENTS EXECUTED AT CLOSE OF ESCROW.

  
BUYER'S INITIALS

12. **BUYER'S COVENANTS, REPRESENTATIONS AND WARRANTIES; RELEASE; ERISA; INDEMNIFICATION.**

In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Real Property to Buyer, Buyer makes the following covenants, representations and warranties:

12.1 **Buyer's Representations and Warranties.**

(a) **Authority.** Buyer has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by Buyer is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein. There is no agreement to which Buyer is a party or to Buyer's knowledge binding on Buyer which is in conflict with this Agreement.

(b) **Executive Order 13224.** To the best of Buyer's knowledge, neither Buyer nor any of its respective affiliates or constituents, nor any of their respective brokers or other agents acting in any capacity in connection with the transactions contemplated by this Agreement is or will be (a) conducting any business or engaging in any transaction or dealing with any person appearing on the U.S.

Treasury Department's Office of Foreign Assets Control ("OFAC") list of restrictions and prohibited persons ("Prohibited Person") (which lists can be accessed at the following web address: <http://www.ustreas.gov/offices/enforcement/ofac/>), including the making or receiving of any contribution of funds, goods or services to or for the benefit of any Prohibited Person; (b) dealing in, or otherwise engaging in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224 dated September 24, 2001, relating to "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism"; or (c) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempting to violate, any of the prohibitions set forth in any U.S. anti-money laundering law.

12.2 **Release.** By proceeding with this transaction, Buyer shall be deemed to have made its own independent investigation of the Property, the Property Information and the presence of Hazardous Materials on the Real Property as Buyer deems appropriate. Accordingly, subject to the representations and warranties of Seller expressly set forth in Section 11.1 hereof, Buyer, on behalf of itself and all of its officers, directors, shareholders, employees, representatives and affiliated entities (collectively, the "Releasors") hereby expressly waives and relinquishes any and all rights and remedies Releasors may now or hereafter have against Seller, its successors and assigns, partners, shareholders, officers and/or directors (the "Seller Parties"), whether known or unknown, which may arise from or be related to (a) the physical condition, quality, quantity and state of repair of the Real Property and the prior management and operation of the Real Property, (b) the Property Information, (c) the Real Property's compliance or lack of compliance with any federal, state or local laws or regulations, and (d) any past, present or future presence or existence of Hazardous Materials on, under or about the Real Property or with respect to any past, present or future violation of any rules, regulations or laws, now or hereafter enacted, regulating or governing the use, handling, storage or disposal of Hazardous Materials, including, without limitation, (i) any and all rights and remedies Releasors may now or hereafter have under the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, and the Toxic Substance Control Act, all as amended, and any similar state, local or federal environmental law, rule or regulation, and (ii) any and all claims, whether known or unknown, now or hereafter existing, with respect to the Real Property under Section 107 of CERCLA (42 U.S.C.A. §9607). As used herein, the term "Hazardous Material(s)" includes, without limitation, any hazardous or toxic materials, substances or wastes, such as (1) any materials, substances or wastes which are toxic, ignitable, corrosive or reactive and which are regulated by any local governmental authority, or any agency of the United States government, (2) any other material, substance, or waste which is defined or regulated as a hazardous material, extremely hazardous material, hazardous waste or toxic substance pursuant to any laws, rules, regulations or orders of the United States government, or any local governmental body, (3) asbestos, (4) petroleum and petroleum based products, (5) formaldehyde, (6) polychlorinated biphenyls (PCBs), and (7) freon and other chlorofluorocarbons.

BUYER, ON BEHALF OF ITSELF AND THE OTHER RELEASORS, HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 ("SECTION 1542"), WHICH IS SET FORTH BELOW:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

BY INITIALING BELOW, BUYER, ON BEHALF OF ITSELF AND THE OTHER RELEASORS, HEREBY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES.

Buyer's Initials:                     

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER, ON BEHALF OF ITSELF AND THE OTHER RELEASORS, HEREBY ASSUMES ALL RISK AND LIABILITY RESULTING

OR ARISING FROM, OR RELATING TO THE OWNERSHIP, USE, CONDITION, LOCATION, MAINTENANCE, REPAIR, OR OPERATION OF, THE PROPERTY.

THE FOREGOING WAIVERS, RELEASES AND AGREEMENTS BY BUYER, ON BEHALF OF ITSELF AND THE RELEASORS, SHALL SURVIVE THE CLOSE OF ESCROW AND THE RECORDATION OF THE DEED AND SHALL NOT BE DEEMED MERGED INTO THE DEED UPON ITS RECORDATION.

12.3 **ERISA.** Buyer is not purchasing any of the Property with "plan assets" of an Employee Benefit Plan subject to Title I of the Employee Retirement Income Security Act of 1974 (as amended from time to time, the "Act," and together with any regulation, rule or judicial or administrative case, order, or pronouncement arising under or connected with the Act, "ERISA") or of a plan subject to Section 4975 of the Internal Revenue Code of 1986, as amended (the "Code"). Buyer shall take all actions reasonably requested by Seller for the purpose of ensuring, to Seller's satisfaction, that the transactions contemplated herein will comply with ERISA and not result in an imposition of an excise tax under Section 4975 of the Code; such actions shall include, without limitation, the making of such further representations and warranties as Seller's counsel reasonably deems necessary to ensure that neither this Agreement nor any of the transactions contemplated herein will violate ERISA or result in an imposition of an excise tax under Section 4975 of the Code. In the event that this Agreement, or any transaction or other action by Seller in connection herewith, shall be deemed to violate ERISA or result in an imposition of an excise tax under Section 4975 of the Code, Seller may immediately terminate this Agreement (without any liability to Seller) in accordance with, and subject to the terms and conditions of, Section 9.3 hereof as if such termination arose from a failed condition under Section 9.3 hereof.

12.4 **Indemnification.** Buyer, on behalf of itself and all of its officers, directors, shareholders, employees, representatives and affiliated entities (collectively, "Indemnitors") hereby agree, at their sole cost and expense, to indemnify, protect, hold harmless and defend (with counsel of Seller's choice) the Seller Parties from any and all claims, liabilities, suits, demands, obligations, duties, acts, omissions, causes of action, damages, losses, and indemnification obligations of every type, kind, nature, description or character whatsoever, and irrespective of how, why, or by what reason or facts now existing or hereafter arising, or which could, might, or may be claimed to exist, whether known or unknown, suspected or unsuspected, which in any way arise out of, are connected with, pertain or relate to, either directly or indirectly, the Property, after the Close of Escrow, including, without limitation, the physical, environmental, title, leasing, and financial condition of the Property and Property operations. The provisions of this Section 12.4 shall survive the Close of Escrow and shall not be deemed merged into the Deed upon its recordation.

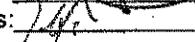
13. **DEFAULT AND DAMAGES.**

13.1 **Default by Buyer.** BUYER AND SELLER HEREBY ACKNOWLEDGE AND AGREE THAT, IN THE EVENT THE CLOSE OF ESCROW FAILS TO OCCUR DUE TO A BUYER DEFAULT (ALL OF THE CONDITIONS TO BUYER'S OBLIGATIONS TO CLOSE HAVING BEEN SATISFIED OR WAIVED), SELLER WILL SUFFER DAMAGES IN AN AMOUNT WHICH WILL, DUE TO THE SPECIAL NATURE OF THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT AND THE SPECIAL NATURE OF THE NEGOTIATIONS WHICH PRECEDED THIS AGREEMENT, BE IMPRACTICAL OR EXTREMELY DIFFICULT TO ASCERTAIN. IN ADDITION, BUYER WISHES TO HAVE A LIMITATION PLACED UPON THE POTENTIAL LIABILITY OF BUYER TO SELLER IN THE EVENT THE CLOSE OF ESCROW FAILS TO OCCUR DUE TO A BUYER DEFAULT, AND WISHES TO INDUCE SELLER TO WAIVE OTHER REMEDIES WHICH SELLER MAY HAVE IN THE EVENT OF A BUYER DEFAULT. BUYER AND SELLER, AFTER DUE NEGOTIATION, HEREBY ACKNOWLEDGE AND AGREE THAT THE AMOUNT OF ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) (WHICH WOULD HELP REIMBURSE SELLER FOR ITS COSTS INCLUDING BUT NOT LIMITED TO LEGAL AND CONSULTING SERVICES) REPRESENTS A REASONABLE ESTIMATE OF THE DAMAGES WHICH SELLER WILL SUSTAIN IN THE EVENT OF SUCH BUYER DEFAULT. BUYER AND SELLER HEREBY AGREE THAT SELLER MAY, IN THE EVENT THE CLOSE OF ESCROW FAILS TO OCCUR DUE TO A BUYER DEFAULT, TERMINATE THIS AGREEMENT BY WRITTEN NOTICE TO BUYER AND ESCROW HOLDER, CANCEL THE ESCROW AND REQUEST THAT THE ABOVE-SPECIFIED

AMOUNT BE PAID TO IT BY CITY AS LIQUIDATED DAMAGES. CITY'S PAYMENT TO SELLER IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE, AND SHALL NOT BE DEEMED TO CONSTITUTE A FORFEITURE OR PENALTY WITHIN THE MEANING OF SECTION 3275 OR SECTION 3369 OF THE CALIFORNIA CIVIL CODE, OR ANY SIMILAR PROVISION.

NOTHING IN THIS SECTION 13.1 SHALL (A) PREVENT OR PRECLUDE ANY RECOVERY OF ATTORNEYS' FEES OR OTHER COSTS INCURRED BY SELLER PURSUANT TO SECTION 18.5 OR (B) IMPAIR OR LIMIT THE EFFECTIVENESS OR ENFORCEABILITY OF THE INDEMNIFICATION OBLIGATIONS OF BUYER CONTAINED IN SECTIONS 4.3.1 AND 14 HEREOF. SELLER AND BUYER ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE PROVISIONS OF THIS SECTION 13.1 AND BY THEIR INITIALS IMMEDIATELY BELOW AGREE TO BE BOUND BY ITS TERMS.

Seller's Initials: 

Buyer's Initials: 

13.2 **Default by Seller.** If Seller defaults in its obligations to sell and convey the Property to Buyer pursuant to this Agreement, Buyer's sole and exclusive remedy shall be to elect one of the following: (a) to terminate this Agreement, or (b) to bring a suit for specific performance provided that any suit for specific performance must be brought as to the Property within thirty (30) days of Seller's default, Buyer's waiving the right to bring suit at any later date to the extent permitted by law. This Agreement confers no present right, title or interest in the Property to Buyer and Buyer agrees not to file a lis pendens or other similar notice against the Real Property except in connection with, and after, the proper filing of a suit for specific performance.

14. **BROKER'S COMMISSIONS.**

Neither party hereto has had any contact or dealing regarding the Real Property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who can claim a right to a commission or finder's fee as a procuring cause of the sale contemplated herein. In the event that any other broker or finder perfects a claim for a commission or finder's fee, the party responsible for the contact or communication on which the broker or finder perfected such claim shall indemnify, save harmless and defend the other party from said claim and all costs and expenses (including reasonable attorneys' fees) incurred by the other party in defending against the same.

15. **USE RESTRICTIONS: SELLER'S RESERVED RIGHTS.**

The Property is located within an area owned by Seller and its affiliated entities which is commonly known as the "Ranch Plan Property," which is described/depicted on Exhibit Q attached hereto. The Ranch Plan Property has been comprehensively planned over many years and has received several governmental approvals including, but not limited to: 1) approval by the Orange County Board of Supervisors on November 8, 2004 of General Plan Amendments, the Ranch Plan Planned Community Zoning (the "Ranch Plan PC"), with its associated "PC Text," and a Development Agreement, all of which include provision for needed residential and commercial uses, and the future preservation of open space uses on over 16,000 acres of the Ranch Plan Property ("Future RMV Habitat Reserve Dedication Areas"), and 2) approval by the County and the US Fish and Wildlife Service ("USFWS") of the Southern Subregion Habitat Conservation Plan ("Southern Subregion HCP") dated January 10, 2007 that provides a comprehensive conservation strategy including designation of the Future RMV Habitat Reserve Dedication Areas for eventual inclusion as part of the HCP Habitat Reserve. The use restrictions and covenants set forth in this Section 15 and in the following Section 16 are critical to implementation of the Ranch Plan PC and the Southern Subregion HCP in an integrated fashion and will greatly benefit the entire Ranch Plan Property (the "Benefited Area").

Pursuant to this section, the "Ranch Plan" is defined by the entitlements and approvals thereof including the above-referenced General Plan Amendments, Ranch Plan PC and Development Agreement, all as amended by certain settlement agreements with the cities of San Clemente and Mission Viejo and a settlement agreement with certain resource organizations (NRDC, Sierra Club, Endangered Habitats League, Sea & Sage Audubon and Laguna Greenbell) dated December 8, 2004, June 9, 2005 and August 16, 2005, respectively. Additional entitlements and approvals defining the

Ranch Plan include the Southern Subregion HCP, the San Juan Creek and Western San Mateo Creek Watersheds Special Area Management Plan ("SAMP") approved by the US Army Corps of Engineers ("USACE") dated March 16, 2007, the Master Streambed Alteration Agreement approved by the California Department of Fish and Game ("CDFG") dated September 29, 2008, and various existing approvals by the San Diego Regional Water Quality Control Board ("SDRWQCB")."

15.1 **Restrictions on Use of Real Property.**

(a) **Parcels 7 and 8.**

(i) The use of Parcels 7 and 8 shall be restricted to (1) those uses described as existing uses on the Property in Section 4.1.2 (and depicted on Exhibit 4.1-3) of the EIR for the Ranch Plan certified by the Board of Supervisors on November 8, 2004 (the "Ranch Plan EIR"), including equestrian and sports field uses (Exhibit M-1 attached hereto), (2) new agricultural uses as allowed under Section III.H of the PC Text (Exhibit M-2 attached hereto), and (3) temporary uses as allowed under Section III.J of the PC Text (Exhibit M-3 attached hereto), subject to the further restriction that the uses described under (1), (2) and (3) above, individually and/or cumulatively, shall not increase traffic beyond the number of peak hour trips shown on Exhibit N attached hereto which represent a level of traffic that is consistent with the existing uses on the Property together with certain additional trips corresponding to a portion of the trips associated with new sports field uses entitled as part of the Ranch Plan.

Any uses other than the foregoing described uses are prohibited, including, but not limited to, residential, commercial (except one commercial equestrian facility) and industrial uses. Any permanent lighting, other than for security purposes, is also prohibited.

(ii) Certain portions of Parcels 7 and 8 contain important vegetation/habitat areas that are identified as "Sensitive Resource Areas" on Exhibit O attached hereto. RMV is the only entity authorized by USFWS, CDFG, USACE and SDRWQCB to remove or otherwise impact the vegetation in these Sensitive Resource Areas. As such, if and when Buyer decides it would like to remove or otherwise impact any of these areas, Buyer must request RMV to do so. Within ninety (90) days of receiving Buyer's request, at Buyer's expense, Seller/RMV will remove the Sensitive Resource Area vegetation. Said vegetation will not be able to be removed during the bird breeding season -- January 15 to September 15.

(iii) The location of any vehicular access into Parcels 7 and 8 from La Pata Road, current or future, shall be consistent with the approved Ranch Plan entitlements and shall require Seller's prior written consent. To the extent practicable, existing access points to Parcels 7 and 8 will be maintained and Buyer agrees that it will not make any modifications to access from La Pata Road until after ultimate Ranch Plan access has been finalized.

(iv) City shall be prohibited from using any plants identified on the California Invasive Plant Council (Cal-IPC) as part of its landscaping on Parcels 7 and 8. At Seller's request, City shall provide its landscaping plans to Seller for review and approval prior to installation of same.

(v) No portion of the Property (including Parcels 7 and 8, as well as the two open space parcels) may be used or otherwise employed in the operation, distribution, transmission and/or provision of telecommunications and associated/related services ("Telecommunications Services") from, on or about the Property. Buyer, its successors and assigns shall not grant, dedicate or otherwise provide any easements, licenses or other rights on, under, over, across or affecting the Property that are intended to (or otherwise may) permit, authorize or allow any person or entity to (i) provide, engage in or facilitate any Telecommunications Services from or upon the Property or (ii) build or operate any Telecommunications Facilities from or upon the Property.

(1) For purposes of this Agreement, "Telecommunications Facilities" shall mean (aa) improvements, equipment and facilities for (i) telecommunications, (ii) transfer of audio, video and data signals, (iii) transfer of any other signals used for transmission of intelligence by electrical, light wave, wireless frequencies or radio frequencies, and (iv) any other methods of communication and information transfer, (bb) all associated improvements, equipment and facilities, including, but not limited to, antennas, towers, broadcasting and receiving devices, conduits, junction boxes, wires, cables, fiber

optics, and any other necessary or appropriate enclosures and connections, and (cc) power generation serving the improvements, equipment and facilities described in subparts (aa) and (bb) of this definition.

(b) **La Pata Open Space and Creek Open Space Parcels.**

(i) Prior to Close of Escrow, Seller shall have fully executed and delivered to Escrow Holder, in recordable form, the Conservation Easement covering the Creek Open Space Parcel and the La Pata Open Space Parcel. The form of the Conservation Easement (see Exhibit J) has previously been negotiated with the wildlife agencies and is not subject to amendment pursuant to this Agreement. On the Closing Date, Escrow Holder shall be entitled to record the Conservation Easement in accordance with the provisions of 9.1 hereof which shall result in and/or confirm the enrollment of the respective parcels as part of the HCP Habitat Reserve pursuant to the Implementation Agreement for the Southern Subregion HCP which was entered into on January 10, 2007 by and between Rancho Mission Viejo, the County of Orange, SMWD and the USFWS. Notwithstanding anything to the contrary herein, Seller, in its sole and absolute discretion, shall have the right to record the Conservation Easement over all or any portion of the open space parcels at any time prior to the Close of Escrow.

(ii) Upon their enrollment in the HCP Habitat Reserve, the use of the Creek Open Space Parcel and La Pata Open Space Parcel, both of which are within the "Do Not Disturb" areas identified on Exhibit O attached hereto, shall be restricted in accordance with the Conservation Easement and the Implementation Agreement for the Southern Subregion HCP. Prohibited uses on these parcels are more particularly described in the Conservation Easement, the relevant portion of which is set forth in Exhibit P attached hereto.

(iii) Should Buyer desire to allow any grazing of the La Pata Open Space Parcel, it would need to prepare and have approved by USFWS a grazing management plan for this area. The Buyer, RMV and the Rancho Mission Viejo Land Trust (the "RMVLT") shall cooperate in the preparation of said grazing management plan. Said grazing management plan shall require RMV's and RMVLT's approval prior to submission to USFWS. Any costs associated with RMV's and RMVLT's review of said grazing management plan shall be borne by Buyer. No grazing shall be allowed on the Creek Open Space Parcel under any circumstances

(iv) If Buyer desires to construct any trail or bikeway over, through or within the Creek Open Space Parcel and/or La Pata Open Space Parcel other than the trails and bikeway described in Section 16.1(d) below, it shall obtain required approvals from the USFWS and all other federal, state and/or local agencies with jurisdiction over these areas, as well as the prior written consent of RMV and The Reserve.

(c) **Restrictions Run with the Land.** The use restrictions set forth in (a) and (b) above (collectively, the "**Use Restrictions**") shall run with the land and be binding upon any person or entity who/that acquires any right, title or interest in or to any portion of the Property and shall be enforceable by the assigns of and successors-in-interest to Sellers. Every person or entity who hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to the Use Restrictions contained herein, whether or not any reference to the Deed is contained in the instrument by which such person acquired an interest in such portion of the Property.

(d) **Right of Re-Entry; Power of Termination.** The grant of the Property to Buyer is subject to the express condition that if the Property is ever used for any use other than those allowed uses specified in (a) and (b) above, then the Seller, its successors or assigns, shall have the right to re-enter the Property and exercise the power of termination of Buyer's estate in the Property; provided, however, Seller shall give Buyer at least fifteen (15) days prior written notice before exercising the power of termination and Buyer shall have the right to cure any use violation within that period.

15.2 **Seller's Reserved Rights.**

(a) The Seller shall reserve all water rights, including riparian, pertaining to Parcels 7 and 8 except for that amount of water necessary to reasonably and beneficially irrigate and maintain landscaping (turf, trees and plants) and domestic use for the operation of the allowed uses on those parcels. To allow Buyer to utilize water for the foregoing uses (on Parcels 7 and 8 only), Seller shall consent to the Buyer constructing a well on either Parcel 7 or Parcel 8. The well pump shall not exceed a capacity, at any time, of 300 gallons per minute and Buyer's use of the water rights conveyed to it hereunder shall not exceed that amount. Seller shall have the right to install, and maintain, a well monitoring device in order to track Buyer's water extraction and use. Should any controlling local, state or federal agency adopt regulations restricting the amount of water that any landowner may extract, or if any court issues a decision restricting the amount of water any landowner may extract, then the Buyer shall reduce its use of water from said well on a correlative basis with any reduction of use by Seller. The foregoing provisions have been incorporated into the Water Agreement (see Exhibit H) to be executed by Seller and the Buyer and recorded concurrently with the Close of Escrow.

(b) The Seller shall also reserve all mineral rights pertaining to the entire Property. Sellers' exploration and extraction activities pursuant to their mineral rights shall be restricted to that zone below a depth of 500 feet of the surface of the Property.

(c) The Seller shall further reserve:

(i) the right to install utilities and storm drain facilities of any kind on the Property to carry out development of its remaining property pursuant to the approved Ranch Plan entitlements (and Buyer shall provide easements for installation and maintenance of said utilities and facilities). Seller agrees, to the extent practicable, to locate such utilities and facilities in a way such that they do not conflict with the Buyer's utilization of the Property.

(ii) the right to require that Buyer grant to the County a construction easement (the "**La Pata Construction Easement**") and an irrevocable offer of dedication of right of way in fee (the "**La Pata IOD**"), at no cost to either County or Seller, covering those portions of the Property as may be identified by County in order to provide for the improvement of La Pata Road to its ultimate width as a primary arterial highway, in fulfillment of Seller's obligations as described in Section I.E of Exhibit D (see Items No. 1 and No. 14) of that certain Development Agreement for the Ranch Plan Project entered into between County and Seller (and/or Seller's predecessors-in-interest) and recorded on December 6, 2004 as Instrument No. 2004001082094 (the "**Rancho Mission Viejo Development Agreement**"). Both the La Pata Construction Easement and La Pata IOD shall be executed and delivered to County by Buyer within thirty (30) days of either County's or Seller's request and shall be in a form reasonably satisfactory to County and suitable for recordation. At County's option, the grant of the La Pata Construction Easement and La Pata IOD may be phased to accommodate phasing of the La Pata Road improvements.

(iii) its development rights under the governmental entitlements/approvals it has received pertaining to the Ranch Plan Property (of which the Property has been a part) including but not limited to its rights under the Ranch Plan PC. Seller/RMV shall have no obligation to assign or otherwise transfer any of said rights to Buyer.

15.3 **Incorporation into Grant Deed.** The provisions in 15.1 and 15.2 hereof regarding restrictions on use and Seller's reserved rights shall be incorporated into the Deed attached hereto as Exhibit F.

16. **ADDITIONAL POST-CLOSING COVENANTS.**

16.1 **Buyer's Covenants – General.** Buyer agrees:

(a) that it shall not itself, nor counsel others to, directly or indirectly, initiate, aid, request, encourage, file, fund or participate in any administrative hearing, litigation or other action related in any way to the approval and/or implementation of the Ranch Plan project on the Ranch Plan Property,

(b) that the initiation of any annexation of the Property shall follow Closing of Escrow and all costs of the annexation shall be borne by the City. Seller shall cooperate and support annexation of the Property to City. In connection with and prior to any annexation of the Property, Buyer further agrees that it shall prezone the entire Property to the "open space" category and designate it as "open space" on the City General Plan,

(c) not to initiate annexation of, or expansion of its Sphere of Influence over, any part of the Ranch Plan Property (as shown on Exhibit Q attached hereto) other than the Property acquired pursuant to this acquisition,

(d) to reserve rights of way for, and to construct, the proposed Regional riding and hiking trails and the Class 1 Bikeway in and around the Property as shown on the Trails and Bikeways Concept for Planning Area 1 of the Ranch Plan Planned Community (Exhibit R). Said trails and Class 1 bikeway shall be constructed by Buyer within one (1) year of RMV's completion of construction of connecting trails and bikeway within and across Planning Area 1,

(e) to grant to the County the La Pata Construction Easement and the La Pata IOD for the improvement of La Pata Road south of Ortega Highway as more fully set forth in Section 15.2(c)(ii) above; and

(f) that the area commonly known as the "Rancho Mission Viejo Riding Park at San Juan Capistrano" (on Parcel 7) shall perpetually be known, identified and advertised by that name, and that City shall use no other name for that area.

16.2 **Buyer's Covenants – Habitat Reserve.** Buyer acknowledges that, upon their enrollment in the HCP Habitat Reserve as described in Section 15.1(b) hereof, the Creek Open Space Parcel and La Pata Open Space Parcel will be subject to the Habitat Reserve Management Program ("HRMP"). Pursuant to the HRMP, various habitat monitoring and management actions will be undertaken by RMVLT and RMV on these open space parcels pursuant to their obligations under the Southern Subregion HCP. In conjunction with this transaction, Seller/RMV shall reserve (a) the right to enter upon the open space parcels to carry out the HRMP and every other permitted use under the Southern Subregion HCP, and (b) the right to enforce the terms and conditions of the Conservation Easement. Buyer agrees to cooperate with RMVLT and RMV to the fullest extent to allow their respective obligations to be fulfilled on the open space parcels. Seller/RMV shall have no obligation to assign or otherwise transfer any of its rights as permittee under the Southern Subregion HCP to Buyer.

16.3 **Incorporation into Grant Deed.** The provisions in 16.1 and 16.2 hereof regarding Buyer's additional post-closing covenants shall be incorporated into the Deed attached hereto as Exhibit F. The covenants set forth above in 16.1 and 16.2 are for the benefit of the Benefited Area and shall run with the Property and be binding upon any person or entity who/that acquires any right, title or interest in or to any portion of the Property and shall be enforceable by the assigns of and successors-in-interest to Sellers. Every person or entity who hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to the covenants contained herein, whether or not any reference to this Deed is contained in the instrument by which such person acquired an interest in such portion of the Property.

16.4 **Buyer's and Seller's Covenants – Parcel 8 Citrus Grove.**

(a) **Removal of Trees and Soil.** Within one (1) year from Close of Escrow, Seller shall remove the existing citrus trees from 3.7 acres of Parcel 8 (the "**Removal Area**") and any contaminated soil relating thereto at Seller's expense. Seller shall notify Buyer when Seller has completed the removal of said trees and soil from the Removal Area.

(b) **Grading of Removal Area.** After receipt of notice of tree and soil removal from Seller, and as a precondition to Seller's obligations for replanting of the citrus trees on the Removal Area pursuant to subsection (c) below, Buyer shall be responsible for grading the Removal Area to a finish grade at its expense.

(c) **Replanting.** Within one (1) year from Close of Escrow (the "**Election Period**"), Buyer shall make an election as to which portions of the Removal Area that Buyer desires to have replanted and notify Seller of its election. Provided that the Removal Area has already been graded by Buyer pursuant to subsection (b) above, Seller shall replant citrus trees in those portions of the Removal Area designated by Buyer for replanting within one hundred twenty (120) days of receiving Buyer's notice. If the Removal Area has not yet been graded when Seller receives Buyer's notice, Seller shall replant the citrus trees within one hundred twenty (120) days after completion of grading by Buyer and Buyer's notice to Seller regarding same.

(d) **Credit.**

(i) In the event that Buyer makes no election by the end of the Election Period (in which case no replanting will be done by Seller), or if Buyer elects to have less than the entire Removal Area replanted, Buyer shall be entitled to a credit from Seller for that portion not replanted.

(ii) The credit shall be Six Thousand Dollars (\$6,000.00) per acre for each acre not replanted.

(iii) Buyer and Seller shall mutually agree on the acreage for which credit is to be given.

(iv) Seller shall pay any credit due to Buyer upon the earlier of (1) thirty (30) days from the date on which Buyer made its election to have less than the entire Removal Area planted, or (2) thirty (30) days from the last day of the Election Period.

17. **RODEO LICENSE AGREEMENT.**

Concurrently with Close of Escrow, Seller and Buyer shall enter into the Rodeo License Agreement (see Exhibit I) at no expense to Seller, for a term of fifty (50) years, and Seller (RMV) shall have the right under the Rodeo License Agreement to hold the Rancho Mission Viejo Rodeo yearly as currently operated. The Rodeo License Agreement shall provide that the rodeo held by RMV shall continue to be named and referred to as the "Rancho Mission Viejo Rodeo." Buyer shall waive all City fees, taxes and other charges required for or related to this event including, but not limited to, any City fees, taxes or other charges related to vendor services and operations. The majority of the net proceeds from the Rodeo shall be available to the City's and South Orange County's charities including, but not limited to, the San Juan Capistrano Open Space Foundation, the Camino Health Center, the R.H. Dana Exceptional Needs Facility and the Shea Therapeutic Riding Center. In the event RMV relocates the Rancho Mission Viejo Rodeo off of the Property, the Buyer's obligations under this section shall terminate. Buyer shall agree not to host any rodeo on the Property unless RMV ceases operating the Rancho Mission Viejo Rodeo for a period of three consecutive years.

18. **MISCELLANEOUS PROVISIONS.**

18.1 **Notices.** All written notices or demands of any kind which either party hereto may be required or may desire to serve on the other in connection with this Agreement shall be served by personal service, by registered or certified mail, recognized overnight courier service or facsimile transmission. Any such notice or demand so to be served by registered or certified mail, recognized overnight courier service or facsimile transmission shall be delivered with all applicable delivery charges thereon fully prepaid and, if the party so to be served be Buyer, addressed to Buyer as follows:

City of San Juan Capistrano  
32400 Paseo Adelanto  
San Juan Capistrano, CA 92675  
Attention: City Manager  
Telephone No: (949) 443-6314  
Fax No.: (949) 488-3874

with a copy thereof to:

Woodruff, Spradlin & Smart  
555 Anton Blvd., Suite 1200  
Costa Mesa, CA 92626  
Attention: Omar Sandoval, Esq.  
Telephone No: (714) 558-7000  
Direct Dial No.: (714) 415-1049  
Fax No.: (714) 835-7787  
Direct Dial Fax No.: (714) 415-1149

and, if the party so to be served be Seller, addressed to Seller as follows:

Rancho Mission Viejo  
28811 Ortega Highway  
San Juan Capistrano, California 92675  
Attention: Donald L. Vodra and Richard Broming  
Telephone No.: (949) 240-3363  
Fax No.: (949) 248-1763

with copies thereof to:

Morgan, Lewis & Bockius LLP  
5 Park Plaza, Suite 1750  
Irvine, California 92614  
Attention: Stephen R. Finn, Esq.  
Telephone No.: (949) 399-7105  
Fax No.: (949) 399-7001

and, if the party to be served be Escrow Holder, addressed to Escrow Holder as follows:

Fidelity National Title Company  
1300 Dove Street, Suite 310  
Newport Beach, California 92660  
Attention: Natalie Priestley  
Telephone No.: (949) 622-4911  
Fax No.: (949) 221-4799

Service of any such notice or demand so made by personal delivery, registered or certified mail, recognized overnight courier or facsimile transmission shall be deemed complete on the date of actual delivery as shown by the addressee's registry or certification receipt or, as to facsimile transmissions, by "answer back confirmation" (provided that a copy of such notice or demand is delivered by any of the other methods provided above within one (1) business day following receipt of such facsimile transmission), as applicable, or at the expiration of the third (3rd) business day after the date of dispatch, whichever is earlier in time. Either party hereto may from time to time, by notice in writing served upon the other as aforesaid, designate a different mailing address to which or a different person to whose attention all such notices or demands are thereafter to be addressed.

**18.2 Assignment; Binding on Successors and Assigns.** Buyer shall not assign, transfer or convey its rights or obligations under this Agreement or with respect to the Property without the prior written consent of Seller, which consent Seller may withhold in its sole, absolute and subjective discretion. Any attempted assignment without the prior written consent of Seller shall be void and Buyer shall be deemed in default hereunder. Any permitted assignments shall not relieve the assigning party from its liability under this Agreement. Subject to the foregoing, and except as provided to the contrary herein, the terms, covenants, conditions and warranties contained herein and the powers granted hereby shall inure to the benefit of and bind all parties hereto and their respective heirs, executors, administrators, successors and assigns, and all subsequent owners of the Property.

**18.3 Work Product.** Effective upon and in the event of a termination of this Agreement for any reason, Buyer shall assign and deliver to Seller (at no cost to Seller), and does hereby assign without the need for any further act or instrument (at no cost to Seller), all reports, plans, studies, documents, written information and the like which has been generated by Buyer in-house or by Buyer's third party consultants, whether prior to the Opening of Escrow or during the period of Escrow in connection with Buyer's proposed acquisition, development, use or sale of the Real Property (collectively, the "**Work Product**"). In such event, Buyer shall deliver the Work Product which has been assigned to Seller not later than five (5) days after the date of the termination of this Agreement. The Work Product shall be fully paid for and shall not be subject to any lien, encumbrance or claim of any kind. Buyer shall also return all materials and information (including, without limitation, the Property Information) given to it by Seller or its consultants during Escrow, in the same condition as delivered to Buyer.

**18.4 Further Assurances.** In addition to the acts and deeds recited herein and contemplated to be performed, executed or delivered by Seller or Buyer, Seller and Buyer hereby agree to perform, execute and deliver, or cause to be performed, executed and delivered, on the Closing Date or thereafter any and all such further acts, deeds and assurances as Buyer or Seller, as the case may be, may reasonably require in order to consummate fully the transactions contemplated hereunder.

**18.5 Attorneys' Fees.** If any legal action or any arbitration or other proceeding is brought or if an attorney is retained for the enforcement of this Agreement or any portion thereof, or because of any alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other reimbursement for the reasonable fees of attorneys and other costs (including court costs and witness fees) incurred by it, in addition to any other relief to which it may be entitled. The term "prevailing party" means the party obtaining substantially the relief sought, whether by compromise, settlement or judgment.

**18.6 Survival of Representations, Warranties and Agreements.** Unless otherwise expressly stated in this Agreement (a) each of the covenants, obligations, representations, and agreements contained in this Agreement shall survive the Close of Escrow and the execution and delivery of the Deed only for a period of 6 months immediately following the Closing Date, and (b) any claim based upon a misrepresentation or a breach of a warranty contained in this Agreement shall be actionable or enforceable if and only if notice of such claim is given to the party which allegedly made such misrepresentation or breached such covenant, obligation, warranty or agreement within 6 months after the Closing Date; provided, however, in no event shall Seller's liability, if any, with respect to any breach of Seller's representations or warranties hereunder exceed \$100,000 in the aggregate. Notwithstanding anything stated to the contrary in this Agreement, the indemnification provisions of

Sections 4.3.1 and 14 hereof and the provisions of Sections 4.4, 10.1, 10.3, 11.2, 12.1, 12.2, 12.3, 12.4, 13.2, 18.3, 18.5, 18.17 and 18.20 hereof shall survive the termination of this Agreement or the Close of Escrow without limitation, and shall not be merged with the recording of the Deed.

18.7 **Entire Agreement.** This Agreement contains the entire agreement and understanding of the parties in respect to the subject matter hereof, and the parties intend for the literal words of this Agreement to govern and for all prior negotiations, drafts, and other extrinsic communications, whether oral or written, to have no significance or evidentiary effect. The parties further intend that neither this Agreement nor any of its provisions may be changed, amended, discharged, waived or otherwise modified orally except only by an instrument in writing duly executed by the party to be bound thereby. The parties hereto fully understand and acknowledge the importance of the foregoing sentence and are aware that the law may permit subsequent oral modification of a contract notwithstanding contract language which requires that any such modification be in writing; but Buyer and Seller fully and expressly intend that the foregoing requirements as to a writing be strictly adhered to and strictly interpreted and enforced by any court which may be asked to decide the question. Each party hereto acknowledges that this Agreement accurately reflect the agreements and understandings of the parties hereto with respect to the subject matter hereof and hereby waive any claim against the other party which such party may now have or may hereafter acquire to the effect that the actual agreements and understandings of the parties hereto with respect to the subject matter hereof may not be accurately set forth in this Agreement.

18.8 **Governing Law.** This Agreement shall be governed by the laws of the State of California.

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

18.10 **Headings; Construction.** The various headings of this Agreement are included for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and the masculine shall include the feminine and the neuter and vice versa. The use in this Agreement of the term "including" and related terms such as "include" shall in all cases mean "without limitation." All references to "days" in this Agreement shall be construed to mean calendar days unless otherwise expressly provided and all references to "business days" shall be construed to mean days on which national banks are open for business.

18.11 **Time of Essence.** Seller and Buyer hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and failure to perform timely any of the terms, conditions, obligations or provisions hereof by either party shall constitute a material breach of, and non-curable (but waivable) default under this Agreement by the parties so failing to perform.

18.12 **Partial Validity; Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

18.13 **No Third Party Beneficiaries.** This Agreement is for the sole and exclusive benefit of the parties hereto and their respective permitted successors and assigns, and no third party is intended to, or shall have, any rights hereunder.

18.14 **Waiver of CC Section 1662.** Seller and Buyer each expressly waive the provisions of California Civil Code Section 1662 and hereby agree that the provisions of Section 5.3 hereof shall

govern their obligations in the event of damage or destruction to the Real Property or condemnation of all or part of the Real Property.

18.15 **Joint Product of Parties.** This Agreement is the result of arms-length negotiations between Seller and Buyer and their respective attorneys. Accordingly, neither party shall be deemed to be the author of this Agreement and this Agreement shall not be construed against either party.

18.16 **Calculation of Time Periods.** Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included at, unless such last day is a Saturday, Sunday or legal holiday for national banks in California, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. Unless otherwise expressly provided herein, the last day of any period of time described herein shall be deemed to end at 5:00 p.m., California time.

18.17 **Procedure for Indemnity.** The following provisions govern actions for indemnity under this Agreement. Promptly after receipt by an indemnitee of notice of any claim, such indemnitee will, if a claim in respect thereof is to be made against the indemnitor, deliver to the indemnitor written notice thereof and the indemnitor shall have the right to participate in and, if the indemnitor agrees in writing that it will be responsible for any costs, expenses, judgments, damages, and losses incurred by the indemnitee with respect to such claim, to assume the defense thereof, with counsel mutually satisfactory to the parties; provided, however, that an indemnitee shall have the right to retain its own counsel, with the fees and expenses to be paid by the indemnitor, if the indemnitee reasonably believes that representation of such indemnitee by the counsel retained by the indemnitor would be inappropriate due to actual or potential differing interests between such indemnitee and any other party represented by such counsel in such proceeding. The failure of indemnitee to deliver written notice to the indemnitor within a reasonable time after indemnitee receives notice of any such claim shall relieve such indemnitor of any liability to the indemnitee under this indemnity only if and to the extent that such failure is prejudicial to its ability to defend such action, and the omission so to deliver written notice to the indemnitor will not relieve it of any liability that it may have to any indemnitee other than under this indemnity. If an indemnitee settles a claim without the prior written consent of the indemnitor, then the indemnitor shall be released from liability with respect to such claim unless the indemnitor has unreasonably withheld such consent.

18.18 **Waiver of Natural Hazards Disclosure Statement** . California Assembly Bill 1195 imposes on sellers of real property the obligation to disclose to buyers information about whether or not property is within certain natural hazard zones. Buyer intends to ascertain such information, as it deems necessary, during its due diligence investigation of the Property. Therefore, to the extent that it is waiveable, Buyer waives the natural hazard disclosure reporting requirements under Assembly Bill 1195. Buyer is not now relying, and will not later rely, upon any representations and warranties made by Seller or anyone acting or claiming to act, by through or under or on Seller's behalf concerning the Property, except as set forth in Section 11.

18.19 **Waiver of Jury Trial.** To the extent permitted by applicable law, the parties hereby waive any right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

18.20 **No Personal Liability.** Notwithstanding anything stated to the contrary herein, Seller's liability under this Agreement shall be limited to Seller's interest in the Property and neither Seller, Seller's constituent partners and/or members, Seller's asset manager, nor Seller's directors, employees or agents shall have any personal liability hereunder.

[remainder of page intentionally blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

**Seller**

RMV Community Development, LLC,  
a California limited liability company

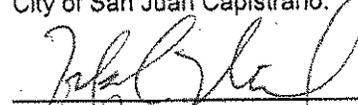
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a Delaware limited liability company  
as authorized agent and manager

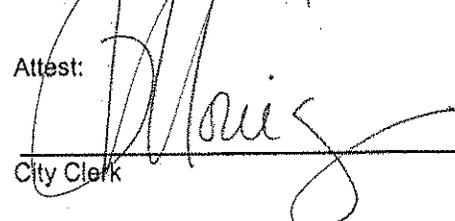
By:   
Donald L. Vodra  
Chief Operating Officer

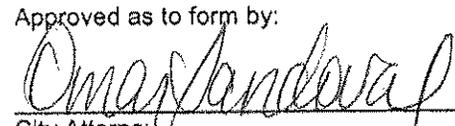
By:   
Richard Broming  
Senior Vice President, Planning and Entitlement

**Buyer**

City of San Juan Capistrano.

  
Mayor

Attest:   
City Clerk

Approved as to form by:  
  
City Attorney

DMB San Juan Investment North, LLC,  
a Delaware limited liability company

By: Rancho Mission Viejo, LLC,  
a Delaware limited liability company,  
as authorized agent and manager

By:   
Donald L. Vodra  
Chief Operating Officer

By:   
Richard Broming  
Senior Vice President, Planning and Entitlement

AGREED TO THIS \_\_\_\_\_  
DAY OF \_\_\_\_\_, 200\_  
AS TO PROVISIONS RELATING  
TO ESCROW HOLDER:

FIDELITY NATIONAL TITLE COMPANY

By \_\_\_\_\_  
Its \_\_\_\_\_

## LIST OF EXHIBITS

- EXHIBIT A — Description of Real Property
- EXHIBIT B — Inventory of Facility Structures and Other Property/Improvements
- EXHIBIT C — Copy of License
- EXHIBIT D — Copy of Lease
- EXHIBIT E — List of Property Information
- EXHIBIT F — Form of Deed
- EXHIBIT G — Form of Assignment of Lease, License and Bill of Sale
- EXHIBIT H — Form of Water Agreement
- EXHIBIT I — Form of Rodeo License Agreement
- EXHIBIT J — Form of Conservation Easement
- EXHIBIT K — Form of FIRPTA Affidavit
- EXHIBIT L — Form of Notice to Licensee/Lessee
- EXHIBIT M — Use Restrictions – Parcels 7 and 8
  - M-1: Exhibit 4.1-3 of Ranch Plan EIR
  - M-2: Section III.H of PC Text
  - M-3: Section III.J of PC Text]
- EXHIBIT N — Maximum Allowed Traffic
- EXHIBIT O — Map of “Sensitive Resource Areas” and “Do Not Disturb Areas”
- EXHIBIT P — Prohibited Uses – La Pata and Creek Open Space Parcels
- EXHIBIT Q — Ranch Plan Property (Benefited Area)
- EXHIBIT R — Trails and Bikeways Concept for Planning Area 1
- EXHIBIT S — Waiver of Relocation Rights

**EXHIBIT A**

Description of Real Property

(Attached)

10-1159-20 (D)  
06-26-09

EXHIBIT A  
LEGAL DESCRIPTION  
RMV COMMUNITY DEVELOPMENT  
SAN JUAN PROJECT

Parcel 7:

That portion of Parcel 104 of Certificate of Compliance No. CC 2001-01, in the Unincorporated Territory of the County of Orange, State of California, recorded July 26, 2001 as Instrument No. 20010508635 of Official Records, in the office of the County Recorder of said County, described as follows:

Beginning at the Southeasterly terminus of that certain course along the Southwesterly line of Rancho Mission Viejo, as shown on Record of Survey No. 2006-1181, in Book 218, Pages 14 through 24, inclusive, of Records of Survey, in the office of said County Recorder, described as having a bearing and distance of "North 52°57'24" West 4459.27" on said Record of Survey; thence along said Southwesterly line North 52°57'24" West 526.36 feet to a point hereinafter referred to as Point "A"; thence leaving said Southwesterly line and along the Northwesterly line of Parcel Two of the Planning Area One Development Boundary as approved July 26, 2006 by the Orange County Planning Commission Resolution No. 06-05, as shown on said Record of Survey, the following courses: North 23°8'15" East 301.76 feet, North 34°09'53" East 888.59 feet, and North 23°20'42" East 814.28 feet to the Southerly right-of-way line of Ortega Highway, as described in Exhibit "C" in the Grant Deed to the County of Orange, recorded August 1, 2008 as Instrument No. 2008000368965 of said Official Records; thence along said Southerly right-of-way line, the following courses: North 83°12'45" East 344.58 feet, North 64°7'15" West 19.74 feet to the beginning of a non-tangent curve concave Southerly having a radius of 6326.27 feet, a radial line of said curve to said point bears North 3°13'37" West, Easterly 24.26 feet along said curve through a central angle of 0°13'11", North 86°59'34" East 256.57 feet to the beginning of a curve concave Northerly having a radius of 4579.70 feet, Easterly 139.48 feet along said curve through a central angle of 1°44'42", non-tangent South 87°43'55" East 90.93 feet to the beginning of a non-tangent curve concave Northerly having a radius of 4591.70 feet, a radial line of said curve to said point bears South 5°52'42" East, Easterly 275.99 feet along said curve through a central angle of 3°26'38", non-tangent North 87°16'57" East 71.92 feet, South 10°12'54" East 4.17 feet, South 59°04'37" East 84.63 feet, and North 85°16'07" East 18.27 feet to a point on a non-tangent curve concave Northwesterly having a radius of 1550.00 feet, a radial line of said curve to said point bears North 85°17'19" East, said curve also being the Northwesterly right-of-way line of La Pata Avenue, as shown on said Record of Survey; thence along said Northwesterly right-of-way, the following courses: Southwesterly 1103.15 feet along said curve through a central angle of 40°46'40", South 36°03'59" West

EXHIBIT A  
LEGAL DESCRIPTION-CONTINUED  
RMV COMMUNITY DEVELOPMENT  
SAN JUAN PROJECT  
PAGE 2

10-1159-20 (D)  
06-26-09

40°46'40", South 36°03'59" West 561.99 feet to the beginning of a curve concave Southeasterly having a radius of 1650.00 feet, and Southwesterly 882.54 feet along said curve through a central angle of 30°38'46", to a point hereinafter referred to as Point "B"; thence leaving said Northwesterly right-of-way line non-tangent South 84°26'50" West 703.78 feet to a point on said Southwesterly line of Rancho Mission Viejo, said point being distant thereon South 19°17'44" East 213.59 feet from the point of beginning; thence North 19°17'44" West 213.59 feet to the point of beginning.

Containing an area of 70.572 acres, more or less.

Creek Open Space Parcel:

That portion of Parcel 104 of Certificate of Compliance No. CC 2001-01, in the Unincorporated Territory of the County of Orange, State of California, recorded July 26, 2001 as Instrument No. 20010508635 of Official Records, in the office of the County Recorder of said County, described as follows:

Beginning at Point "A" as described in Parcel 1 herein above; thence along the Northwesterly line of Parcel Two of the Planning Area One Development Boundary as approved July 26, 2006 by the Orange County Planning Commission Resolution No. 06-05, as shown on Record of Survey No. 2006-1181, in Book 218, Pages 14 through 24, inclusive, of Records of Survey, in the office of said County Recorder, the following courses: North 2°38'15" East 301.76 feet, North 34°09'53" East 888.59 feet, and North 23°20'42" East 814.28 feet to the Southerly right-of-way line of Ortega Highway, as described in Exhibit "C" in the Grant Deed to the County of Orange, recorded August 1, 2008 as Instrument No. 2008000368965 of said Official Records; thence along said Southerly right-of-way line, the following courses: South 83°12'45" West 55.42 feet, South 6°47'15" East 40.00 feet, and South 83°12'45" West 311.98 feet to the Southeasterly line of Parcel One of said Planning Area One Development Boundary, as shown on said Record of Survey, said point hereinafter referred to as Point "C"; thence leaving said Southerly right-of-way line and along said Southeasterly line, the following courses: South 37°43'28" West 358.30 feet, South 27°51'21" West 469.69 feet, South 38°38'01" West 422.80 feet to the beginning of a non-tangent curve Southeasterly having a radius of 500.00 feet, a radial line of said curve to said point bears North 5°39'07" West, and Southwesterly 445.03 feet along said curve through a central angle of 50°59'50" to a point on the Southwesterly line of Rancho Mission, as shown on said Record of Survey, said point being distant thereon North 52°57'24" West 746.21 feet from the point of beginning; thence leaving said Southeasterly line and along said Southwesterly line South 52°57'24" East 746.21 feet to the point of beginning.

Containing an area of 17.142 acres, more or less.

EXHIBIT A  
LEGAL DESCRIPTION-CONTINUED  
RMV COMMUNITY DEVELOPMENT  
SAN JUAN PROJECT  
PAGE 3

10-1159-20 (D)  
06-26-09

Parcel 8:

That portion of Parcel 104 of Certificate of Compliance No. CC 2001-01, in the Unincorporated Territory of the County of Orange, State of California, recorded July 26, 2001 as Instrument No. 20010508635 of Official Records, in the office of the County Recorder of said County, described as follows:

Beginning at Point "C" as described in Parcel 2 herein above; thence along the Southeasterly line of Parcel One of the Planning Area One Development Boundary as approved July 26, 2006 by the Orange County Planning Commission Resolution No. 06-05, as shown on Record of Survey No. 2006-1181, in Book 218, Pages 14 through 24, inclusive, of Records of Survey, in the office of said County Recorder, the following courses: South 37°43'28" West 358.30 feet, South 27°51'21" West 469.69 feet, South 38°38'01" West 422.80 feet to the beginning of a non-tangent curve concave Southeasterly having a radius of 500.00 feet, a radial line of said curve to said point bears North 5°39'07" West, and Southwesterly 445.03 feet along said curve through a central angle of 50°59'50" to a point on the Southwesterly line of Rancho Mission Viejo, as shown on said Record of Survey; thence North 52°57'24" West 640.24 feet along said Southwesterly line to the Southerly right-of-way line of Ortega Highway, as described in Exhibit "C" in the Grant Deed to the County of Orange, recorded August 1, 2008 as Instrument No. 2008000368965 of said Official Records; thence along said Southerly right-of-way line, the following courses: North 53°03'40" East 15.49 feet, South 36°56'20" East 3.50 feet, North 53°03'40" East 308.58 feet to the beginning of a curve concave Northerly having a radius of 7044.30 feet, Northeasterly 299.61 feet along said curve through a central angle of 2°26'13", North 50°37'27" East 81.26 feet, South 39°22'52" East 3.07 feet, North 50°37'08" East 210.25 feet, North 57°51'04" East 71.12 feet to the beginning of a non-tangent curve concave Southerly having a radius of 1474.06 feet, a radial line of said curve to said point bears North 39°24'19" West, Northeasterly 210.68 feet along said curve through a central angle of 8°11'20", non-tangent South 25°11'17" East 13.07 feet, North 80°23'21" East 29.94 feet, North 61°08'36" East 68.00 feet, North 29°11'32" West 11.61 feet, North 42°04'13" East 30.05 feet to the beginning of a non-tangent curve concave Southeasterly having a radius of 1530.00 feet, a radial line of said curve to said point bears North 24°59'51" West, Northeasterly 254.57 feet along said curve through a central angle of 9°32'00", along a radial line of said curve non-tangent South 15°27'51" East 50.00 feet to the beginning of a non-tangent curve concave Southeasterly having a radius of 1480.00 feet, a radial line of said curve to said point bears North 15°27'51" West, Northeasterly 224.13 feet along said curve through a central angle of 8°40'36" and North 83°12'45" East 45.72 feet to the point of beginning.

Containing an area of 18.403 acres, more or less.

EXHIBIT A  
LEGAL DESCRIPTION-CONTINUED  
RMV COMMUNITY DEVELOPMENT  
SAN JUAN PROJECT  
PAGE 4

10-1159-20 (D)  
06-26-09

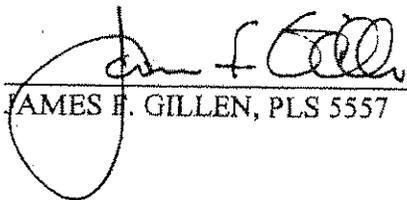
La Pata Open Space Parcel:

That portion of Parcel 104 of Certificate of Compliance No. CC 2001-01, in the Unincorporated Territory of the County of Orange, State of California, recorded July 26, 2001 as Instrument No. 20010508635 of Official Records, in the office of the County Recorder of said County, described as follows:

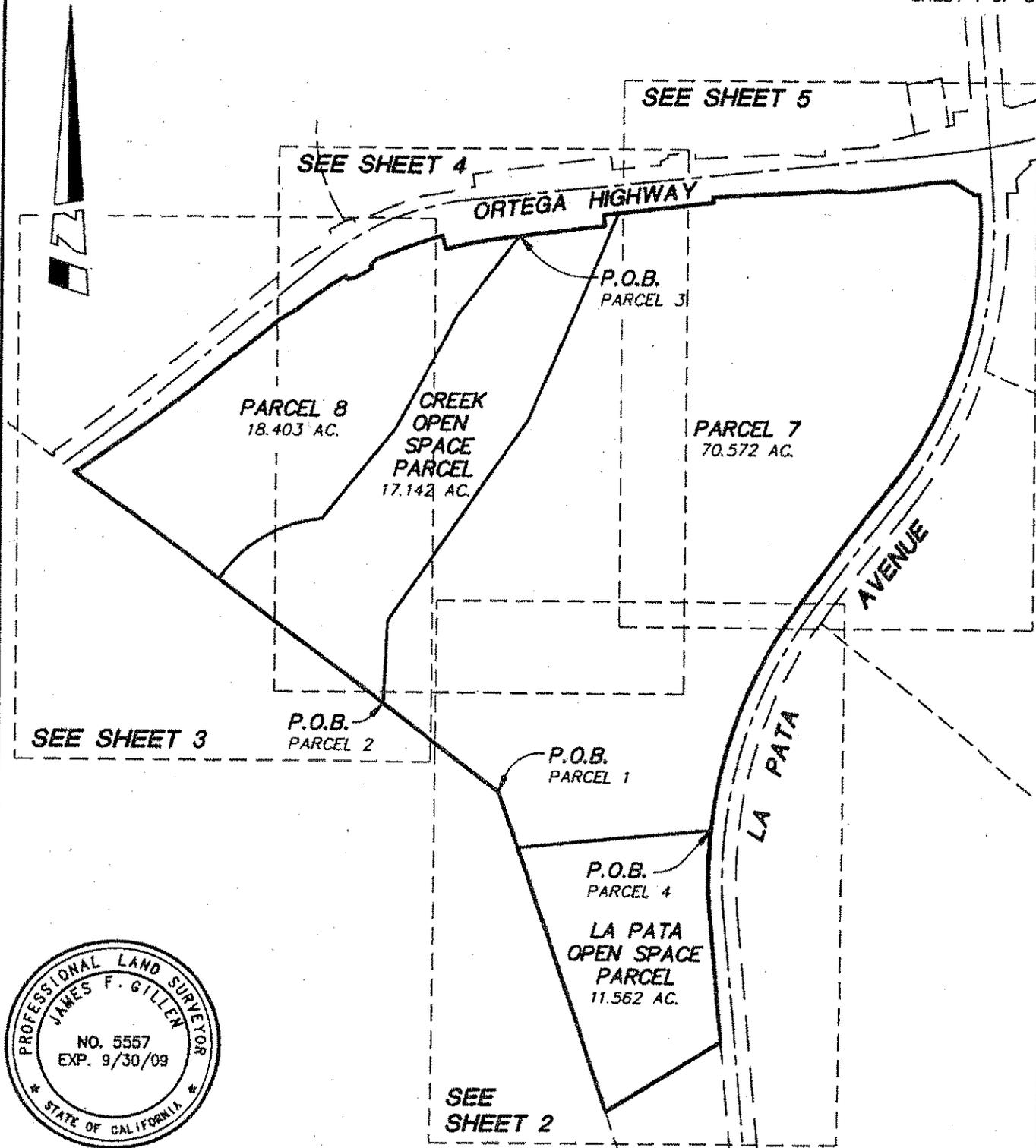
Beginning at Point "B" as described in Parcel 1 herein above; thence South 84°26'50" West 703.78 feet to a point on the Southwesterly line of Rancho Mission Viejo, as shown on Record of Survey No. 2006-1181, in Book 218, Pages 14 through 24, inclusive, of Records of Survey, in the office of said County Recorder, said point being distant thereon South 19°17'44" East 213.59 feet from the point of beginning of said Parcel 1; thence along the Westerly, Southerly and Easterly lines of said Parcel 104, the following courses: South 19°17'44" East 1017.75 feet, North 58°02'03" East 484.09 feet, North 5°46'10" West 452.96 feet to the beginning of a curve concave Easterly having a radius of 1650.00 feet, and Northerly 322.24 feet along said curve through a central angle of 1°11'23" to the point of beginning.

Containing an area of 11.562 acres, more or less.

As shown on Exhibit B attached hereto and by this reference made a part hereof.

  
\_\_\_\_\_  
JAMES F. GILLEN, PLS 5557





# HUITT-ZOLLARS

Huitt-Zollars, Inc. Irvine  
 430 Exchange, Suite 200, Irvine, CA 92602-1315  
 Phone (714) 734-5100 Fax (714) 734-5155

APPROVED BY

*[Signature]* 6/26/09

SKETCH TO ACCOMPANY  
 A LEGAL DESCRIPTION

**SAN JUAN PROJECT  
 RMV COMMUNITY  
 DEVELOPMENT**

SCALE 1"=500'

DRAWN BY DWM

CHECKED BY PMc

DATE 6/26/2009

JOB NO. 10-1159-20

SEE SHEET 4

SEE SHEET 5

SHEET 2 OF 5

3

CC 2001 - 01

PARCEL 7  
70.572 AC.

R.S. NO. 2006 - 1181

PARCEL 104

P.O.B.  
PARCEL 1

POINT 'B'  
P.O.B.  
PARCEL 4

N84°26'50"E 703.78'

N84°34'47"W  
RAD

R.S.B.

218 / 14 - 24

LA PATA  
OPEN SPACE  
PARCEL  
11.562 AC.

INST. NO.  
20010508635, O.R.

PARCEL  
LLA 2003  
INST NO.  
2003000294489  
O.R.

LA PATA AVENUE

2  
-004

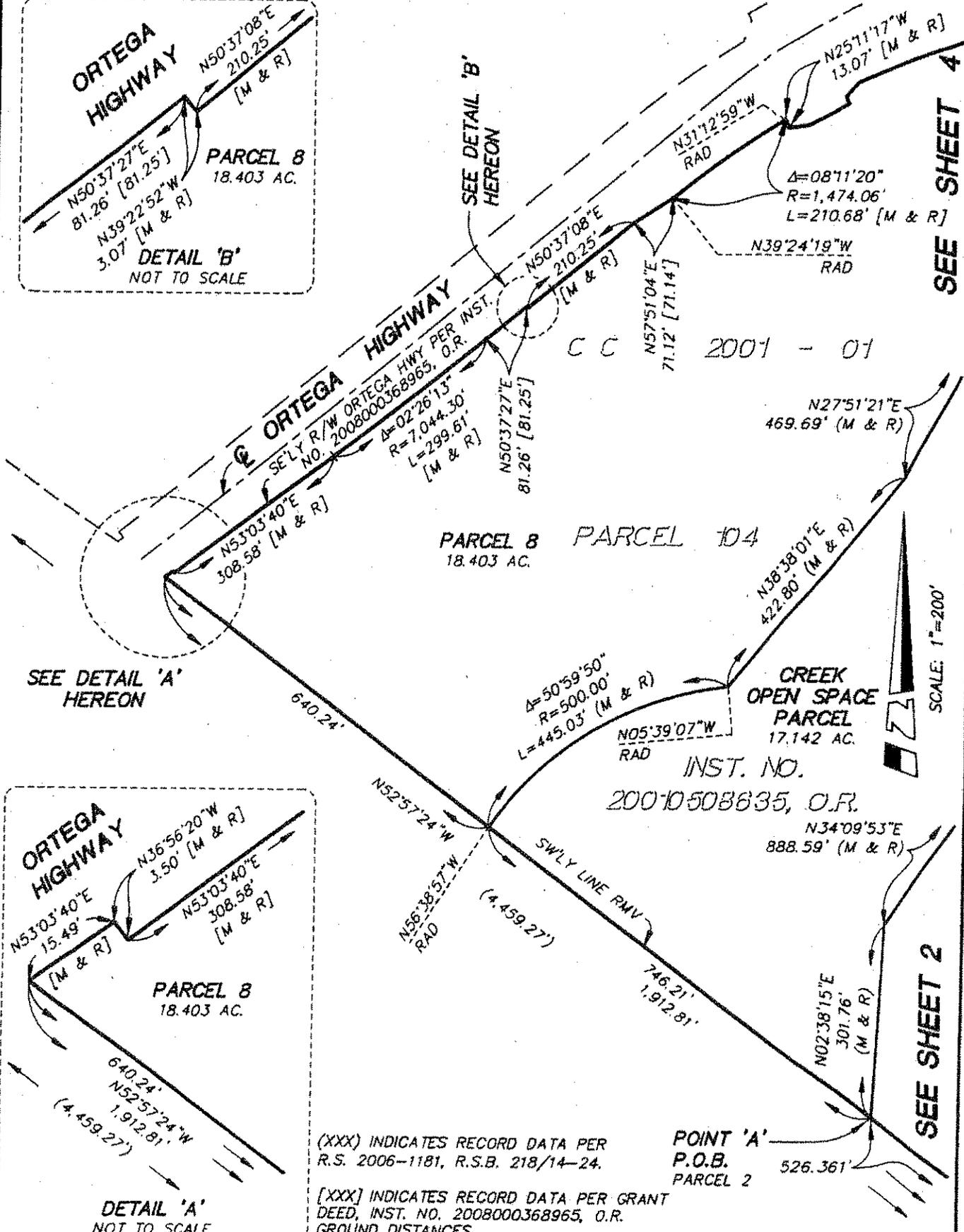
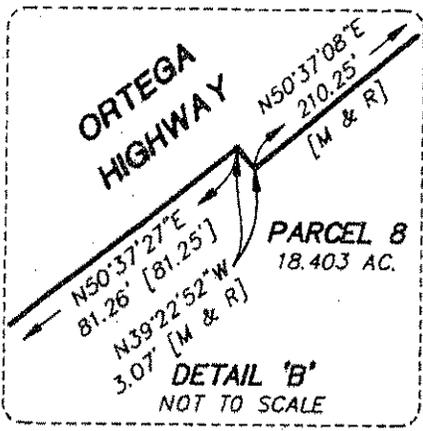
SEE SHEET

SEE

SCALE: 1"=200'

[XXX] INDICATES RECORD DATA PER  
R.S. 2006-1181, R.S.B. 218/14-24.

[XXX] INDICATES RECORD DATA PER GRANT  
DEED, INST. NO. 2008000368965, O.R.  
GROUND DISTANCES



SEE SHEET 4

SEE DETAIL 'A' HEREON

SCALE: 1"=200'

SEE SHEET 2

(XXX) INDICATES RECORD DATA PER R.S. 2006-1181, R.S.B. 218/14-24.

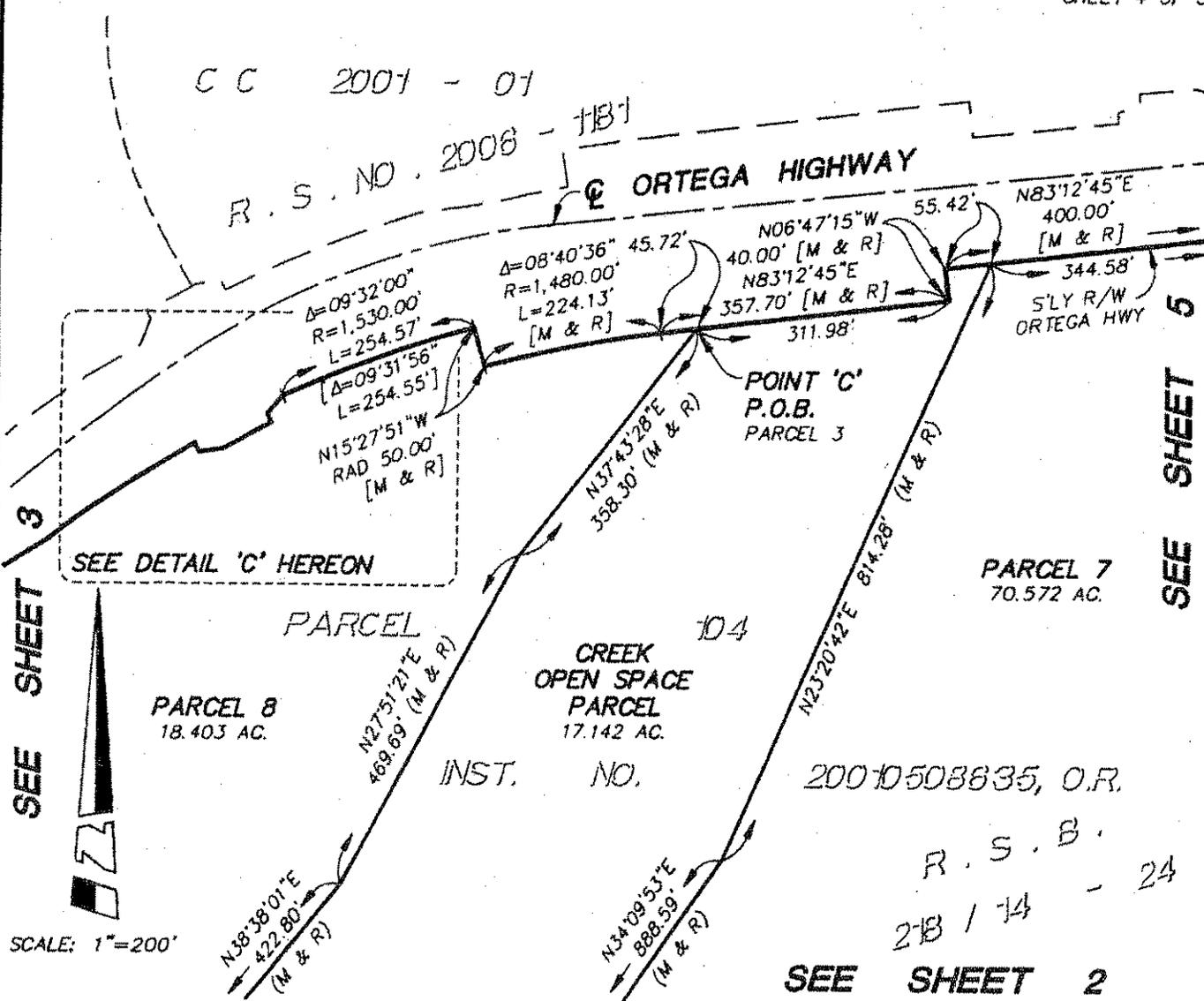
[XXX] INDICATES RECORD DATA PER GRANT DEED, INST. NO. 2008000368965, O.R. GROUND DISTANCES

POINT 'A' P.O.B. PARCEL 2 526.361'

C C 2007 - 07

R. S. NO. 2006 - 1181

ORTEGA HIGHWAY



SEE SHEET 3

SEE SHEET 5

SEE DETAIL 'C' HEREON



SCALE: 1"=200'

INST. NO.

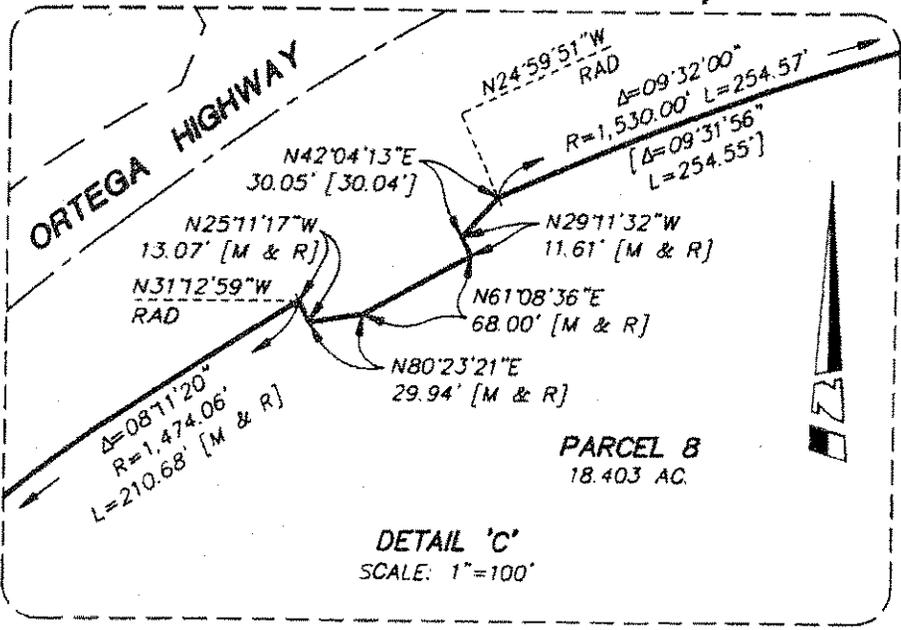
20070508835, O.R.

R. S. B.

218 / 14

24

SEE SHEET 2



(XXX) INDICATES RECORD DATA PER R.S. 2006-1181, R.S.B. 218/14-24.

[XXX] INDICATES RECORD DATA PER GRANT DEED, INST. NO. 2008000368965, O.R. GROUND DISTANCES



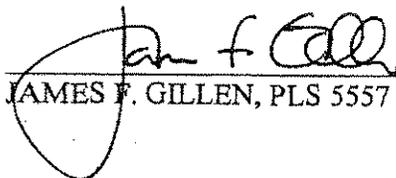
10-1159-20 (D)  
06-26-09

EXHIBIT A  
LEGAL DESCRIPTION  
DMB SAN JUAN INVESTMENT NORTH  
LA PATA OPEN SPACE PARCEL  
SAN JUAN PROJECT

That portion of Parcel 2 of Lot Line Adjustment LL 2003-004, in the Unincorporated Territory of the County of Orange, State of California, recorded March 19, 2003 as Instrument No. 2003000294469 of Official Records, in the office of the County Recorder of said County, lying Westerly of La Pata Avenue.

Containing an area of 13.855 acres, more or less.

As shown on Exhibit B attached hereto and by this reference made a part hereof.

  
\_\_\_\_\_  
JAMES F. GILLEN, PLS 5557





CC 2007-01  
PCL 104  
INST. NO.  
20010508635, O.R.

N58°02'03"E  
484.09' (483.96')

PARCEL  
LA PATA  
OPEN  
SPACE  
PARCEL  
13.855 AC.

N19°17'44"W

1,945.95' (1,945.97')  
3,177.27'

LL

L=16,004.5' R=3,050.00'  
L=852.36' (M & REC)

LA PATA AVENUE

2003-004

NO. 2003000294469, O.R.

INST.

N21°46'53"W  
618.29'

N68°13'07"E  
278.93'  
(278.89')

PCL  
1

(XXX) INDICATES RECORD  
DATA PER LL 2003-004,  
INST. NO. 2003000294469, O.R.



# HUITT-ZOLLARS

Huitt-Zollars, Inc. Irvine  
430 Exchange, Suite 200, Irvine, CA 92602-1315  
Phone (714) 734-5100 Fax (714) 734-5155

APPROVED BY

6/26/09

SKETCH TO ACCOMPANY  
A LEGAL DESCRIPTION

**SAN JUAN PROJECT  
DMB SAN JUAN  
INVESTMENT NORTH**

SCALE 1"=300'

DRAWN BY DWM

CHECKED BY PMC

DATE 6/26/2009

JOB NO. 10-1159-20

**EXHIBIT B**

Inventory of Facility Structures and Other Property/Improvements

(Attached)

**Inventory of Facility Structures  
Ranch Planning Area 1**

**Parcels 7 & 8**

<b>Parcel 8</b>	<b>Exhibit #</b>	<b>Structure</b>	<b>Street #</b>	<b>Street Name</b>	<b>Permit #</b>	<b>Sq. Ft.</b>	<b>Pic #</b>	<b>Ownership</b>	<b>Existing Use/Status</b>
	18	Conservancy Meeting Facility	28672	Ortega Hwy	DM070018	777	6	RMV Community Development LLC	Demolished
	19	Humbertos Ramos Residence	28632	Ortega Hwy	DM070017	1276	7	RMV Community Development LLC	Conservancy Meeting Facility
	20	Humbertos Garage		Ortega Hwy	DM070017		8	RMV Community Development LLC	Conservancy Meeting Facility
	21	Shed				100	9	RMV Community Development LLC	Vacant
	22	Vacant Residence	28652	Ortega Hwy	DM070016	1012	5	RMV Community Development LLC	Vacant
	23	Freestanding Garage					2	RMV Community Development LLC	Vacant
	24	Shed (Wood Frame)		Ortega Hwy			3	RMV Community Development LLC	Vacant
	25	Barn w/Restroom (Wood Frame)		Ortega Hwy			11 & 12	RMV Community Development LLC	Agricultural Operations
	26	Limo Barn w/Restroom		Ortega Hwy	DM070052	3780	1 & 14	RMV Community Development LLC	Existing Garage Structure
	27	Barn w/Restroom (Wood Frame)		Ortega Hwy			10	RMV Community Development LLC	Agricultural Operations
	28	Barn/Overhead Structure		Ortega Hwy			13	RMV Community Development LLC	Agricultural Operations
	29	Foundation (from previous shed)		Ortega Hwy			4	RMV Community Development LLC	Vacant
<b>Parcel 7</b>									
	<b>Exhibit #</b>	<b>Structure</b>	<b>Street #</b>	<b>Street Name</b>	<b>Permit #</b>	<b>Sq. Ft.</b>	<b>Pic #</b>	<b>Ownership</b>	<b>Existing Use/Status</b>
	30	Barn		Ortega Hwy			32	Brandes	Lease Operations
	31	Barn		Ortega Hwy			31	Brandes	Lease Operations
	32	Barn/Lean To		Ortega Hwy			78	Brandes	Lease Operations
	33	Office		Ortega Hwy			36	Brandes	Lease Operations
	34	Office/Trailer		Ortega Hwy			37	Brandes	Lease Operations
	35	Office/Barn/Rest-room		Ortega Hwy			35 & 38	Brandes	Lease Operations
	36	Shack		Ortega Hwy			30	Brandes	Lease Operations
	37	Shack		Ortega Hwy			29	Brandes	Lease Operations
	38	Kitchen/Concession Stand		Ortega Hwy			28	Brandes	Lease Operations
	39	A-H Portable Gazebos for Judging		Ortega Hwy			27	Brandes	Lease Operations
	40	Kitchen/Concession Stand		Ortega Hwy			41	Brandes	Lease Operations
	41	Kitchen/Concession Stand		Ortega Hwy			40	Brandes	Lease Operations
	42	5 Horse Wash Out Pits A-E		Ortega Hwy			39	Brandes	Lease Operations
	43	Temp. Office/Sheds/Storage Bins		Ortega Hwy			N/A	Sierra Soils (Brandes Sublicense)	Lease Operations

**EXHIBIT C**

Copy of License

(Attached)

# Equestrian and Sports Field License

**REDACTED**

**UNTIL**

**CLOSE**

**OF**

**ESCROW**

**EXHIBIT D**

Copy of Lease

(Attached)

# Lease of Ranch Property

**REDACTED**

**UNTIL**

**CLOSE**

**OF**

**ESCROW**

## EXHIBIT E

### List of Property Information

- Ranch Plan Entitlement Description for Planning Area 1 Parcels 7 and 8 [Exhibit E to Term Sheet]
- Equestrian and Sports Field Access and Use License [Exhibit F to Term Sheet]
- Lease of Ranch Property [Exhibit G to Term Sheet]
- Existing Land Uses in Planning Area 1 (Exhibit 4.1-3 to Ranch Plan EIR) [Exhibit H to Term Sheet]
- Agricultural and Other Existing and On-Going Uses (from Section III.H of Ranch Plan PC Text) [Exhibit I to Term Sheet]
- Temporary Uses Permitted (from Section III.J of Ranch Plan PC Text) [Exhibit J to Term Sheet]
- Map of "Do Not Disturb Areas" [Exhibit K to Term Sheet]
- Trails and Bikeway Concept for Planning Area 1 of Ranch Plan PC [Exhibit L to Term Sheet]
- Form of Declaration of Irrevocable Covenant [Exhibit M to Term Sheet]
- Form of Conservation Easement [Exhibit N to Term Sheet]

**EXHIBIT F**

Form of Deed

(Attached)

RECORDING REQUESTED BY:  
WHEN RECORDED MAIL TO:

[.....]

MAIL TAX STATEMENTS TO:

[.....]

(Space Above Line For Recorder's Use Only)

(Documentary Transfer Tax is not of public record and is shown on a separate sheet attached to this Grant Deed in accordance with the provisions of Section 11932 of the California Revenue and Taxation Code)

**GRANT DEED**

**WITNESSETH:**

FOR AND IN CONSIDERATION of the sum of Twenty-Seven Million Five Hundred Thousand Dollars (\$27,500,000.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, RMV Community Development, LLC, a California limited liability company, and DMB San Juan Investment North, LLC, a Delaware limited liability company (hereinafter "**Grantor**"), whose address is 28811 Ortega Highway, San Juan Capistrano, CA 92675, Attn: Donald L. Vodra, hereby grants, sells and conveys to City of San Juan Capistrano, a California municipal corporation (hereinafter "**Grantee**"), whose address is

\_\_\_\_\_, Attn: \_\_\_\_\_, the lots, tracts, or parcels of land or real property lying, being, and situated in unincorporated Orange County, State of California, more particularly described in Exhibit A attached hereto and incorporated herein by reference, together with certain improvements thereon and fixtures affixed thereto and certain privileges, easements, tenements and appurtenances thereon as set forth in that certain Purchase and Sale Agreement and Escrow Instructions dated \_\_, 20\_\_ (the "Agreement") entered into by and between Grantor and Grantee (collectively, the "**Property**").

THE PROPERTY IS CONVEYED TO GRANTEE SUBJECT TO: (a) all liens, encumbrances, easements, covenants, conditions, and restrictions of record; (b) all interests of licensee and lessee in possession of the Property; (c) all matters that would be revealed or disclosed in an accurate survey of the Property; (d) a lien not yet delinquent for taxes, and any general or special assessments against the Property; (e) zoning ordinances and regulations and any other laws, ordinances, or governmental regulations restricting or regulating the use, occupancy, or enjoyment of the Property; (f) Grantor's reserved rights and use restrictions as set forth in Paragraphs A and B below, and (g) Grantee's post-closing covenants as set forth in Paragraph C below.

**A. GRANTOR'S RESERVED RIGHTS.**

1. Grantor hereby reserves all water rights, including riparian, pertaining to Parcels 7 and 8 except for that amount of water necessary to reasonably and beneficially irrigate and maintain landscaping (turf, trees and plants) and domestic use for the operation of the allowed uses on those parcels. To allow Grantee to utilize water for the foregoing uses (on Parcels 7 and 8 only), Grantor shall consent to the Grantee constructing a well on either Parcel 7 or Parcel 8. The well pump shall not exceed a capacity, at any time, of 300 gallons per minute and Grantee's use of the water rights conveyed to it hereunder shall not exceed that amount. Grantor shall have the right to install, and maintain, a well

monitoring device in order to track Grantee's water extraction and use. Should any controlling local, state or federal agency adopt regulations restricting the amount of water that any landowner may extract, or if any court issues a decision restricting the amount of water any landowner may extract, then the Grantee shall reduce its use of water from said well on a correlative basis with any reduction of use by Grantor. The foregoing provisions have been incorporated into a Water Agreement entered into by Grantor and the Grantee and recorded concurrently with the recordation of this Grant Deed.

2. Grantor also reserves all mineral rights pertaining to the entire Property. Grantor's exploration and extraction activities pursuant to their mineral rights shall be restricted to that zone below a depth of 500 feet of the surface of the Property.

3. Grantor further reserves:

(i) the right to install utilities and storm drain facilities of any kind on the Property to carry out development of its remaining property pursuant to the approved Ranch Plan entitlements (and Grantee shall provide easements for installation and maintenance of said utilities and facilities). Grantor agrees, to the extent practicable, to locate such utilities and facilities in a way such that they do not conflict with the Grantee's utilization of the Property, and

(ii) the right to require that Grantee grant to the County a construction easement (the "**La Pata Construction Easement**") and an irrevocable offer of dedication of right of way in fee (the "**La Pata IOD**"), at no cost to either County or Grantor, covering those portions of the Property as may be identified by County in order to provide for the improvement of La Pata Road to its ultimate width as a primary arterial highway, in fulfillment of Grantor's obligations as described in Section I.E of Exhibit D (see Items No. 1 and No. 14) of that certain Development Agreement for the Ranch Plan Project entered into between County and Grantor (and/or Grantor's predecessors-in-interest) and recorded on December 6, 2004 as Instrument No. 2004001082094 (the "**Rancho Mission Viejo Development Agreement**"). Both the La Pata Construction Easement and La Pata IOD shall be executed and delivered to County by Grantee within thirty (30) days of either County's or Grantor's request and shall be in a form reasonably satisfactory to County and suitable for recordation. At County's option, the grant of the La Pata Construction Easement and La Pata IOD may be phased to accommodate phasing of the La Pata Road improvements.

(iii) its development rights under the governmental entitlements/approvals it has received pertaining to the Ranch Plan Property (of which the Property has been a part) including but not limited to its rights under the Ranch Plan PC. Grantor/RMV shall have no obligation to assign or otherwise transfer any of said rights to Grantee.

#### B. RESTRICTIONS ON USE OF REAL PROPERTY.

The Property is located within an area owned by Grantor and its affiliated entities (collectively, "RMV") which is commonly known as the "**Ranch Plan Property**," which is described/depicted on Exhibit B attached hereto and incorporated herein by reference. The Ranch Plan Property has been comprehensively planned over many years and has received several governmental approvals including, but not limited to: 1) approval by the Orange County Board of Supervisors on November 8, 2004 of General Plan Amendments, the Ranch Plan Planned Community Zoning (the "**Ranch Plan PC**"), with its associated "**PC Text**," and a Development Agreement, all of which include provision for needed residential and commercial uses, and the future preservation of open space uses on over 16,000 acres of the Ranch Plan Property ("**Future RMV Habitat Reserve Dedication Areas**"), and 2) approval by the County and the US Fish and Wildlife Service ("**USFWS**") of the Southern Subregion Habitat Conservation Plan ("**Southern Subregion HCP**") dated January 10, 2007 that provides a comprehensive conservation strategy including designation of the Future RMV Habitat Reserve Dedication Areas for eventual inclusion as part of the HCP Habitat Reserve. The use restrictions and covenants set forth in this Paragraph B and in the following Paragraph C are critical to implementation of the Ranch Plan PC and the Southern Subregion HCP in an integrated fashion and will greatly benefit the entire Ranch Plan Property (the "**Benefited Area**").

Pursuant to this section, the "**Ranch Plan**" is defined by the entitlements and approvals thereof including the above-referenced General Plan Amendments, Ranch Plan PC and Development Agreement, all as amended by certain settlement agreements with the cities of San Clemente and Mission Viejo and a settlement agreement with certain resource organizations (NRDC, Sierra Club, Endangered Habitats League, Sea & Sage Audubon and Laguna Greenbelt) dated December 8, 2004, June 9, 2005 and August 16, 2005, respectively. Additional entitlements and approvals defining the Ranch Plan include the Southern Subregion HCP, the San Juan Creek and Western San Mateo Creek Watersheds Special Area Management Plan ("**SAMP**") approved by the US Army Corps of Engineers ("**USACE**") dated March 16,

2007, the Master Streambed Alteration Agreement approved by the California Department of Fish and Game ("CDFG") dated September 29, 2008, and various existing approvals by the San Diego Regional Water Quality Control Board ("SDRWQCB")."

1. Parcels 7 and 8.

(a) The use of Parcels 7 and 8 shall be restricted to (i) those uses described as existing uses on the Property in Section 4.1.2 (and depicted on Exhibit 4.1-3) of the EIR for the Ranch Plan certified by the Board of Supervisors on November 8, 2004 (the "Ranch Plan EIR"), including equestrian and sports field uses (Exhibit C-1 attached hereto and incorporated by reference), (ii) new agricultural uses as allowed under Section III.H of the PC Text (Exhibit C-2 attached hereto and incorporated herein by reference), and (iii) temporary uses as allowed under Section III.J of the PC Text (Exhibit C-3 attached hereto and incorporated herein by reference), and shall be subject to the further restriction that the uses described under (i), (ii) and (iii) above, individually and/or cumulatively, shall not increase traffic beyond the number of peak hour trips shown on Exhibit D attached hereto and incorporated herein by reference which represent a level of traffic that is consistent with the existing uses on the Property together with certain additional trips corresponding to a portion of the trips associated with new sports field uses entitled as part of the Ranch Plan.

Any uses other than the foregoing described uses are prohibited, including, but not limited to, residential, commercial (except one commercial equestrian facility) and industrial uses. Any permanent lighting, other than for security purposes, is also prohibited.

(b) Certain portions of Parcels 7 and 8 contain important vegetation/habitat areas that are identified as "Sensitive Resource Areas" on Exhibit E attached hereto and incorporated herein by reference. RMV is the only entity authorized by USFWS, CDFG, USACE and SDRWQCB to remove or otherwise impact the vegetation in these Sensitive Resource Areas. As such, if and when Grantee decides it would like to remove or otherwise impact any of these areas, Grantee must request RMV to do so. Within ninety (90) days of receiving Grantee's request, at Grantee's expense, Grantor/RMV will remove the Sensitive Resource Area vegetation. Said vegetation will not be able to be removed during the bird breeding season – January 15 to September 15.

(c) The location of any vehicular access into Parcels 7 and 8 from La Pata Road, current or future, shall be consistent with the approved Ranch Plan entitlements and shall require Grantor's prior written consent. To the extent practicable, existing access points to Parcels 7 and 8 will be maintained and Grantee agrees that it will not make any modifications to access from La Pata Road until after ultimate Ranch Plan access has been finalized.

(d) Grantee shall be prohibited from using any plants identified on the California Invasive Plant Council (Cal-IPC) as part of its landscaping on Parcels 7 and 8. At Grantor's request, Grantee shall provide its landscaping plans to Grantor for review and approval prior to installation of same.

(e) No portion of the Property (including Parcels 7 and 8, as well as the two open space parcels) may be used or otherwise employed in the operation, distribution, transmission and/or provision of telecommunications and associated/related services ("Telecommunications Services") from, on or about the Property. Grantee, its successors and assigns shall not grant, dedicate or otherwise provide any easements, licenses or other rights on, under, over, across or affecting the Property that are intended to (or otherwise may) permit, authorize or allow any person or entity to (i) provide, engage in or facilitate any Telecommunications Services from or upon the Property or (ii) build or operate any Telecommunications Facilities from or upon the Property.

(1) For purposes of this Agreement, "Telecommunications Facilities" shall mean (aa) improvements, equipment and facilities for (i) telecommunications, (ii) transfer of audio, video and data signals, (iii) transfer of any other signals used for transmission of intelligence by electrical, light wave, wireless frequencies or radio frequencies, and (iv) any other methods of communication and information transfer, (bb) all associated improvements, equipment and facilities, including, but not limited to, antennas, towers, broadcasting and receiving devices, conduits, junction boxes, wires, cables, fiber optics, and any other necessary or appropriate enclosures and connections, and (cc) power generation serving the improvements, equipment and facilities described in subparts (aa) and (bb) of this definition.

2. La Pata Open Space and Creek Open Space Parcels.

(a) Prior to or concurrent with the recordation of this Grant Deed, a Conservation Easement shall be recorded covering the Creek Open Space Parcel and the La Pata Open Space Parcel

which shall result in and/or confirm the enrollment of the respective parcels as part of the HCP Habitat Reserve pursuant to the Implementation Agreement for the Southern Subregion HCP which was entered into on January 10, 2007 by and between Rancho Mission Viejo, the County of Orange, SMWD and the USFWS.

(b) Upon their enrollment in the HCP Habitat Reserve, the use of the Creek Open Space Parcel and La Pata Open Space Parcel, both of which are within the "Do Not Disturb" areas identified on Exhibit E attached hereto, shall be restricted in accordance with the Conservation Easement and the Implementation Agreement for the Southern Subregion HCP. Prohibited uses on these parcels are more particularly described in the Conservation Easement, the relevant portion of which is set forth in Exhibit F attached hereto and incorporated herein by reference.

(c) Should Grantee desire to allow any grazing of the La Pata Open Space Parcel, it would need to prepare and have approved by USFWS a grazing management plan for this area. The Grantee, RMV and the Rancho Mission Viejo Land Trust (the "RMVLT") shall cooperate in the preparation of said grazing management plan. Said grazing management plan shall require RMV's and RMVLT's approval prior to submission to USFWS. Any costs associated with RMV's and RMVLT's review of said grazing management plan shall be borne by Grantee. No grazing shall be allowed on the Creek Open Space Parcel under any circumstances.

(d) If Grantee desires to construct any trail or bikeway over, through or within the Creek Open Space Parcel and/or La Pata Open Space Parcel other than the trails and bikeway described in Paragraph C.1(d) below, it shall obtain required approvals from the USFWS and all other federal, state and/or local agencies with jurisdiction over these areas, as well as the prior written consent of RMV and The Reserve.

3. Restrictions Run with the Land. The use restrictions set forth in 1 and 2 above (collectively, the "**Use Restrictions**") shall run with the land and be binding upon any person or entity who/that acquires any right, title or interest in or to any portion of the Property and shall be enforceable by the assigns of and successors-in-interest to Grantors. Every person or entity who hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to the Use Restrictions contained herein, whether or not any reference to this Grant Deed is contained in the instrument by which such person acquired an interest in such portion of the Property.

4. Right of Re-Entry; Power of Termination. The grant of the Property to Grantee is subject to the express condition that if the Property is ever used for any use other than those allowed uses specified in (a) and (b) above, then the Grantor, its successors or assigns, shall have the right to re-enter the Property and exercise the power of termination of Grantee's estate in the Property; provided, however, Seller shall give Buyer at least fifteen (15) days prior written notice before exercising the power of termination and Buyer shall have the right to cure any use violation within that period..

C. GRANTEE'S ADDITIONAL POST-CLOSING COVENANTS.

1. Grantee's Covenants – General. Grantee agrees:

(a) that it shall not itself, nor counsel others to, directly or indirectly, initiate, aid, request, encourage, file, fund or participate in any administrative hearing, litigation or other action related in any way to the approval and/or implementation of the Ranch Plan project on the Ranch Plan Property,

(b) that the initiation of any annexation of the Property shall follow Closing of Escrow and all costs of the annexation shall be borne by the City. Grantor shall cooperate and support annexation of the Property to City. In connection with and prior to any annexation of the Property, Grantee further agrees that it shall prezone the entire Property to the "open space" category and designate it as "open space" on the City General Plan,

(c) not to initiate annexation of, or expansion of its Sphere of Influence over, any part of the Ranch Plan Property (as shown on Exhibit B attached hereto) other than the Property acquired pursuant to this acquisition,

(d) to reserve rights of way for, and to construct, the proposed Regional riding and hiking trails and the Class 1 Bikeway in and around the Property as shown on the Trails and Bikeways Concept for Planning Area 1 of the Ranch Plan Planned Community (attached as Exhibit G and

incorporated herein by reference). Said trails and Class 1 bikeway shall be constructed by Grantee within one (1) year of RMV's completion of construction of connecting trails and bikeway within and across Planning Area 1,

(e) to grant to the County the La Pata Construction Easement and the La Pata IOD for the improvement of La Pata Road south of Ortega Highway as more fully set forth in Section A.3(ii) above, and

(f) that the area commonly known as the "Rancho Mission Viejo Riding Park at San Juan Capistrano" (on Parcel 7) shall perpetually be known, identified and advertised by that name, and that City shall use no other name for that area.

2. Grantee's Covenants – Habitat Reserve. Grantee acknowledges that, upon their enrollment in the HCP Habitat Reserve as described in Paragraph B.2 hereof, the Creek Open Space Parcel and La Pata Open Space Parcel will be subject to the Habitat Reserve Management Program ("HRMP"). Pursuant to the HRMP, various habitat monitoring and management actions will be undertaken by RMVLT and RMV on these open space parcels pursuant to their obligations under the Southern Subregion HCP. In conjunction with this transaction, Grantor/RMV reserves (a) the right to enter upon the open space parcels to carry out the HRMP and every other permitted use under the Southern Subregion HCP, and (b) the right to enforce the terms and conditions of the Conservation Easement. Grantee agrees to cooperate with RMVLT and RMV to the fullest extent to allow their respective obligations to be fulfilled on the open space parcels. Grantor/RMV shall have no obligation to assign or otherwise transfer any of its rights as permittee under the Southern Subregion HCP to Grantee.

3. Effect of Covenants. The covenants set forth above in 1 and 2 are for the benefit of the Benefited Area and shall run with the Property and be binding upon any person or entity who/that acquires any right, title or interest in or to any portion of the Property and shall be enforceable by the assigns of and successors-in-interest to Grantors. Every person or entity who hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to the covenants contained herein, whether or not any reference to this Grant Deed is contained in the instrument by which such person acquired an interest in such portion of the Property.

D. BY ACCEPTING THIS DEED (AS EVIDENCED BY THE RECORDING OF THIS DEED IN THE OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA), GRANTEE ACKNOWLEDGES AND AGREES TO ALL OF THE FOLLOWING:

1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR GRANTOR'S REPRESENTATIONS AND WARRANTIES TO GRANTEE (WHICH SURVIVE FOR A SPECIFIED PERIOD OF TIME) IN SECTION 11.1 OF THE AGREEMENT ("**GRANTOR'S WARRANTIES**"), THIS DEED IS MADE AND IS DELIVERED WITHOUT REPRESENTATION, COVENANT, OR WARRANTY OF ANY KIND (WHETHER EXPRESS, IMPLIED, OR, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, STATUTORY) BY GRANTOR. AS A MATERIAL PART OF THE CONSIDERATION FOR THIS DEED, GRANTEE AGREES TO ACCEPT THE PROPERTY ON AN "AS IS" AND "WHERE IS" BASIS, WITH ALL FAULTS, AND WITHOUT ANY REPRESENTATION OR WARRANTY, ALL OF WHICH GRANTOR HEREBY DISCLAIMS, EXCEPT FOR GRANTOR'S WARRANTIES. EXCEPT FOR GRANTOR'S WARRANTIES, GRANTEE ACKNOWLEDGES THAT NO WARRANTY OR REPRESENTATION IS MADE BY GRANTOR AS TO FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, DESIGN, QUALITY, CONDITION, OPERATION OR INCOME, COMPLIANCE WITH DRAWINGS OR SPECIFICATIONS, ABSENCE OF DEFECTS, ABSENCE OF HAZARDOUS OR TOXIC SUBSTANCES, ABSENCE OF FAULTS, FLOODING, OR COMPLIANCE WITH LAWS AND REGULATIONS INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO HEALTH, SAFETY, AND THE ENVIRONMENT. GRANTEE ACKNOWLEDGES THAT GRANTEE ENTERED INTO THE AGREEMENT TO TAKE TITLE TO THE PROPERTY WITH THE INTENTION OF MAKING AND RELYING UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC USE, COMPLIANCE, AND LEGAL CONDITION OF THE PROPERTY AND THAT GRANTEE IS NOT NOW RELYING, AND WILL NOT LATER RELY, UPON ANY REPRESENTATIONS AND WARRANTIES MADE BY GRANTOR OR ANYONE ACTING OR

CLAIMING TO ACT, BY, THROUGH OR UNDER OR ON GRANTOR'S BEHALF CONCERNING THE PROPERTY. ADDITIONALLY, GRANTEE AND GRANTOR HEREBY AGREE THAT (A) EXCEPT FOR GRANTOR'S WARRANTIES, GRANTEE IS TAKING THE PROPERTY "AS IS" WITH ALL LATENT AND PATENT DEFECTS AND THAT EXCEPT FOR GRANTOR'S WARRANTIES, THERE IS NO WARRANTY BY GRANTOR THAT THE PROPERTY IS FIT FOR A PARTICULAR PURPOSE, (B) EXCEPT FOR GRANTOR'S WARRANTIES, GRANTEE IS SOLELY RELYING UPON ITS EXAMINATION OF THE PROPERTY, AND (C) GRANTEE TAKES THE PROPERTY UNDER THIS DEED UNDER THE EXPRESS UNDERSTANDING THAT THERE ARE NO EXPRESS OR IMPLIED WARRANTIES (EXCEPT FOR THE LIMITED WARRANTIES OF TITLE SET FORTH IN THIS DEED AND THE GRANTOR'S WARRANTIES).

2. WITH RESPECT TO THE FOLLOWING, GRANTOR SHALL NOT HAVE ANY LIABILITY, OBLIGATION OR RESPONSIBILITY OF ANY KIND AND GRANTOR HAS MADE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND:

- (i) THE CONTENT OR ACCURACY OF ANY REPORT, STUDY, OPINION OR CONCLUSION OF ANY SOILS, TOXIC, ENVIRONMENTAL OR OTHER ENGINEER OR OTHER PERSON OR ENTITY WHO HAS EXAMINED THE PROPERTY OR ANY ASPECT THEREOF;
- (ii) THE CONTENT OR ACCURACY OF ANY OF THE ITEMS (INCLUDING, WITHOUT LIMITATION, THE PROPERTY INFORMATION (THE "**PROPERTY INFORMATION**") DELIVERED TO GRANTEE PURSUANT TO GRANTEE'S REVIEW OF THE CONDITION OF THE PROPERTY; OR
- (iii) THE CONTENT OR ACCURACY OF ANY PROJECTION, FINANCIAL OR MARKETING ANALYSIS OR OTHER INFORMATION GIVEN TO GRANTEE BY GRANTOR OR REVIEWED BY GRANTEE WITH RESPECT TO THE PROPERTY.

3. THE PROPERTY MAY CONTAIN ASBESTOS AND GRANTEE MAY BE REQUIRED TO REMEDIATE ANY ASBESTOS CONDITION IN ACCORDANCE WITH APPLICABLE LAW.

4. GRANTEE IS A SOPHISTICATED REAL ESTATE INVESTOR AND IS, FAMILIAR WITH THE PROPERTY AND ITS SUITABILITY FOR GRANTEE'S INTENDED USE.

5. GRANTEE HAS MADE ITS OWN INDEPENDENT INVESTIGATION OF THE PROPERTY, THE PROPERTY INFORMATION AND THE PRESENCE OF HAZARDOUS MATERIALS ON THE PROPERTY AS GRANTEE DEEMS APPROPRIATE. ACCORDINGLY, EXCEPT FOR GRANTOR'S WARRANTIES, GRANTEE HEREBY EXPRESSLY WAIVES AND RELINQUISHES ANY AND ALL RIGHTS AND REMEDIES GRANTEE MAY NOW OR HEREAFTER HAVE AGAINST GRANTOR, ITS SUCCESSORS AND ASSIGNS, PARTNERS, SHAREHOLDERS, OFFICERS AND/OR DIRECTORS, WHETHER KNOWN OR UNKNOWN, WHICH MAY ARISE FROM OR BE RELATED TO (A) THE PHYSICAL CONDITION, QUALITY, QUANTITY AND STATE OF REPAIR OF THE PROPERTY AND THE PRIOR MANAGEMENT AND OPERATION OF THE PROPERTY, (B) THE PROPERTY INFORMATION, (C) THE PROPERTY'S COMPLIANCE OR LACK OF COMPLIANCE WITH ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, AND (D) ANY PAST, PRESENT OR FUTURE PRESENCE OR EXISTENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE PROPERTY OR WITH RESPECT TO ANY PAST, PRESENT OR FUTURE VIOLATION OF ANY RULES, REGULATIONS OR LAWS, NOW OR HEREAFTER ENACTED, REGULATING OR GOVERNING THE USE, HANDLING, STORAGE OR DISPOSAL OF HAZARDOUS MATERIALS, INCLUDING, WITHOUT LIMITATION, (I) ANY AND ALL RIGHTS AND REMEDIES GRANTEE MAY NOW OR HEREAFTER HAVE UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980 ("**CERCLA**"), THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND THE TOXIC SUBSTANCE CONTROL ACT, ALL AS AMENDED, AND ANY SIMILAR STATE, LOCAL OR FEDERAL ENVIRONMENTAL LAW, RULE OR REGULATION, AND (II) ANY AND ALL CLAIMS, WHETHER KNOWN OR UNKNOWN, NOW OR HEREAFTER EXISTING, WITH RESPECT TO THE

REAL PROPERTIES UNDER SECTION 107 OF CERCLA (42 U.S.C.A. §9607). AS USED HEREIN, THE TERM "HAZARDOUS MATERIAL(S)" INCLUDES, WITHOUT LIMITATION, ANY HAZARDOUS OR TOXIC MATERIALS, SUBSTANCES OR WASTES, SUCH AS (1) ANY MATERIALS, SUBSTANCES OR WASTES WHICH ARE TOXIC, IGNITABLE, CORROSIVE OR REACTIVE AND WHICH ARE REGULATED BY ANY LOCAL GOVERNMENTAL AUTHORITY, OR ANY AGENCY OF THE UNITED STATES GOVERNMENT, (2) ANY OTHER MATERIAL, SUBSTANCE, OR WASTE WHICH IS DEFINED OR REGULATED AS A HAZARDOUS MATERIAL, EXTREMELY HAZARDOUS MATERIAL, HAZARDOUS WASTE OR TOXIC SUBSTANCE PURSUANT TO ANY LAWS, RULES, REGULATIONS OR ORDERS OF THE UNITED STATES GOVERNMENT, OR ANY LOCAL GOVERNMENTAL BODY, (3) ASBESTOS, (4) PETROLEUM AND PETROLEUM BASED PRODUCTS, (5) FORMALDEHYDE, (6) POLYCHLORINATED BIPHENYLS (PCBS), AND (7) FREON AND OTHER CHLOROFLUOROCARBONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, GRANTEE HEREBY ASSUMES ALL RISK AND LIABILITY RESULTING OR ARISING FROM, OR RELATING TO THE OWNERSHIP, USE, CONDITION, LOCATION, MAINTENANCE, REPAIR, OR OPERATION OF, THE PROPERTY.

THE ACKNOWLEDGMENTS, WAIVERS, RELEASES AND AGREEMENTS BY GRANTEE SET FORTH IN PARAGRAPHS D.1 THROUGH 5, INCLUSIVE, ABOVE SHALL BE ACKNOWLEDGMENTS, WAIVERS, RELEASES, AGREEMENTS AND COVENANTS RUNNING WITH THE LAND FOR THE BENEFIT OF GRANTOR, SHALL BE BINDING UPON GRANTEE'S SUCCESSORS AND ASSIGNS AND ALL FUTURE OWNERS OF ANY PART OF THE PROPERTY FOR THE BENEFIT OF GRANTOR, SHALL SURVIVE THE DELIVERY AND THE RECORDATION OF THIS DEED AND ANY FUTURE DEEDS OF THE PROPERTY FOR THE BENEFIT OF GRANTOR AND SHALL NOT BE DEEMED MERGED INTO SUCH DEEDS UPON THEIR DELIVERY, ACCEPTANCE AND RECORDATION SO THAT EACH FUTURE OWNER OF THE PROPERTY SHALL BE DEEMED TO HAVE MADE ALL SUCH ACKNOWLEDGMENTS, WAIVERS, RELEASES, AGREEMENTS AND COVENANTS FOR THE BENEFIT OF GRANTOR CONCURRENTLY WITH SUCH FUTURE OWNER'S TAKING TITLE TO THE PROPERTY.

[SIGNATURE ON FOLLOWING PAGE]

200\_.

IN WITNESS WHEREOF, the undersigned has executed this Grant Deed as of \_\_\_\_\_,

**Grantor**

DMB San Juan Investment North, LLC,  
a Delaware limited liability company

By: Rancho Mission Viejo, LLC,  
a Delaware limited liability company,  
as authorized agent and manager

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

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

RMV Community Development, LLC,  
a California limited liability company

By: Rancho Mission Viejo, LLC,  
a Delaware limited liability company  
as authorized agent and manager

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

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

STATE OF \_\_\_\_\_ )  
 )ss  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 200\_\_ before me, \_\_\_\_\_  
personally appeared \_\_\_\_\_, who proved to  
me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the  
within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon  
behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and seal.

\_\_\_\_\_  
Signature

Printed Name: \_\_\_\_\_

(SEAL)

EXHIBIT A  
LEGAL DESCRIPTION

[ATTACHED]

10-1159-20 (D)  
06-26-09

EXHIBIT A  
LEGAL DESCRIPTION  
RMV COMMUNITY DEVELOPMENT  
SAN JUAN PROJECT

Parcel 7:

That portion of Parcel 104 of Certificate of Compliance No. CC 2001-01, in the Unincorporated Territory of the County of Orange, State of California, recorded July 26, 2001 as Instrument No. 20010508635 of Official Records, in the office of the County Recorder of said County, described as follows:

Beginning at the Southeasterly terminus of that certain course along the Southwesterly line of Rancho Mission Viejo, as shown on Record of Survey No. 2006-1181, in Book 218, Pages 14 through 24, inclusive, of Records of Survey, in the office of said County Recorder, described as having a bearing and distance of "North 52°57'24" West 4459.27' " on said Record of Survey; thence along said Southwesterly line North 52°57'24" West 526.36 feet to a point hereinafter referred to as Point "A"; thence leaving said Southwesterly line and along the Northwesterly line of Parcel Two of the Planning Area One Development Boundary as approved July 26, 2006 by the Orange County Planning Commission Resolution No. 06-05, as shown on said Record of Survey, the following courses: North 2°38'15" East 301.76 feet, North 34°09'53" East 888.59 feet, and North 2°32'04" East 814.28 feet to the Southerly right-of-way line of Ortega Highway, as described in Exhibit "C" in the Grant Deed to the County of Orange, recorded August 1, 2008 as Instrument No. 2008000368965 of said Official Records; thence along said Southerly right-of-way line, the following courses: North 8°12'45" East 344.58 feet, North 0°47'15" West 19.74 feet to the beginning of a non-tangent curve concave Southerly having a radius of 6326.27 feet, a radial line of said curve to said point bears North 3°13'37" West, Easterly 24.26 feet along said curve through a central angle of 0°13'11", North 86°59'34" East 256.57 feet to the beginning of a curve concave Northerly having a radius of 4579.70 feet, Easterly 139.48 feet along said curve through a central angle of 1°44'42", non-tangent South 87°43'55" East 90.93 feet to the beginning of a non-tangent curve concave Northerly having a radius of 4591.70 feet, a radial line of said curve to said point bears South 3°52'42" East, Easterly 275.99 feet along said curve through a central angle of 3°26'38", non-tangent North 87°16'57" East 71.92 feet, South 10°12'54" East 4.17 feet, South 59°04'37" East 84.63 feet, and North 85°16'07" East 18.27 feet to a point on a non-tangent curve concave Northwesterly having a radius of 1550.00 feet, a radial line of said curve to said point bears North 85°17'19" East, said curve also being the Northwesterly right-of-way line of La Pata Avenue, as shown on said Record of Survey; thence along said Northwesterly right-of-way, the following courses: Southwesterly 1103.15 feet along said curve through a central angle of 40°46'40", South 36°03'59" West

EXHIBIT A  
LEGAL DESCRIPTION-CONTINUED  
RMV COMMUNITY DEVELOPMENT  
SAN JUAN PROJECT  
PAGE 2

10-1159-20 (D)  
06-26-09

40°46'40", South 36°03'59" West 561.99 feet to the beginning of a curve concave Southeasterly having a radius of 1650.00 feet, and Southwesterly 882.54 feet along said curve through a central angle of 30°38'46", to a point hereinafter referred to as Point "B"; thence leaving said Northwesterly right-of-way line non-tangent South 84°26'50" West 703.78 feet to a point on said Southwesterly line of Rancho Mission Viejo, said point being distant thereon South 19°17'44" East 213.59 feet from the point of beginning; thence North 19°17'44" West 213.59 feet to the point of beginning.

Containing an area of 70.572 acres, more or less.

Creek Open Space Parcel:

That portion of Parcel 104 of Certificate of Compliance No. CC 2001-01, in the Unincorporated Territory of the County of Orange, State of California, recorded July 26, 2001 as Instrument No. 20010508635 of Official Records, in the office of the County Recorder of said County, described as follows:

Beginning at Point "A" as described in Parcel 1 herein above; thence along the Northwesterly line of Parcel Two of the Planning Area One Development Boundary as approved July 26, 2006 by the Orange County Planning Commission Resolution No. 06-05, as shown on Record of Survey No. 2006-1181, in Book 218, Pages 14 through 24, inclusive, of Records of Survey, in the office of said County Recorder, the following courses: North 2°38'15" East 301.76 feet, North 34°09'53" East 888.59 feet, and North 23°20'42" East 814.28 feet to the Southerly right-of-way line of Ortega Highway, as described in Exhibit "C" in the Grant Deed to the County of Orange, recorded August 1, 2008 as Instrument No. 2008000368965 of said Official Records; thence along said Southerly right-of-way line, the following courses: South 83°12'45" West 55.42 feet, South 6°47'15" East 40.00 feet, and South 83°12'45" West 311.98 feet to the Southeasterly line of Parcel One of said Planning Area One Development Boundary, as shown on said Record of Survey, said point hereinafter referred to as Point "C"; thence leaving said Southerly right-of-way line and along said Southeasterly line, the following courses: South 37°43'28" West 358.30 feet, South 27°51'21" West 469.69 feet, South 38°38'01" West 422.80 feet to the beginning of a non-tangent curve Southeasterly having a radius of 500.00 feet, a radial line of said curve to said point bears North 5°39'07" West, and Southwesterly 445.03 feet along said curve through a central angle of 50°59'50" to a point on the Southwesterly line of Rancho Mission, as shown on said Record of Survey, said point being distant thereon North 52°57'24" West 746.21 feet from the point of beginning; thence leaving said Southeasterly line and along said Southwesterly line South 52°57'24" East 746.21 feet to the point of beginning.

Containing an area of 17.142 acres, more or less.

EXHIBIT A  
LEGAL DESCRIPTION-CONTINUED  
RMV COMMUNITY DEVELOPMENT  
SAN JUAN PROJECT  
PAGE 3

10-1159-20 (D)  
06-26-09

Parcel 8:

That portion of Parcel 104 of Certificate of Compliance No. CC 2001-01, in the Unincorporated Territory of the County of Orange, State of California, recorded July 26, 2001 as Instrument No. 20010508635 of Official Records, in the office of the County Recorder of said County, described as follows:

Beginning at Point "C" as described in Parcel 2 herein above; thence along the Southeasterly line of Parcel One of the Planning Area One Development Boundary as approved July 26, 2006 by the Orange County Planning Commission Resolution No. 06-05, as shown on Record of Survey No. 2006-1181, in Book 218, Pages 14 through 24, inclusive, of Records of Survey, in the office of said County Recorder, the following courses: South 37°43'28" West 358.30 feet, South 27°51'21" West 469.69 feet, South 38°38'01" West 422.80 feet to the beginning of a non-tangent curve concave Southeasterly having a radius of 500.00 feet, a radial line of said curve to said point bears North 5°39'07" West, and Southwesterly 445.03 feet along said curve through a central angle of 50°59'50" to a point on the Southwesterly line of Rancho Mission Viejo, as shown on said Record of Survey; thence North 52°57'24" West 640.24 feet along said Southwesterly line to the Southerly right-of-way line of Ortega Highway, as described in Exhibit "C" in the Grant Deed to the County of Orange, recorded August 1, 2008 as Instrument No. 2008000368965 of said Official Records; thence along said Southerly right-of-way line, the following courses: North 53°03'40" East 15.49 feet, South 36°56'20" East 3.50 feet, North 53°03'40" East 308.58 feet to the beginning of a curve concave Northerly having a radius of 7044.30 feet, Northeasterly 299.61 feet along said curve through a central angle of 2°26'13", North 50°37'27" East 81.26 feet, South 39°22'52" East 3.07 feet, North 50°37'08" East 210.25 feet, North 57°51'04" East 71.12 feet to the beginning of a non-tangent curve concave Southerly having a radius of 1474.06 feet, a radial line of said curve to said point bears North 39°24'19" West, Northeasterly 210.68 feet along said curve through a central angle of 8°11'20", non-tangent South 25°11'17" East 13.07 feet, North 80°23'21" East 29.94 feet, North 61°08'36" East 68.00 feet, North 29°11'32" West 11.61 feet, North 42°04'13" East 30.05 feet to the beginning of a non-tangent curve concave Southeasterly having a radius of 1530.00 feet, a radial line of said curve to said point bears North 24°59'51" West, Northeasterly 254.57 feet along said curve through a central angle of 9°32'00", along a radial line of said curve non-tangent South 15°27'51" East 50.00 feet to the beginning of a non-tangent curve concave Southeasterly having a radius of 1480.00 feet, a radial line of said curve to said point bears North 15°27'51" West, Northeasterly 224.13 feet along said curve through a central angle of 8°40'36" and North 83°12'45" East 45.72 feet to the point of beginning.

Containing an area of 18.403 acres, more or less.

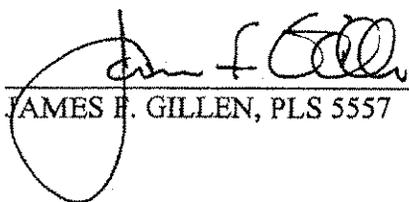
La Pata Open Space Parcel:

That portion of Parcel 104 of Certificate of Compliance No. CC 2001-01, in the Unincorporated Territory of the County of Orange, State of California, recorded July 26, 2001 as Instrument No. 20010508635 of Official Records, in the office of the County Recorder of said County, described as follows:

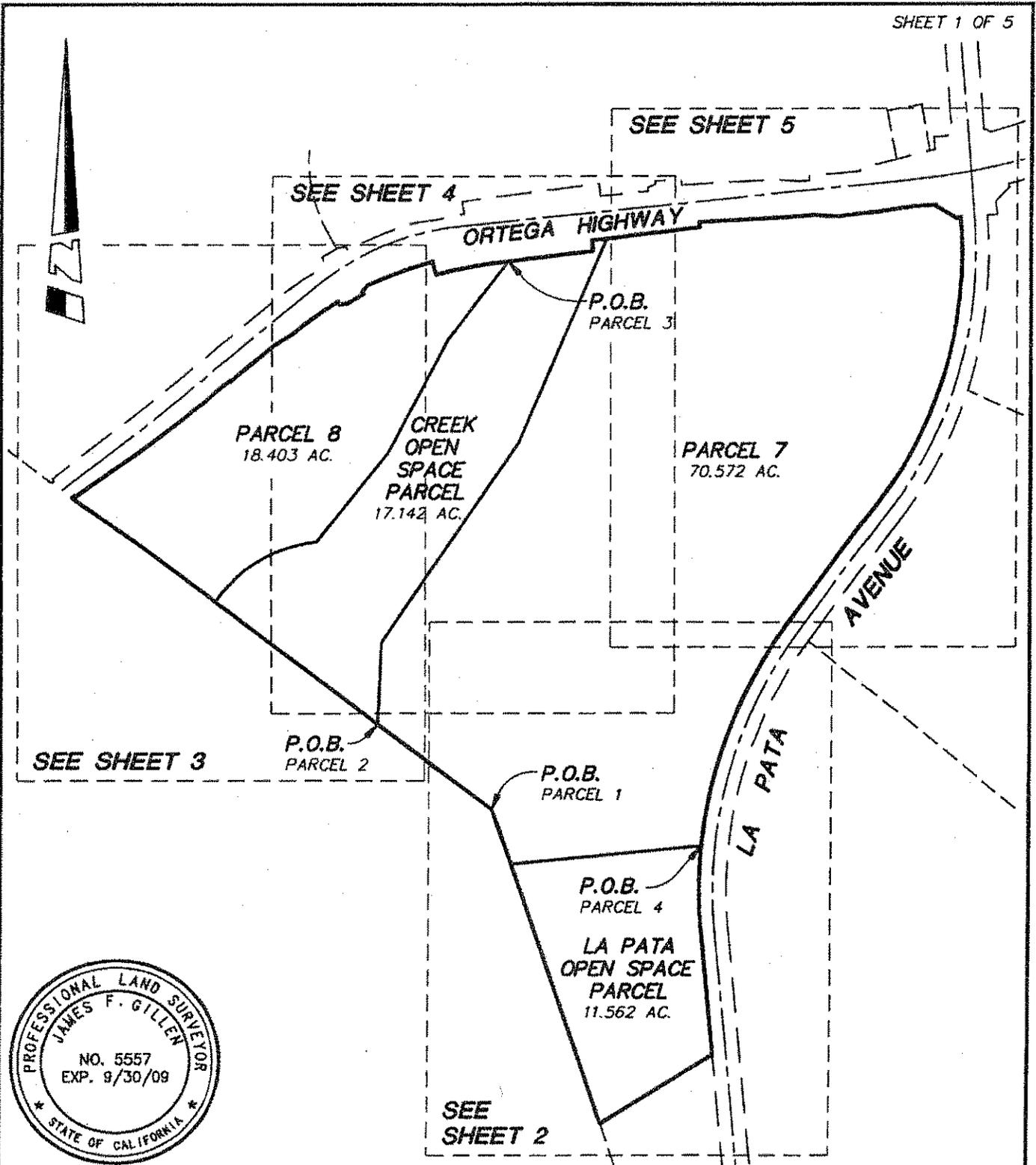
Beginning at Point "B" as described in Parcel 1 herein above; thence South 84°26'50" West 703.78 feet to a point on the Southwesterly line of Rancho Mission Viejo, as shown on Record of Survey No. 2006-1181, in Book 218, Pages 14 through 24, inclusive, of Records of Survey, in the office of said County Recorder, said point being distant thereon South 19°17'44" East 213.59 feet from the point of beginning of said Parcel 1; thence along the Westerly, Southerly and Easterly lines of said Parcel 104, the following courses: South 19°17'44" East 1017.75 feet, North 58°02'03" East 484.09 feet, North 5°46'10" West 452.96 feet to the beginning of a curve concave Easterly having a radius of 1650.00 feet, and Northerly 322.24 feet along said curve through a central angle of 1°11'23" to the point of beginning.

Containing an area of 11.562 acres, more or less.

As shown on Exhibit B attached hereto and by this reference made a part hereof.

  
\_\_\_\_\_  
JAMES F. GILLEN, PLS 5557





# HUITT-ZOLLARS

Huitt-Zollars, Inc. Irvine  
 430 Exchange, Suite 200, Irvine, CA 92602-1315  
 Phone (714) 734-5100 Fax (714) 734-5155

APPROVED BY

*[Signature]* 6/26/09

SKETCH TO ACCOMPANY  
 A LEGAL DESCRIPTION

**SAN JUAN PROJECT  
 RMV COMMUNITY  
 DEVELOPMENT**

SCALE	1"=500'
DRAWN BY	DWM
CHECKED BY	PMc
DATE	6/26/2009
JOB NO.	10-1159-20

SEE SHEET 4

SEE SHEET 5

SHEET 2 OF 5

C C 2001 - 01

PARCEL 7  
70.572 AC.

R. S. NO. 2006 - 1181

PARCEL 104

P.O.B.  
PARCEL 1

POINT 'B'  
P.O.B.  
PARCEL 4

N84°26'50"E 703.78'

N84°34'47"W  
RAD

R. S. B.  
218 / 14 - 24

LA PATA  
OPEN SPACE  
PARCEL  
11.562 AC.

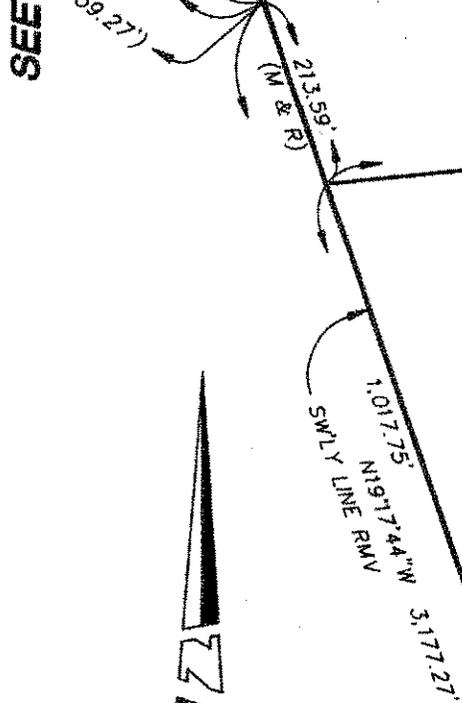
INST. NO.  
200-10508635, O.R.

LA PATA AVENUE

2  
-004

SEE SHEET 3

SEE SHEET 4

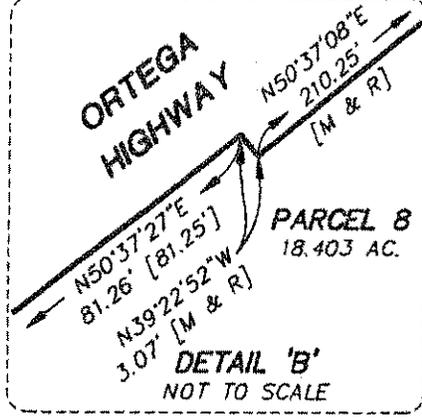


SCALE: 1"=200'

(XXX) INDICATES RECORD DATA PER  
R.S. 2006-1181, R.S.B. 218/14-24.

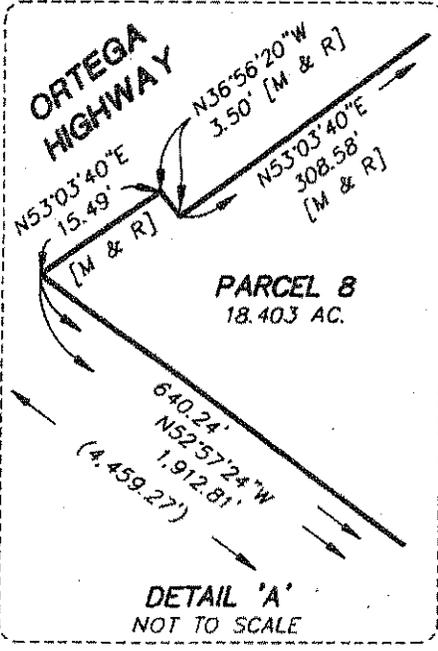
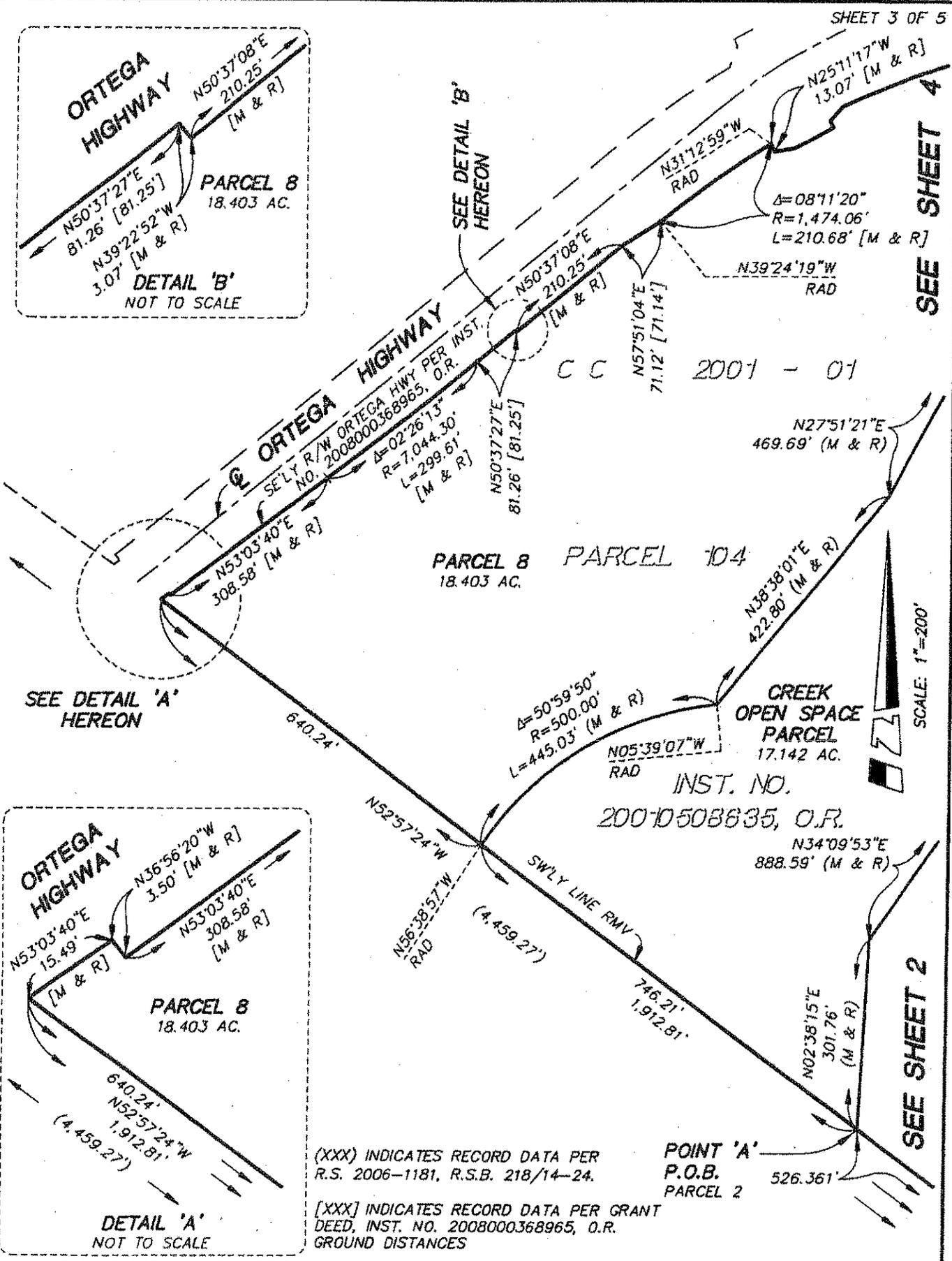
[XXX] INDICATES RECORD DATA PER GRANT  
DEED, INST. NO. 2008000368965, O.R.  
GROUND DISTANCES

PARCEL  
LLA 2003  
INST NO.  
2003000294469  
O.R.



SEE DETAIL 'B' HEREON

SEE SHEET 4



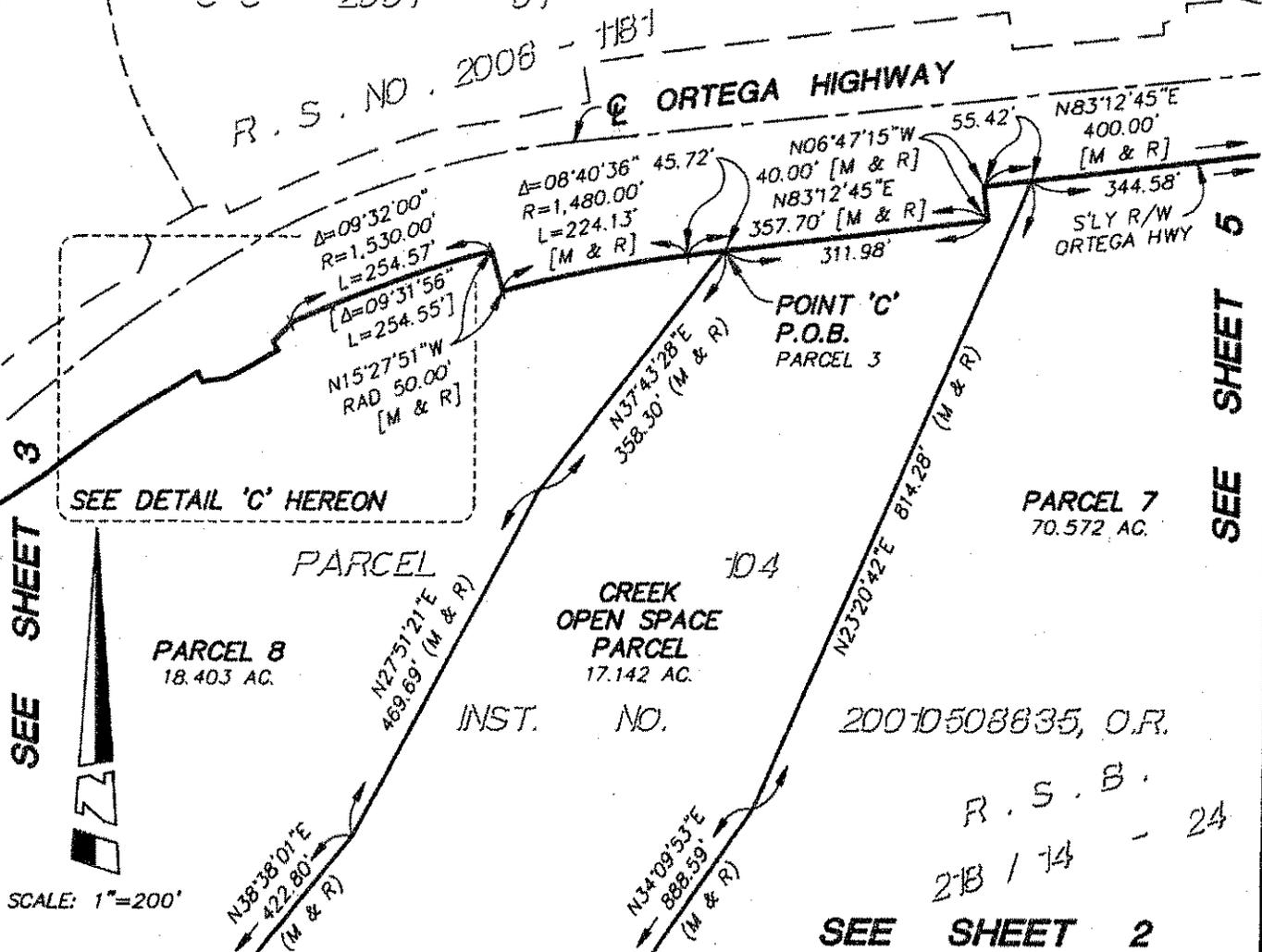
(XXX) INDICATES RECORD DATA PER R.S. 2006-1181, R.S.B. 218/14-24.

(XXX) INDICATES RECORD DATA PER GRANT DEED, INST. NO. 2008000368965, O.R. GROUND DISTANCES

C C 2001 - 01

R. S. NO. 2006 - 1181

ORTEGA HIGHWAY

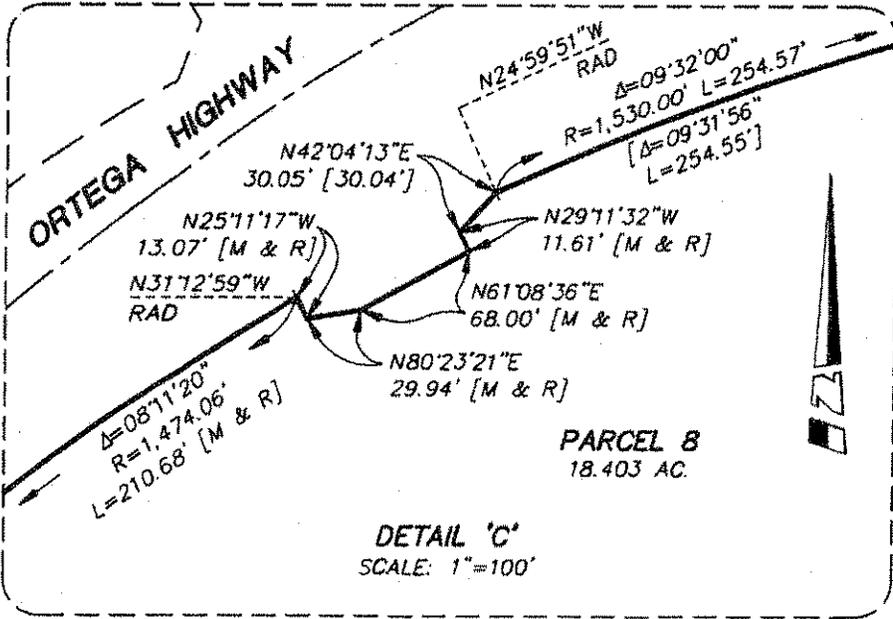


SEE SHEET 3

SEE SHEET 5

SEE DETAIL 'C' HEREON

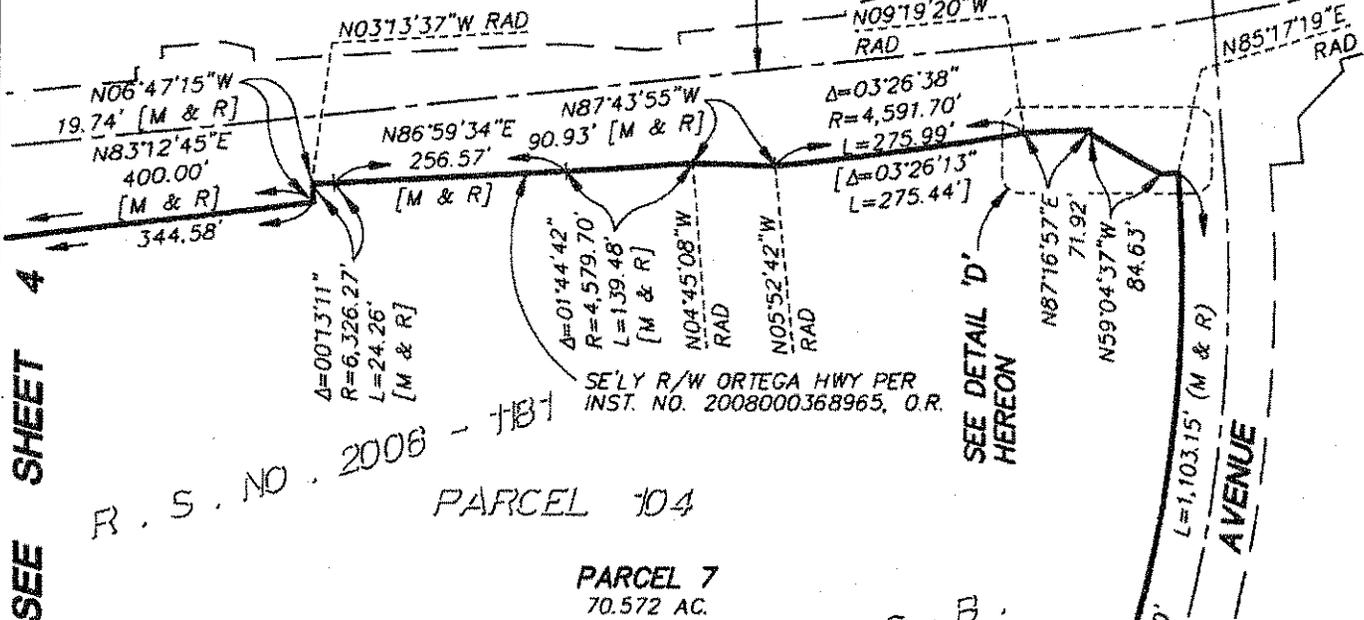
SEE SHEET 2



(XXX) INDICATES RECORD DATA PER  
 R.S. 2006-1181, R.S.B. 218/14-24.  
 [XXX] INDICATES RECORD DATA PER  
 GRANT DEED, INST. NO.  
 2008000368965, O.R. GROUND  
 DISTANCES

C C 2001 - 01

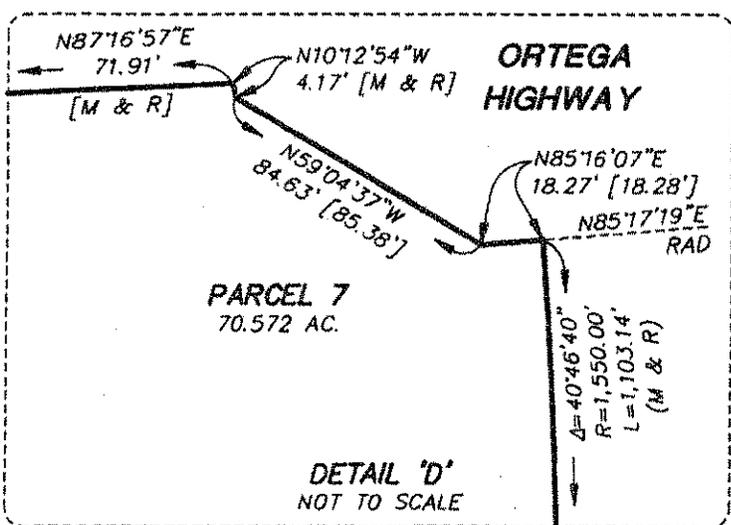
# ORTEGA HIGHWAY



R. S. NO. 2006 - 1181  
PARCEL 104

PARCEL 7  
70.572 AC.

R. S. B.  
218 / 14 - 24



PARCEL 7  
70.572 AC.

DETAIL 'D'  
NOT TO SCALE

INST. NO.  
20010508635, O.R.

(XXX) INDICATES RECORD DATA PER  
R.S. 2006-1181, R.S.B. 218/14-24.

[XXX] INDICATES RECORD DATA PER GRANT  
DEED, INST. NO. 2008000368965, O.R.  
GROUND DISTANCES

$\Delta=41^{\circ}50'09''$   
 $R=1,650.00'$   
 $L=1,204.78'$  (M & R)

SEE SHEET 2

SCALE: 1"=200'

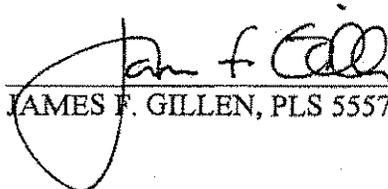
10-1159-20 (D)  
06-26-09

EXHIBIT A  
LEGAL DESCRIPTION  
DMB SAN JUAN INVESTMENT NORTH  
LA PATA OPEN SPACE PARCEL  
SAN JUAN PROJECT

That portion of Parcel 2 of Lot Line Adjustment LL 2003-004, in the Unincorporated Territory of the County of Orange, State of California, recorded March 19, 2003 as Instrument No. 2003000294469 of Official Records, in the office of the County Recorder of said County, lying Westerly of La Pata Avenue.

Containing an area of 13.855 acres, more or less.

As shown on Exhibit B attached hereto and by this reference made a part hereof.

  
\_\_\_\_\_  
JAMES F. GILLEN, PLS 5557





CC 2007-01  
 PCL 104  
 INST. NO.  
 20010508835, O.R.

N58°02'03"E  
 484.09' (483.96')

PARCEL

LA PATA  
 OPEN  
 SPACE  
 PARCEL  
 13.855 AC.

N19°17'44"W

LL

1,945.93' (1,945.97')  
 3,177.27'

D=16.0043" R=3,050.00'  
 L=852.36' (M & REC)

1,046.07'

593.11' (593.11')

N05°46'10"W

LA PATA AVENUE

2003-004

NO. 2003000294469, O.R.

INST.

N21°46'53"W  
 618.29'

N68°13'07"E  
 278.93'  
 (278.89')

PCL  
 1

(XXX) INDICATES RECORD  
 DATA PER LL 2003-004,  
 INST. NO. 2003000294469, O.R.



# HUITT - ZOLIARS

Huitt-Zollars, Inc. Irvine  
 430 Exchange, Suite 200, Irvine, CA 92602-1315  
 Phone (714) 734-5100 Fax (714) 734-5155

APPROVED BY

*[Signature]*

6/26/09

SKETCH TO ACCOMPANY  
 A LEGAL DESCRIPTION

**SAN JUAN PROJECT  
 DMB SAN JUAN  
 INVESTMENT NORTH**

SCALE 1"=300'

DRAWN BY DWM

CHECKED BY PMc

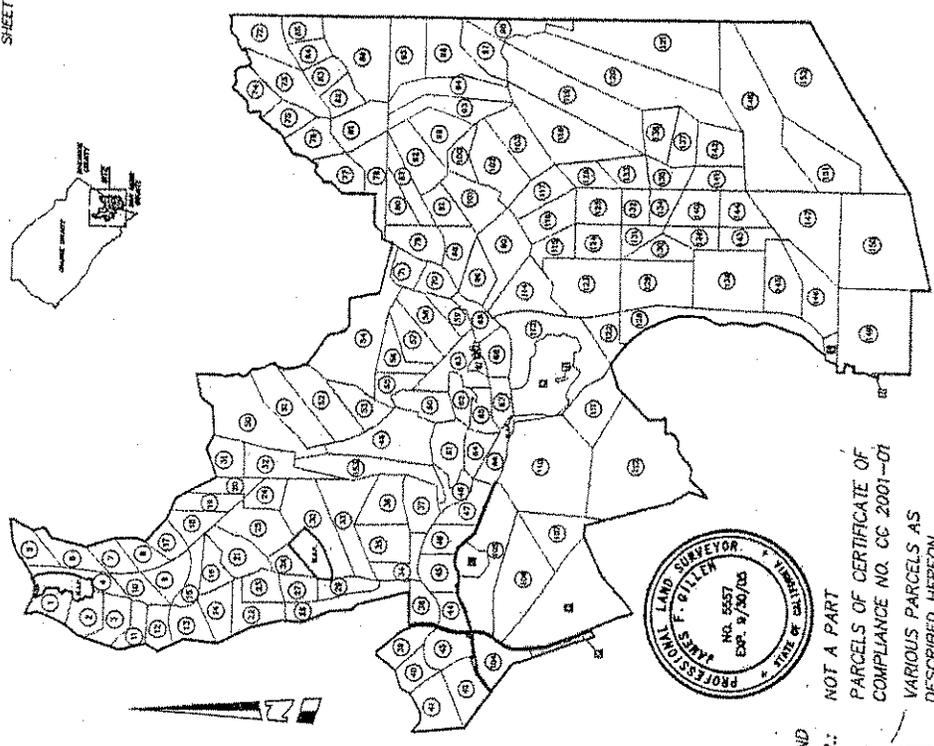
DATE 6/26/2009

JOB NO. 10-1159-20

EXHIBIT B

RANCH PLAN PROPERTY (BENEFITED AREA)

[ATTACHED]



LEGEND  
 NOT A PART  
 PARCELS OF CERTIFICATE OF COMPLIANCE NO. CC 2001-01  
 VARIOUS PARCELS AS DESCRIBED HEREON.

<b>HUITT-ZOLIARS</b> HUITT-ZOLIARS, INC. 400 Exchange Suite 200 Irvine, CA 92602-1315 Phone (714) 734-5100 Fax (714) 734-6155 APPROVED: <i>[Signature]</i> 6/16/04		SKETCH TO ACCOMPANY A LEGAL DESCRIPTION RANCH PLAN PLANNED COMMUNITY	SCALE NOT TO SCALE DRAWN BY DAD CHECKED BY PMC DATE 6-16-04 JOB NO. 10-0755-01
--	--	---	--

Description of Property

[See following pages]

NOTE:

PARCEL A IS SHOWN HEREON AS INDIVIDUAL PARCELS AS NUMBERS IN A CIRCLE ○  
PARCELS B THROUGH I ARE SHOWN HEREON AS INDIVIDUAL PARCELS AS LETTERS IN A SQUARE □

LEGAL DESCRIPTION:

PARCEL A: PARCELS 1 THROUGH 107, INCLUSIVE, 110 THROUGH 126, INCLUSIVE, AND 128 THROUGH 153, INCLUSIVE, OF CERTIFICATE OF COMPLIANCE NO. CC 2001-01 IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN AND DESCRIBED IN THAT CERTAIN DOCUMENT RECORDED JULY 26, 2001 AS INSTRUMENT NO. 20010508635 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THE LAND AS DESCRIBED IN THE GRANT DEED TO THE FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY RECORDED MAY 30, 1995 AS INSTRUMENT NO. 19950228157, OF SAID OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER.

PARCEL B: PARCEL 2, IN SAID UNINCORPORATED TERRITORY, AS SHOWN ON THE MAP FILED IN BOOK 90, PAGES 23 THROUGH 27, INCLUSIVE, OF PARCEL MAPS, IN THE OFFICE OF SAID COUNTY RECORDER.

PARCEL C: PARCEL 1 OF PARCEL MAP 85-476, IN SAID UNINCORPORATED TERRITORY, AS SHOWN ON THE MAP FILED IN BOOK 248, PAGES 7 AND 8 OF PARCEL MAPS, IN THE OFFICE OF SAID COUNTY RECORDER.

EXCEPTING THEREFROM THE LAND AS DESCRIBED IN THE GRANT DEED TO LAST ROUND UP, INC. RECORDED SEPTEMBER 4, 1987 AS INSTRUMENT NO. 87-504837 OF SAID OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER.

PARCEL D: PARCEL 1 OF PARCEL MAP 87-159, IN SAID UNINCORPORATED TERRITORY, AS SHOWN ON THE MAP FILED IN BOOK 280, PAGES 49 AND 50 OF PARCEL MAPS, IN THE OFFICE OF SAID COUNTY RECORDER.

PARCEL E: PARCEL 1 OF PARCEL MAP 94-153, IN SAID UNINCORPORATED TERRITORY, AS SHOWN ON THE MAP FILED IN BOOK 287, PAGES 9 AND 10 OF PARCEL MAPS, IN THE OFFICE OF SAID COUNTY RECORDER.

PARCEL F: PARCEL 1 OF PARCEL MAP 95-161, IN SAID UNINCORPORATED TERRITORY, AS SHOWN ON THE MAP FILED IN BOOK 296, PAGES 11 AND 12 OF PARCEL MAPS, IN THE OFFICE OF SAID COUNTY RECORDER.

PARCEL G: PARCEL 2 OF LOT LINE ADJUSTMENT NO. LL 2003-004, IN SAID UNINCORPORATED TERRITORY, AS SHOWN ON EXHIBIT B ATTACHED TO THAT CERTAIN DOCUMENT RECORDED MARCH 19, 2003 AS INSTRUMENT NO. 20030028469 OF SAID OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER.

TOGETHER WITH THOSE PORTIONS OF SECTION 24, TOWNSHIP 8 SOUTH, RANGE 7 WEST, OF RANCHO MISSION WEAD AS SHOWN ON THE MAP SECTORIZING RANCHO MISSION WEAD, IN SAID UNINCORPORATED TERRITORY, FILED IN BOOK 9, PAGES 15 THROUGH 22, INCLUSIVE, OF RECORD OF SURVEYS, IN THE OFFICE OF SAID COUNTY RECORDER, DESCRIBED IN PARCELS AS FOLLOWS:

PARCEL H: BOUNDED SOUTHERLY BY THE NORTHERLY LINE OF PARCEL 149 OF SAID CERTIFICATE OF COMPLIANCE NO. CC 2001-01, RECORDED JULY 26, 2001, AS INSTRUMENT NO. 20010508635 OF OFFICIAL RECORDS, BOUNDED NORTHEASTERLY BY THE SOUTHWESTERLY LINE OF PARCEL 146 OF SAID CERTIFICATE OF COMPLIANCE, BOUNDED NORTHERLY BY THE SOUTHERLY LINE OF PARCEL 128 OF SAID CERTIFICATE OF COMPLIANCE AND BOUNDED WESTERLY AND NORTHWESTERLY BY THE SOUTHEASTERLY LINE OF PARCEL 127 OF SAID CERTIFICATE OF COMPLIANCE.

PARCEL I: BOUNDED EASTERLY BY THE WESTERLY LINE OF PARCEL 149 OF THAT CERTIFICATE OF COMPLIANCE NO. CC 2001-01, RECORDED JULY 26, 2001, AS INSTRUMENT NO. 20010508635 OF OFFICIAL RECORDS AND BOUNDED WESTERLY AND SOUTHERLY BY THE GENERAL EASTERLY LINE OF PARCEL 5 AS SHOWN ON CERTIFICATE OF COMPLIANCE NO. CC 87-08 RECORDED AUGUST 7, 1987 AS INSTRUMENT NO. 87-448971, BOTH OF OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER.

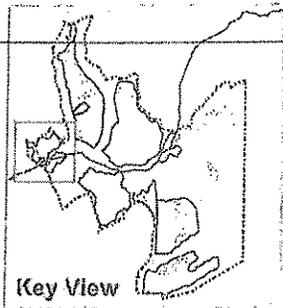
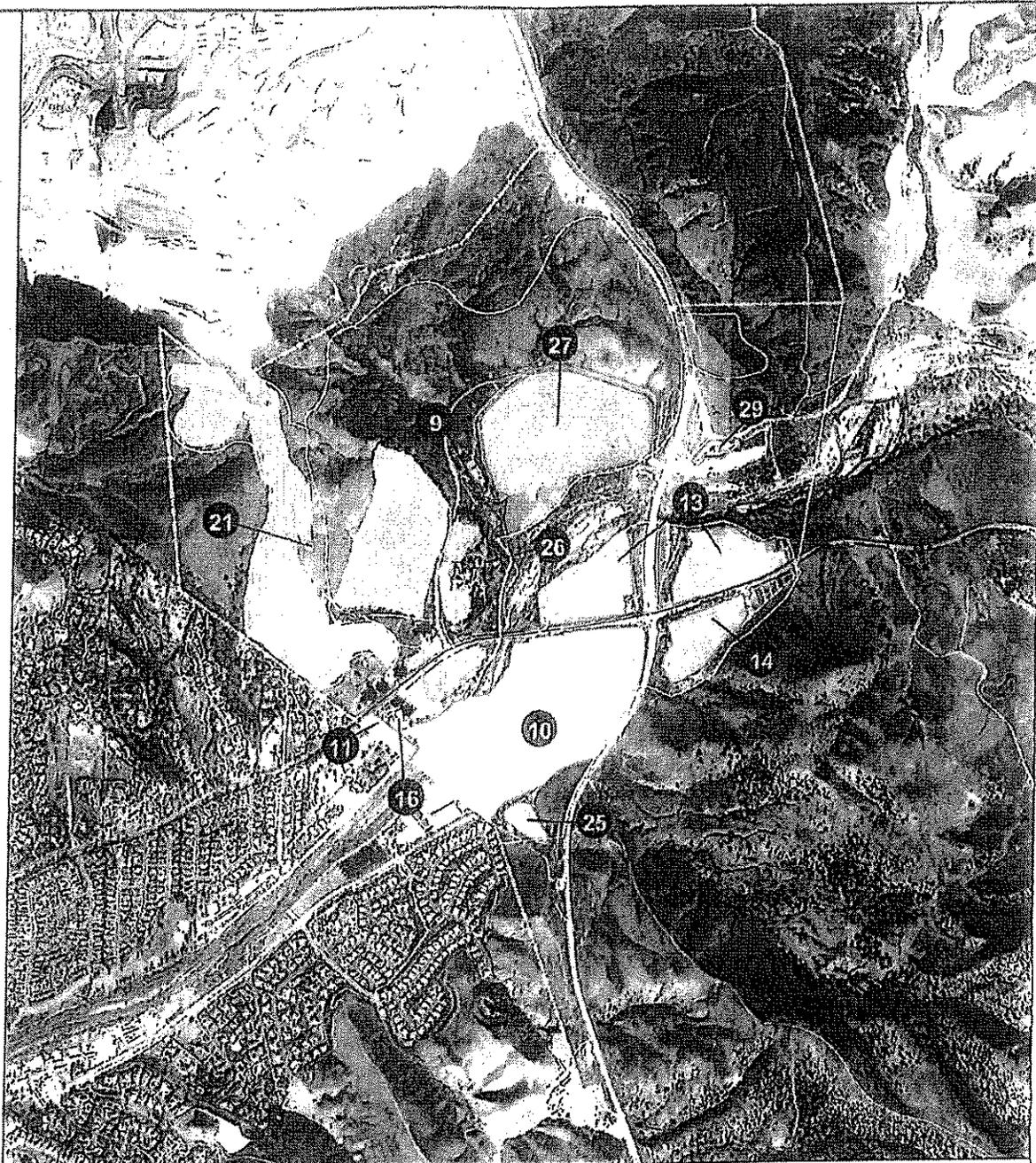
PARCEL J: THE LAND AS DESCRIBED IN THE GRANT DEED TO LAST ROUND UP, INC. RECORDED SEPTEMBER 4, 1987 AS INSTRUMENT NO. 87-504837 OF SAID OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER.

EXHIBIT C

USE RESTRICTIONS – PARCELS 7 AND 8

- (C-1: Exhibit 4.1-3 of Ranch Plan EIR
- C-2: Section III-H of PC Text
- C-3: Section III-J of PC Text)

[ATTACHED]



**Legend**

- 9 Leders Ranch Construction Yard
- 10 The Bierheim Oake Rencho Mission Viejo Riding Park
- 11 The Oaks Condos
- 12 DM Color Express
- 13 TnuGreen Nurseries
- 14 Ranch Buildings
- 15 Antenna Site (Lemon Grove)
- 16 Sierra Soils
- 17 RMV Headquarters
- 18 Seasonal Row Crops
- 19 SHWD San Juan Creek LHA Station

**Planning Boundaries**

- Planning Area Boundary
- Development Boundary
- Ranch Plan Boundary

**Existing Land Use Legend**

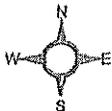
- Existing Uses
- Lease Areas
- RMV Residence
- Existing Agriculture
- Seasonal Row Crops
- Citrus Trees

**Existing Land Uses in Planning Area 1**

**Exhibit 4.1-3**

*The Ranch Plan*

1" = 2,000'





## H. AGRICULTURAL AND OTHER EXISTING AND ON-GOING USES

The purpose and intent of this Section is to allow for uses compatible with the existing agricultural and low intensity nature of the Ranch Plan PC area, and consistent with the A1 "General Agricultural" District Regulations of Zoning Code Section 7-9-55. These uses include non-agricultural uses consistent with the open space nature of agricultural uses. It is also intended that these uses (agricultural and non-agricultural) may be allowed as interim uses within Ranch Plan PC Planning Areas designated for future development.

1. **Agricultural Uses:** The following existing, relocated and future farming and ranching uses shall be allowed within any Planning Area, in addition to uses allowed by the A1 "General Agricultural" District Regulations per Zoning Code Section 7-9-55, subject to mitigation measures identified in the Ranch Plan Final Program EIR 589, per the procedures described in Section III.H.3 hereof:

- a) Grazing (cattle, horses, sheep, goats, etc.).
- b) Farming (citrus farming, dry farming, and row crops).
- c) Caretaker housing and related facilities in relation to on-going agricultural and ranching operations, including the "Ranch House" residence located south of Ortega Highway in Planning Area 10 and the "Horse Ranch" residence at 33101 Ortega Highway in Planning Area 4.
- d) Employee quarters related to agricultural uses.
- e) Livestock feeding ranches in compliance with applicable health and safety regulations.
- f) Packing plants for agricultural products.
- g) Permanent facilities for sale of agricultural products grown within the Ranch Plan PC Area.
- h) Apiaries (if 150 feet from a street or highway, 40 feet from any property line and more than 400 feet from an occupied dwelling).

2. **Existing Uses:** The following existing uses shall be allowed in appropriate locations throughout the Ranch Plan PC Area, per the procedures in Section III.H.3 hereof:

- a) Rancho Mission Viejo headquarters ("Oficina") at 28811 Ortega Highway, including a heliport.
- b) Ladera construction offices at 28811-A Ortega Highway.
- c) Rancho Mission Viejo maintenance yard at 28672 Ortega Highway.
- d) Ranching facilities also used periodically for recreational purposes (including "Cow Camp" at 31471 Ortega Highway, and "Amantes Camp" and "Campo Portola" within Planning Area 10).
- e) Communication transmitting, reception or relay facilities (including AirTouch/PacBell Wireless, Bell South, Saddleback KSBK, SDG&E, and SCE) and RMV Telecom antenna sites.
- f) Public/private utility buildings and structures.
- g) Existing infrastructure facilities including but not limited to all existing ranch roads, pipelines and utilities. Of particular note, reconstruction of the San Juan Creek crossing of roadways and utilities connecting Planning Area 3 to Ortega Highway shall be allowed in the event of storm damage.
- h) Wholesale nurseries (including Tree of Life Nursery, Color Spot Nursery, DM Color Express Nurseries, Tru-Green Wholesale Nurseries and O'Connell Landscaping yard).
- i) Commercial stables (including Oaks/Blenheim/Rancho Mission Viejo Riding Park, Oaks Corral/J. Irvine Smith, RJO Horse Ranch, St. Augustine's Training Center and Stables).
- j) ~~Research and development testing facilities and activities (including TRW, Northrop Grumman Space Technology and Propulsion Testing Site).~~
- k) Waste disposal operations and related uses (including Solag Disposal, Tierra Verde Industries and La Pata Greenwaste).
- l) Storage of recreational vehicles, campers, trailers and boats.
- m) Recycling and transfer/materials recovery facilities per Zoning Code Section 7-9-146.12 (including Elwes Materials Asphalt Recycling).
- n) Surface mining and quarrying of rock, sand, gravel, aggregate, earth, clay and similar materials per Zoning Code Section 7-9-104 (including California

Portland Cement/Catalina Pacific Concrete South, California Silica/Ogleby Norton, Transit Mixed Concrete Company/City Concrete, Olsen Pavingstone, Inc. and Sierra Soils).

- o) Resource mitigation sites for the preservation or replacement of native, riparian or other biological habitat, as approved by the appropriate regulatory agency (e.g., Army Corps of Engineers, U.S. Fish & Wildlife Service California Department of Fish and Game and/or the County).

### 3. Procedures:

#### a. Continuation of Existing Uses

- 1) Agricultural and existing uses listed in Sections III.H.1 and III.H.2, respectively, may continue in their present location(s) in perpetuity without need for subsequent permitting or approval.
- 2) Any buildings, structures or other facilities utilized in connection with an established/existing use may be repaired, replaced or modified without obtaining new permits or approvals; provided, however, that any and all construction activities performed in furtherance of the repair, replacement and/or modification of said buildings, structures and facilities shall comply with applicable building and safety codes.
- 3) In instances where a use listed in Sections III.H.1 and III.H.2 is allowed per a Use Permit, and that particular Use Permit is subject to a time limitation, the Use Permit may be renewed administratively per approval of the Director, PDS.

#### b. Expansion of Existing Uses

- 1) Agricultural Uses – Any agricultural use listed in Section III.H.1 may be expanded without the need to obtain a prior permit or other approval from the County. Notwithstanding, expansion of an agricultural use may require the issuance of a permit or other formal authorization from a federal or state agency prior to commencement or use of the expanded facility. Additionally, any construction activities performed in furtherance of the expanded use shall comply with applicable building and safety codes.
- 2) Existing Uses – Any existing use identified in Section III.H.2 may be expanded without the issuance of new County approvals or permits, provided that:
  - (a) Any expansion shall fully comply with all existing development and permitting standards for the particular use;

(b) All construction activities performed in furtherance of the expansion are conducted in accordance with applicable building and safety codes; and

(c) All necessary permits and/or authorizations from applicable federal and state agencies are obtained prior to commencement or use of the expanded facility.

c. Relocation of Existing Uses

1) Agricultural Uses – Any existing use identified in Section III.H.1 may be relocated within or throughout the Ranch Plan PC Area without the need for issuance of a new permit or other prior approval from the County. Notwithstanding, relocation of an existing agricultural use may require the issuance of a permit or other formal authorization from a state or federal agency prior to the desired relocation.

2) Existing Uses – Any existing use identified in Section III.H.2 may be relocated within or throughout the Ranch Plan PC Area, provided that:

(a) A Site Development Permit shall be required, per Zoning Administrator approval, in accordance with the provisions of Zoning Code Section 7-9-150.3(d);

(b) All necessary permits and/or authorizations from applicable federal and state agencies shall be obtained prior to relocation.

d. New Agricultural Uses: Consistent with the provisions of Section III.H.1, above, new agricultural uses (as well as any authorized uses identified within the A1 "General Agricultural" District) may be conducted within any Planning Area without the issuance of any County approvals or permits, provided that:

1) All new facilities, structures and buildings shall comply with existing development and design standards;

2) All construction activities performed in connection with the establishment of the new use(s) shall comply with applicable building and safety codes; and

3) All necessary permits and/or authorizations from applicable federal and state agencies shall be obtained prior to commencement of the new use.



## J. TEMPORARY USES PERMITTED

The purpose and intent of this Temporary Uses Permitted chapter of the Ranch Plan PC Text is to list all temporary uses that shall be allowed within all Planning Areas and use categories (with the exception of the Open Space (Section III.I) category, unless otherwise restricted below. Said temporary uses include, but are not limited to:

1. Construction activities (including the installation of construction offices and the storage of equipment and materials).
2. Construction office. The temporary use of a construction office during the construction of a main building on the same site shall be permitted upon the following conditions:
  - a. A temporary construction office shall be removed or shall be converted to a permitted use prior to the issuance of a certificate of use and occupancy for the main building or buildings. If construction is phased over a length of time, the permit may provide that certificates of use and occupancy may be issued for completed buildings, except the last buildings to be completed, prior to removal or conversion of the temporary use.
3. Continued use of an existing building during construction. The use of an existing, lawfully established building may continue during construction or relocation of another building on the same building site, in compliance with the following provisions:
  - a. Conformity with regulations. Prior to occupancy of a new building, the existing building will be brought into conformity with any additional regulation rendered applicable by the placement of any new building on the site. Conformity will be accomplished by removal, reconstruction, relocation, conversion, change of use or any combination thereof.
  - b. Guarantee of completion. The Director, PDS, shall require the landowner to provide a guarantee, which may include a bond, to ensure full compliance with applicable regulations upon completion of the new building or sooner if, in the opinion of the Director, PDS, work pertaining to the completion of all facilities required by law is not being diligently pursued.
4. Temporary excavation/extraction of construction aggregate or construction related materials extraction shall be allowed during construction grading and on-site earthmoving activities to promote project construction efficiencies and limit long-range transportation of construction aggregate and construction related material subject to all of the following conditions:
  - a. Such temporary excavation/extraction use would be included in applicable grading or Site Development Permits for a development project and consistent with the Ranch Plan PC and Final Program EIR 589.
  - b. Exportation of any surplus excavated/extracted construction aggregate or construction-related materials shall be limited to private or public construction projects within the boundaries of the Ranch Plan PC Area.
  - c. Exportation of any surplus excavated/extracted construction aggregate or construction related materials within the project site shall be allowed only

when actual construction grading and earthmoving activities have commenced and shall cease when it is determined that construction grading and earthmoving activities have terminated, have been indefinitely suspended, or are no longer being actively pursued for the development project.

5. Commercial coaches. A temporary commercial coach may be permitted subject to approval of a Site Development Permit in accordance with Section II.C, "Site Development Permits," and subject to the following:
  - a. Time limitation. A Site Development Permit application for a temporary commercial coach may be approved for a maximum of two (2) years from the date of approval.
  - b. Cash bond. A cash bond in the amount of five hundred dollars (\$500.00) for each commercial coach unit shall be posted with the Director, PDS, to guarantee the removal of each commercial coach unit upon the expiration of the Site Development Permit.
6. Christmas tree sales facility. A temporary Christmas tree sales facility shall be permitted subject to the following requirements:
  - a. Date of opening. A Christmas tree sales facility shall not be open for business during any calendar year prior to the day after Thanksgiving. However, ministerial permits necessary to establish the business may be issued by November 15.
  - b. Merchandise to be sold. A permitted Christmas tree sales facility shall not engage in the sale of any merchandise not directly associated with Christmas trees and Christmas decorations.
  - c. Electrical permit. The applicant shall secure an electrical permit from the Director, PDS if the facility is to be energized.
  - d. Removal of facility. The facility shall be removed and the premises shall be cleared of all debris and restored to the condition prior to the establishment of the facility within fourteen (14) days after Christmas.
  - e. Fire prevention standards. Each Christmas tree sales facility shall comply with fire prevention standards as approved and enforced by the County Fire Chief.

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7. Halloween pumpkin sales facility. A temporary Halloween pumpkin sales facility shall be permitted subject to the following requirements:
  - a. Date of opening. A Halloween pumpkin sales facility shall not be open for business during any calendar year prior to October 4.
  - b. Merchandise to be sold. A permitted Halloween pumpkin sales facility may not sell items not directly associated with pumpkins and Halloween decorations.
  - c. Electrical permit. The applicant shall secure an electrical permit from the Director, PDS if the facility is to be energized.

- d. Removal of facility. The facility shall be removed and the premises cleared of all debris and restored to the condition prior to the establishment of the facility by November 14.
  - e. Fire prevention standards. The facility shall comply with fire prevention standards as approved and enforced by the County Fire Chief.
8. Special outdoor gatherings. The temporary use of property for special outdoor gatherings including, but not limited to, pageants, fairs, carnivals, rodeos and other athletic, religious or entertainment events. Such activities are permitted, without regard for other land use regulations to the contrary, in any open space Planning Area in compliance with the following provisions:
- a. Activities on property owned by or leased to the County and public road rights-of-way may require an encroachment permit issued by the Director, PDS.
  - b. Private outdoor gatherings conducted within open space areas (including those open space areas regulated by Section III.I) shall not be subject to the restrictions and requirements established in Zoning Code Section 7-9-136.11, "Special Outdoor Gatherings".
  - c. The temporary use may be permitted for a period not to exceed ten (10) consecutive days. Events recurring more than four (4) times in a calendar year are not considered temporary.
  - d. The Director, PDS may require a cash bond or other guarantee for removal of the temporary use, cleanup and restoration of the activity site within seven (7) days of the activity conclusion.
  - e. Applications for permits/certificates required by subsections "a." and "b." above, shall be referred by the Director, PDS, to other affected County agencies as may be appropriate for review and comment.
  - f. Related issues including, but not limited to, police/security, food and water supply, use of tents and canopies, sanitation facilities, medical services, noise, signage, fire protection and traffic control shall be satisfactorily addressed as may be required by the Director, PDS, Sheriff, Fire Chief, or Health Officer in their administration of other County codes. Such other codes may require the applicant to obtain permits such as building, electrical, health and tent permits.
9. Farmers' Markets and off-site sale of agricultural products. A temporary stand for the sale of seasonal agricultural products not grown within the Ranch Plan PC Area shall be permitted subject to the following requirements:
- a. Establishment of use/time limit. Prior to beginning sale of any product, the applicant shall obtain a temporary Certificate of Use and Occupancy for land from the County. The Certificate shall be good for a period time of not to exceed 90 days from date of issue.
  - b. Merchandise to be sold. The stand shall be limited to the sale of agricultural products.
  - c. Electrical permit. The applicant shall secure an electrical permit from the Director, PDS if the facility is to be energized.

- d. Removal of facility. The facility shall be removed and the premises cleared of all debris and restored to the condition prior to the establishment of the facility within fourteen (14) days of the expiration of the time limit.
  - e. Fire prevention standards. The facility shall comply with fire prevention standards as approved and enforced by the County Fire Chief.
  - f. Site Development Permit. In addition to the above requirements, an approved Site Development Permit in accordance with Section II.C, "Site Development Permits," shall be required.
10. Fireworks displays, as allowed by the Orange County Fire Authority.
11. Subject to the approval of the Director, PDS, a landowner may conduct such other temporary uses upon his property as are consistent with the purpose and intent of this Section.

EXHIBIT D

MAXIMUM ALLOWED TRAFFIC

[ATTACHED]

## Maximum Allowed Traffic

Subject to all applicable governmental laws, rules and restrictions, Seller places no restriction on City relating to the maximum number of trips to and from the Property on weekends and the following holidays: New Years, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas.

The maximum number of trips during the weekday P.M. peak hours from the equestrian facilities, sports field complexes and other allowed uses on the Property shall not exceed a total of 203 trips (combined inbound and outbound trips). The City may allocate these trips among the allowed uses in its discretion so long as the maximum number of trips specified above is not exceeded.

For purposes of calculating the number of trips from equestrian and sports field uses, a trip generation factor of 1.0 P.M. peak hour trip for each permanent equestrian stall, and a factor of 20.67 P.M. peak hour trips per sports field/soccer field shall be applied.

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### Explanation of and Guide to Application of the "Maximum Allowed Traffic" Restriction

*Based on projections of future traffic associated with Planning Area 1 of the Ranch Plan, which includes the Property, Seller's primary concern is the traffic to be generated during the weekday P.M. peak hour (i.e., 4:45 p.m. to 5:45 p.m.). For that reason, the maximum allowed traffic restriction set forth above is keyed to the weekday P.M. peak hour. In short, the restriction requires the City to manage its operations and events to ensure that traffic generated from uses on the Property during that time period would not exceed 203 trips (combined inbound and outbound trips). As noted above, the City may allocate these trips among the allowed uses in its discretion so long as the maximum number of trips specified is not exceeded.*

Given the nature of the uses to be conducted on the site, which are expected to be primarily a continuation of uses conducted on the Property over the past several years, it is not expected that the traffic limitation would unduly restrict the City's use of the Property. For example, most of the horse shows typically occur over 2 or more days and are low spectator events, with traffic to and from those activities being spread more or less evenly over those periods. Furthermore, horse trailers do not generally operate during the peak hours.

It should be noted that the above-stated trip generation rate of one (1) P.M. peak hour trip per horse stall does not pertain to the temporary stalls used in conjunction with the horse shows. That rate pertains to permanent stalls expected to be associated with the one (1) allowed commercial stable on the Property. Thus, for example, if there were 50 occupied horse stalls at the commercial stable, they would be expected to generate 50 trips during the P.M. peak hour.

With regard to sports field/soccer field uses on the Property, a factor of 20.67 P.M. peak hour trips would be applied as stated above. Thus, for example, if there were 4 sports fields/soccer fields in operation during weekday afternoon/evening hours, a total of 83 P.M. peak hour trips would be expected.

In summary, the cumulative trips associated with the horse shows, the permanent horse stalls and other allowed uses such as sports field uses (see below), would be considered in determining whether the maximum allowed traffic limitation was being complied with. Using the above examples, with 50 permanent horse stalls and 4 sports fields, a total of 133 P.M. peak hour trips would be generated, leaving 70 P.M. peak hour trips available for any horse shows or other events taking place at the same time.

It should be emphasized that trips to and from the Property on weekend days (i.e., Saturday and Sunday) and the holidays described above are not restricted. Thus, it would be expected that major events on the Property would be held on these days. In fact, given the maximum allowed traffic limitation, any event that would result in more than 203 P.M. peak hour trips, when the traffic from that event is added to traffic from other allowed uses on the Property, would be required to be held on the weekend.

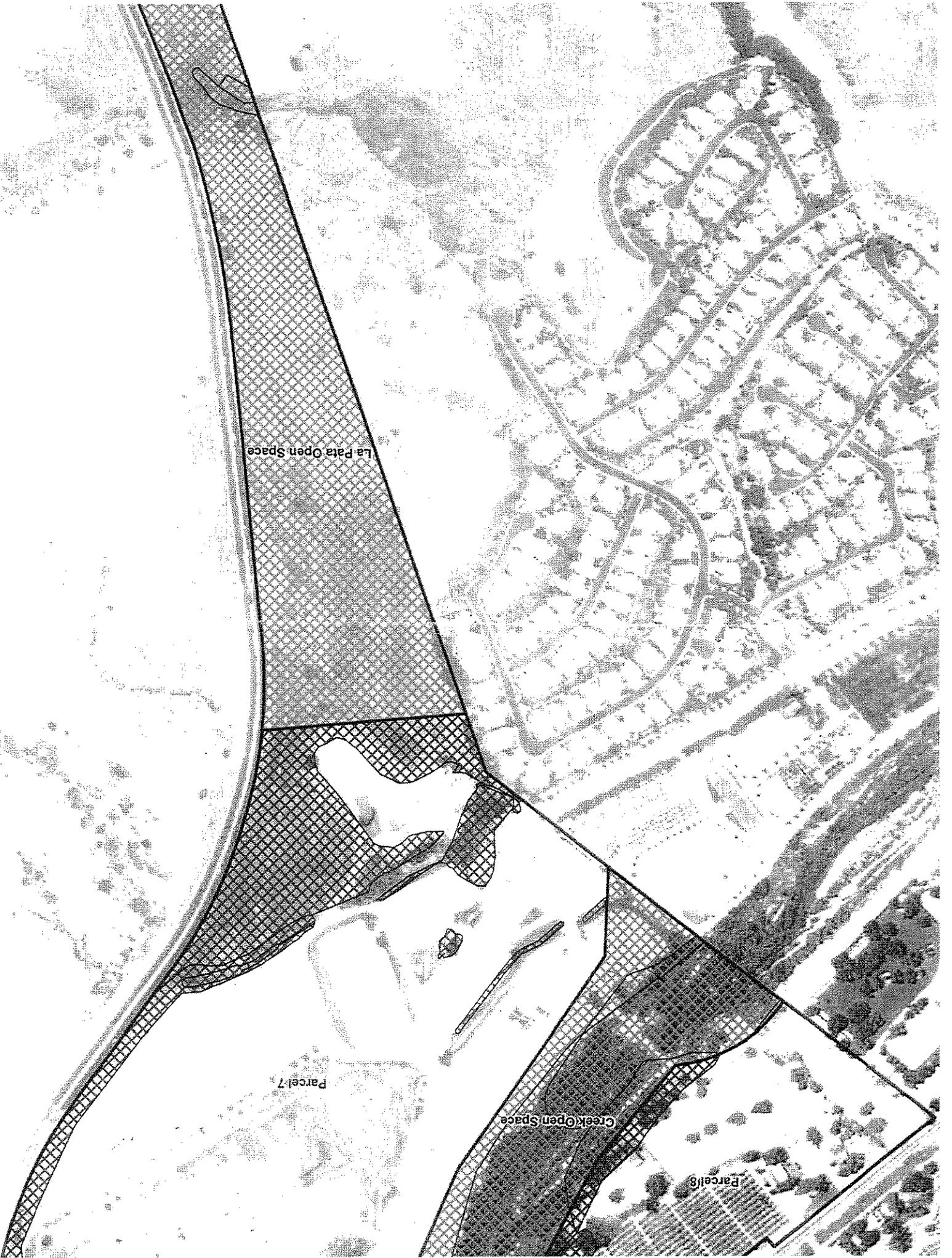
In any event, the City is required to regulate any proposed major weekend activity such that it would not create significant adverse impacts on the circulation system and not adversely affect existing

*and future residents in the area due to parking, dust, noise, light and glare or other impacts. To help reduce the potential for light and glare impacts, RMV has prohibited the use of permanent lighting on the site.*

*The application of normally required conditional use or other permit requirements of the County (or the City, after annexation of the Property), and CEQA review associated with such permitting, would be expected to adequately regulate such events and to ensure appropriate mitigation measures are applied where indicated.*

EXHIBIT E  
MAP OF "SENSITIVE RESOURCE AREAS" AND  
"DO NOT DISTURB AREAS"

[ATTACHED]



La Pata Open Space

Parcel 7

Creek Open Space

Parcel 8

EXHIBIT F

PROHIBITED USES – LA PATA AND CREEK OPEN SPACE PARCELS

[ATTACHED]

### Excerpt from SSHCP Conservation Easement regarding Prohibited Uses

*All activities on or uses of the Property inconsistent with the purpose of this Conservation Easement are prohibited, including the following*

- (a) *Fuel modification zones adjacent to development;*
- (b) *Commercial and industrial uses;*
- (c) *Row crop agricultural practices;*
- (d) *Residential uses;*
- (e) *Active recreation not provided for in Section 11.2 of the HCP (e.g., mountain biking is a Compatible Use), including golf and athletic fields;*
- (f) *Collection or removal of any native plant, animal or microorganism, unless authorized for monitoring or research under the HRMP, or for other purposes authorized by the County or RMV Reserve Managers for their respective portions of the Habitat Reserve and consistent with relevant state and/or federal permits, authorizations or agreements;*
- (g) *Deliberate introduction of any non-native plant or wildlife species or microorganism not authorized under the HRMP;*
- (h) *Disturbance, collection, or removal of cultural resources unless conducted under a survey, salvage or research program authorized by the County or RMV Reserve Managers for their respective portions of the Habitat Reserve and consistent with relevant state and/or federal permits, authorizations or agreements;*
- (i) *Collection of rocks, soils and fallen trees unless conducted under a survey, salvage or research program authorized by the County or RMV Reserve Managers for their respective portions of the Habitat Reserve consistent with the HRMP;*
- (j) *Collection of cultural artifacts unless authorized by the County or appropriate state/federal agency;*
- (k) *Any activities that are incompatible with or may disturb or disrupt ongoing HRMP activities;*
- (l) *Use of firearms or weapons, hunting or trapping (unless carried out pursuant to the HRMP) and fireworks;*

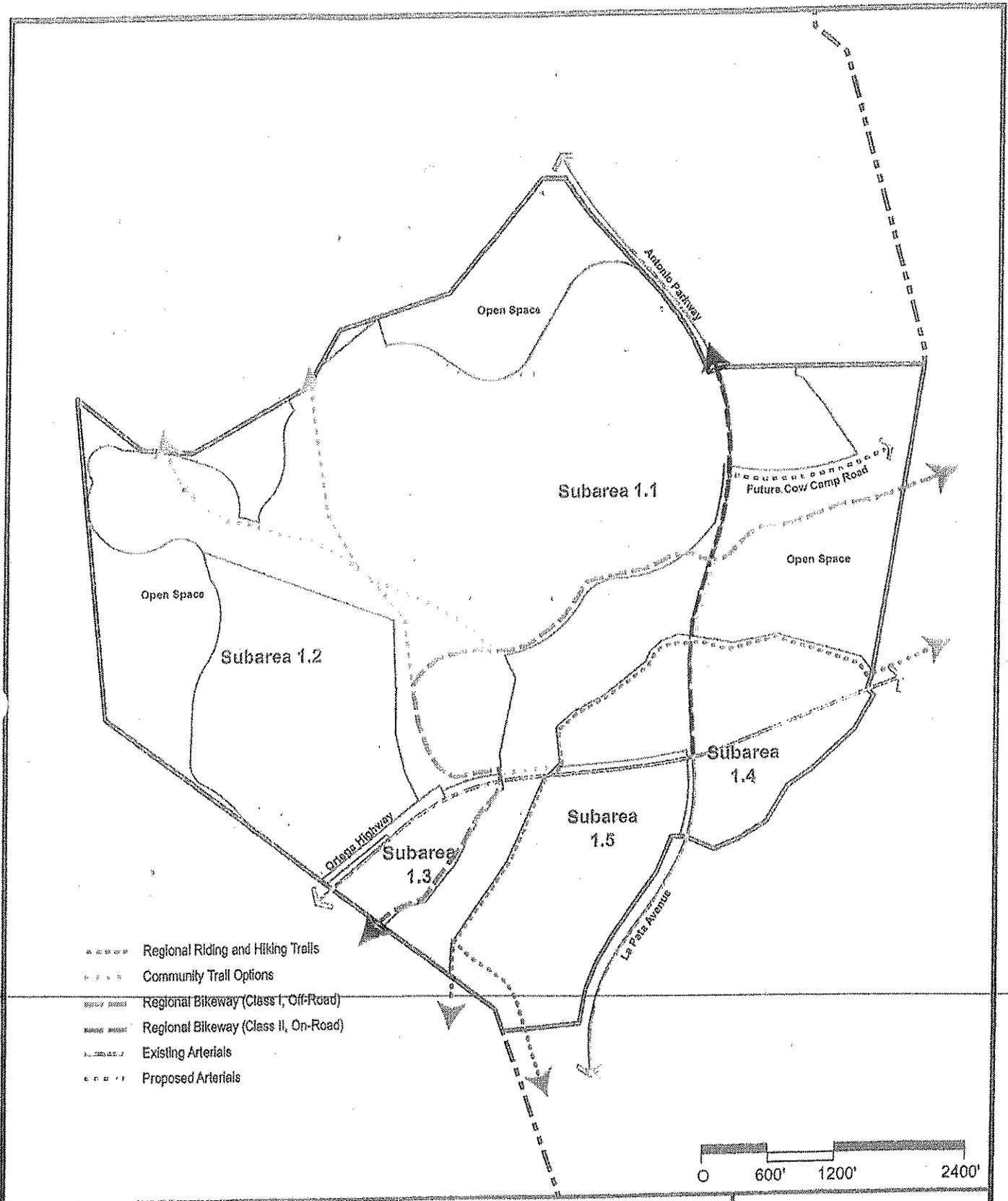
- (m) *Wood fires outside designated fire rings, and wood fires anywhere in the Habitat Reserve during extreme fire conditions;*
- (n) *Cigarette, cigar, pipe or other smoking;*
- (o) *Vehicle operations off designated roads, with the exception of farming equipment within designated agricultural areas and activities related to maintaining grazing, such as fence repairs;*
- (p) *Hiking, mountain biking and equestrian activities off designated trails;*
- (q) *Swimming and/or wading in lakes, ponds and creeks, unless conducted as part of activities authorized by the HRMP (e.g., monitoring or research of aquatic species);*
- (r) *All pets off leash (6-foot maximum leash), all pets outside designated locations or off designated trails and failure to dispose of pet waste other than in trash receptacles;*
- (s) *Alcohol consumption, except as specifically authorized by the RMV Reserve Manager for specific special outdoor gatherings;*
- (t) *Dumping of ashes, trash, garbage or other unsightly, offensive or toxic material or the storage or use of biocides and agricultural chemicals except as such biocides and/or chemicals may be necessary: (i) implement the AMP; or (ii) to support the allowed agricultural uses;*
- (u) *Nurseries;*
- (v) *Construction offices;*
- (w) *Maintenance yards;*
- (x) *Commercial stables (except the St. Augustine's Training Center and Stables or successors in its current location);*
- (y) *Research and development facilities (except for the uses at the Northrop Grumman-Capistrano Test Site permitted by the lease);*
- (z) *Waste disposal operations and associated uses (except the Recycling and Recovery facility as described in Section 3.7 of the Settlement Agreement);*
- (aa) *Storage facilities;*
- (bb) *Mining and quarrying of materials;*
- (cc) *Materials recycling and recovery facilities (except for the Recycling and Recovery Facility described in Section 3.7 of the Settlement Agreement);*

- (dd) *New, expanded and/or relocated citrus or other orchard crops (not including the additional 50 acres of orchards allowed pursuant to Section 4.2(b) of the Settlement Agreement);*
- (ee) *New, expanded and/or relocated dry farming;*
- (ff) *Irrigated crops (except citrus or other orchard crops as provided above);*
- (gg) *Packing plants (except when located within allowed orchards);*
- (hh) *Any uses or activities that are not Existing Agricultural/Ranching Practices as defined in section 1.3 of the Settlement Agreement, except as expressly authorized by the Settlement Agreement;*
- (ii) *Caretaker or employee housing and related facilities except as authorized by Sections 3.8 and 4.2(a) of the Settlement Agreement;*
- (jj) *Feed lots;*
- (kk) *Active recreation and related facilities except Existing Agricultural/Ranching Practices;*
- (ll) *Passive public recreation except as authorized in the HCP;*
- (mm) *Fire station or permanent wildland fire training facility;*
- (nn) *Fuel modification zones;*
- (oo) *Exploration, excavating, dredging, drilling, extraction, removal, production, storage, transport of hydrocarbon substances or minerals on the surface of, or below and within a depth of 500 feet of the surface of, the Property. [Exploration and extraction of such substances below a depth of 500 feet of the surface of the Property is not prohibited, provided that said activities do not compromise or impair the integrity of the protected habitat and species resources located on the Property.]*
- (pp) *Without the prior written consent of Grantee and the Service, which consent may be withheld, separating the water rights appurtenant to the Property.*

EXHIBIT G

TRAILS AND BIKEWAYS CONCEPT FOR PLANNING AREA 1

[ATTACHED]



**PLANNING AREA 1**  
**TRAILS AND BIKEWAYS CONCEPT**  
**RANCH PLAN PLANNED COMMUNITY**

EXHIBIT: 11



**EXHIBIT G**

Form of Assignment of Lease, License and Bill of Sale

(Attached)

## ASSIGNMENT OF LEASE, LICENSE AND BILL OF SALE

This Assignment of Lease, License and Bill of Sale (this "**Assignment**") is executed and delivered as of the \_\_\_\_ day of \_\_\_\_\_, 200\_ (the "**Closing Date**") pursuant to that certain Purchase and Sale Agreement and Escrow Instructions ("**Agreement**") dated \_\_\_\_\_, 200\_, by and between \_\_\_\_\_, a \_\_\_\_\_ ("**Seller**"), and \_\_\_\_\_, a \_\_\_\_\_ ("**Purchaser**"), covering the real property described in Exhibit A attached hereto ("**Property**").

1. Assignment of Lease and License. For good and valuable consideration, Seller hereby assigns, transfers, sets over and conveys to Purchaser, and Purchaser hereby accepts all of the Seller's right, title and interest in and to the lease and license listed in Exhibit B attached hereto ("**Lease and License**");

2. Assumption. Purchaser hereby assumes the obligations of Seller under the Lease and License listed on Exhibit B attached hereto arising from and after the Closing Date, and shall defend, indemnify and hold harmless Seller from and against any liability, damages, causes of action, expenses, and attorneys' fees incurred by Seller by reason of the failure of Purchaser to fulfill, perform, discharge, and observe its obligations with respect to the Lease and/or License.

3. Agreement Applies. Except as may otherwise be provided in the Agreement, the Lease and License are being assigned and transferred, and the Personal Property is being transferred, to Purchaser on an "as is," and "where is" basis, with all faults, and without any representation or warranty, all of which Seller hereby disclaims, all as more particularly set forth in Section 11.2 of the Agreement, which Section shall be, and hereby is, incorporated herein by reference.

4. Counterparts. This Assignment may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, with the same effect as if all parties had signed the same signature page.

5. Attorneys' Fees. In any action between the parties to enforce any of the terms or provisions of this Assignment, the prevailing party in the action shall be entitled to recover from the non-prevailing party, in addition to damages, injunctive relief or other relief, and its reasonable costs and expenses, including, without limitation, costs and reasonable attorneys' fees (including on appeal).

6. Merger. This Assignment and the Agreement contain the entire understanding between the parties relating to their subject matter. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Assignment and the Agreement. This Assignment may only be modified in writing executed by both Purchaser and Seller. Nothing contained in this Assignment is intended to terminate or affect the validity of any of the representations or warranties contained in the Agreement.

7. Miscellaneous. This Assignment shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, executors, administrators, successor-in-interest and assigns. If any term or provision of this Assignment shall be held invalid or unenforceable, the remainder of this Assignment shall not be affected. This Assignment shall be construed in accordance with and governed by the laws of the State of California. Nothing in this Assignment shall impair, limit or lessen any of the rights of the parties with respect to the provisions of the Agreement which were intended to survive the Closing Date. Nothing in this Assignment, express or implied, is intended to confer upon any person or entity, other than the parties hereto and their respective successors and assigns, any rights or remedies.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date written above.

SELLER:

\_\_\_\_\_

a \_\_\_\_\_

\_\_\_\_\_

PURCHASER:

\_\_\_\_\_

a \_\_\_\_\_

\_\_\_\_\_

EXHIBIT A

DESCRIPTION OF PROPERTY

[ATTACHED]

EXHIBIT B

DESCRIPTIONS OF LEASE AND LICENSE UNDER WHICH PURCHASER  
ASSUMES OBLIGATIONS AFTER THE CLOSING DATE

[ATTACHED]

**EXHIBIT H**

Form of Water Agreement

(Attached)

RECORDED AT REQUEST OF,  
AND RETURN TO:

Rancho Mission Viejo, LLC  
P. O. Box 9  
San Juan Capistrano, California 92698  
Attention: Richard Broming

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Space Above this Line for Recorder's Use

### WATER AGREEMENT

THIS WATER AGREEMENT ("**Water Agreement**") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between RANCHO MISSION VIEJO, LLC, a Delaware limited liability company ("**RMV**"), and the CITY OF SAN JUAN CAPISTRANO, a California municipal corporation ("**City**").

### RECITALS

- A. RMV is the agent and manager for the owners ("**Owners**") of certain real property situated in the County of Orange, State of California (the "**Property**"), that will be acquired by City pursuant to that certain Purchase and Sale Agreement dated \_\_\_\_\_, 200\_\_ (the "**Purchase and Sale Agreement**").
- B. As more particularly described on Exhibit A attached hereto, the Property consists of four (4) separate parcels designated as Parcel 7, Parcel 8, the Creek Open Space Parcel and the La Pata Open Space Parcel, respectively.
- C. Among other things, the Purchase and Sale Agreement sets forth various terms and conditions relating to City's use of the Property, and describes certain uses that would be allowed on the Property including certain active uses on Parcels 7 and 8.
- D. Owners have riparian water rights pertaining to the Property (the "**RMV Water**") by virtue of their ownership of the Property, which rights have been used to supply water in support of various beneficial uses on the Property.
- E. The Purchase and Sale Agreement provides that in conveying the Property to City, the Owners shall reserve all RMV Water and any other water rights, including riparian, pertaining to Parcels 7 and 8 except for a certain amount of RMV Water specified in the Purchase and Sale Agreement. The Purchase and Sale Agreement further provides certain terms and conditions relating to City's use of that portion of the RMV Water to be conveyed to City on Parcels 7 and 8.
- F. The Purchase and Sale Agreement also provides that that portion of the RMV Water pertaining to the Creek Open Space Parcel and La Pata Open Space Parcel, which parcels will be subject to a recorded Conservation Easement, will not be reserved by the Owners but will be conveyed to City with these parcels.
- G. RMV and City desire to enter into this Water Agreement in order (1) to clarify the amount of RMV Water to be conveyed to City with Parcels 7 and 8, and to document the specific terms and conditions that will govern City's use of that portion of RMV Water so transferred, and (2) to clarify certain restrictions pertaining to the RMV Water conveyed to City with the Creek Open Space and La Pata Open Space Parcels by virtue of the Conservation Easement.

H. Capitalized terms not defined herein shall have the meaning set forth in the Purchase and Sale Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, the parties agree as follows:

A. Transfer of Portion of RMV Water on Parcels 7 and 8. In conveying Parcels 7 and 8 to City, the Owners shall also convey a portion of RMV Water pertaining to Parcels 7 and 8. The portion transferred shall be limited to use on Parcels 7 and 8 and shall only be that amount necessary to reasonably and beneficially irrigate and maintain landscaping (turf, trees and plants), and for domestic use (in coordination with Santa Margarita Water District), for the operation of the allowed uses by City on those parcels. The City's extraction and use of the portion of RMV Water conveyed to it on Parcels 7 and 8 shall be carried out consistent with the following terms and conditions. Owners shall have the sole right to use RMV Water not transferred to City.

a. Well. To allow City to utilize water for the allowed uses (on Parcels 7 and 8 only), RMV shall consent to the City constructing a well on either Parcel 7 or Parcel 8. The well pump shall not exceed a capacity, at any time, of 300 gallons per minute and City's use of the RMV Water conveyed to it shall not exceed that amount. RMV shall have the right to install, and maintain, a well monitoring device in order to track City's water extraction and use. Should any controlling local, state or federal agency adopt regulations restricting the amount of water that any landowner may extract, or if any court issues a decision restricting the amount of water any landowner may extract, then the City shall reduce its use of water from said well on a correlative basis with any reduction of use by RMV.

b. Other Permits and Approvals. City agrees to obtain or cause to be obtained all permits, certificates, or approvals required by applicable local, state or federal agencies for any activity undertaken in conjunction with the use of the conveyed portion of RMV Water under this Water Agreement, including any approvals required in order to construct the well described in a. above.

c. Limited to Use by City. The rights granted herein shall be specifically limited to use by City and City's employees, contractors, subcontractors, agents, and representatives (collectively "City Agents").

B. Run with the Land. The foregoing terms and conditions applicable to Parcels 7 and 8 are for the benefit of the Benefited Area and shall run with those parcels and be binding upon any person or entity who/that acquires any right, title or interest in or to any portion of those parcels and shall be enforceable by the assigns of and successors-in-interest to Owners. Every person or entity who hereafter owns or acquires any right, title or interest in or to any portion of those parcels is and shall be conclusively deemed to have consented and agreed to the covenants contained herein, whether or not any reference to this instrument is contained in the instrument by which such person acquired an interest in such portion of those parcels.

C. Transfer of RMV Water on Open Space Parcels; Restrictions Under Conservation Easement. As noted above, the RMV Water pertaining to the Creek Open Space Parcel and La Pata Open Space Parcel will be conveyed as part of the agreed upon transaction. Although the RMV Water pertaining to the Creek Open Space Parcel and La Pata Open Space Parcel will be conveyed to City by Owners, City acknowledges (1) that the two open space parcels will be subject to the recorded Conservation Easement, (2) that pursuant to Section 5(pp) of the Conservation Easement, the water rights pertaining to those parcels cannot be separated from the parcels without the prior written consent of the Grantee of the Conservation Easement (i.e., The Reserve) and the U.S. Fish and Wildlife Service ("USFWS"), which consent may be withheld, and (3) that pursuant to Section 4(d) of the Conservation Easement, The Reserve will have the right to use the RMV Water pertaining to those parcels as necessary to preserve, protect and sustain the biological resources and conservation values of the parcels.

D. Indemnification. City shall indemnify, defend and hold harmless RMV, the Owners and all of their respective officers, directors, stockholders, partners, members, agents, representatives, managers and employees from and against all liabilities, claims, damages, losses and expenses of any nature whatsoever (including, but not limited to any costs or expenses for attorneys' fees and all incidental or consequential damages) arising out of any negligent act or omission or willful misconduct of City, City's Agents, and/or any other person or party acting under the authority or color of this Water Agreement; provided, however, that the City's obligations under this Section 4 shall not extend to any liabilities, claims, damages, losses or expenses to the extent they were caused by the negligence or willful misconduct of any party indemnified hereby.

E. Process in the Event of Breach.

a. Notice of Breach. Prior to either party commencing any lawsuit asserting a breach of one or more obligations under this Water Agreement, the non-breaching party shall notify the other party of the nature of the alleged breach(es) in writing and provide a written explanation of the basis for its determination.

b. Response to Notice of Breach. Within fifteen (15) business days of its receipt of the notice set forth in subsection a., above, the party receiving said notice shall provide a written response to the notifying party indicating its concurrence with, or rejection of, the determination of breach, or indicating that the alleged breach has no bearing on that party's obligations under this Water Agreement, as the case may be.

c. Meet and Confer Obligation. Should the parties disagree with respect to the determination of breach of this Water Agreement, or the remedy necessary to cure any alleged breach, as soon as is reasonably practicable, but in no event later than fifteen (15) days after the receipt by the party claiming the breach of all responses by the alleged breaching party, or other mutually agreeable date, the parties shall meet and confer in good faith in an attempt to resolve any differences. Unless such delay would prejudice or otherwise harm the party claiming breach, the party shall not file a lawsuit until at least fifteen (15) days after the meet and confer process pursuant to this subsection c.

F. Representations and Warranties.

a. City hereby represents and warrants to RMV that as of the date hereof:

City is duly organized and validly existing under the laws of the State of California and has full right, power and authority to enter into this Water Agreement and all documents contemplated hereby or to be delivered in connection herewith and to perform its obligations hereunder.

The persons executing this Water Agreement and all documents contemplated hereby for City are authorized to act for City and to enter into this Water Agreement, perform the terms of this Water Agreement and such actions have been authorized by all necessary action on the part of City and no permission or consent of any other person is required to approve this Water Agreement or perform hereunder.

b. RMV hereby represents and warrants to City that as of the date hereof:

The Owners are the owners of the Property.

RMV has full right, power and authority to enter into this Water Agreement and to perform the obligations specified herein.

G. Notice. Any and all notices given or delivered by any party hereto shall be delivered in person or by Federal Express or similar private commercial courier for next business day delivery or

otherwise deposited in the United States mail in the County of Orange, California, duly certified or registered, postage prepaid, and addressed as set forth below:

To RMV:                    Rancho Mission Viejo, LLC  
                                 P.O. Box 9  
                                 San Juan Capistrano, California 92698  
                                 Attn: Richard Broming, Senior Vice President –  
                                                    Planning and Entitlement

To City:                    City of San Juan Capistrano  
                                 32400 Paseo Adelanto  
                                 San Juan Capistrano, CA 92675  
                                 Attention: City Manager

H.        Miscellaneous.

a.        This Water Agreement shall be binding on the successors, successors-in-interest, assigns and legal representatives of each of the parties hereto; provided City shall not assign or transfer its interest in this Water Agreement without the prior written consent of RMV.

b.        This Water Agreement, along with the underlying Purchase and Sale Agreement, represent the entire agreement between the parties hereto on the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral.

c.        This Water Agreement may be modified only by written instrument executed by both parties hereto.

d.        Time is of the essence of each provision of this Water Agreement.

e.        Any failure by RMV to insist upon a strict performance by City of any of the terms and provisions hereof shall not be deemed to be a waiver of any of the terms and provisions hereof.

f.        This Water Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

g.        If any suit or action is brought to enforce or construe any provision of this Water Agreement, the prevailing party shall be entitled to recover its costs and expenses arising out of such litigation, including attorneys' fees and court costs, from the non-prevailing party; and each party hereto waives any and all rights to a trial by jury with respect to any dispute or action hereunder or otherwise to enforce or construe this Water Agreement.

h.        This Water Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.

i.        The parties hereto are entering into this Water Agreement solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the parties hereto, and their successors and assigns.

**[SIGNATURE PAGES TO FOLLOW]**

IN WITNESS WHEREOF, the parties have executed this Water Agreement as of the date first written above.

**"RMV"**

RANCHO MISSION VIEJO, LLC,  
a Delaware limited liability company

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

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

**"CITY"**

CITY OF SAN JUAN CAPISTRANO,

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form by:

\_\_\_\_\_  
City Attorney

EXHIBIT A

PROPERTY DESCRIPTION AND DEPICTION

(Attached)

**EXHIBIT I**

Form of Rodeo License Agreement

(Attached)

## RODEO LICENSE AGREEMENT

THIS AGREEMENT is entered into as of \_\_\_\_\_, 20\_\_ (the "Effective Date"), between City of San Juan Capistrano, a California municipal corporation ("Licensor"), and Rancho Mission Viejo, LLC, a Delaware limited liability company ("Licensee").

A. Licensor is the owner of that certain real property located in the County of Orange, State of California, described and depicted on Exhibit "A" attached hereto and made a part hereof (the "Property"). **[The Property Shall INCLUDE PARCELS 7 and 8.]**

B. Licensor acquired the Property from certain Rancho Mission Viejo entities for which Licensee serves as agent and manager, pursuant to that certain Purchase and Sale Agreement dated \_\_\_\_\_, 20\_\_ (the "Purchase and Sale Agreement").

C. As part of the consideration for entering into the Purchase and Sale Agreement, Licensor agreed to grant a license to Licensee at no expense to allow Licensee to continue to hold a rodeo (the "Rancho Mission Viejo Rodeo") on the Property on a yearly basis. Licensee desires to use the Property for that purpose.

D. Licensor hereby agrees to give to Licensee the license to use the Property for the purpose hereinafter specified, upon and subject to the terms, reservations, covenants and conditions hereinafter set forth.

Now therefore, for and in consideration of the mutual promises, covenants and agreements herein set forth, Licensee and Licensor hereby agree as follows:

1. License: Licensor, as the owner of the Property, hereby grants to Licensee an exclusive license ("License"), subject to and in accordance with the terms and conditions of this Agreement.

2. Use: Licensee will use the Property for the purpose of holding the Rancho Mission Viejo Rodeo yearly, as it has been operated in the past, during a two week (14 day) period (the "Rodeo Period") the dates of which shall be determined solely by Licensee, after consulting with Licensor. The City agrees that the rodeo held by Licensee shall continue to be named and referred to as the "Rancho Mission Viejo Rodeo." The City further agrees that it shall not allow any other event to be held on the Property during the Rodeo Period. Licensee shall provide the City notice of the dates for the next upcoming Rodeo Period one (1) year in advance of that Rodeo Period.

3. Term: Unless otherwise terminated as provided herein, this Agreement will be in effect for a term of fifty (50) years commencing on the Effective Date ("Term").

4. Consideration: As noted above, this Agreement is being entered into pursuant to the Purchase and Sale Agreement. In accordance with the terms of that agreement, the Licensor shall waive all City fees, taxes and other charges required for or related to The Rancho Mission Viejo Rodeo including, but not limited to, any City fees, taxes or other charges related to vendor services and operations. The majority of the net proceeds from the Rodeo shall be available to the Licensor's and South Orange County's charities including, but not limited to, the San Juan Capistrano Open Space Foundation, the Camino Health Center, the R.H. Dana Exceptional Needs Facility and the Shea Therapeutic Riding Center.

5. Insurance: During the term of this Agreement, Licensee shall maintain the following insurance:

(a) Commercial General Liability Insurance, including contractual liability and products liability, with a combined single limit of \$2,000,000.00. Such insurance shall: (i) name Licensor, its officers, agents and employees as additional insureds, (ii) be primary for all purposes, and (iii) contain standard cross-liability provisions.

(b) Commercial Automobile Insurance with a combined single limit of \$2,000,000.00. Such insurance shall: (i) cover the use of owned, non-owned and hired vehicles on the Property and (ii) name Licensor, its officers, agents and employees as additional insureds.

Licensee shall provide Licensor with proof of such insurance by submission of certificates of insurance, pursuant to Section 13 "Notices," at least ten days prior to commencement of the first Rodeo event held under this Agreement.

6. Licensor's Use of and Access to the Property During the Rodeo Period: Licensee agrees that Licensor, its successors and assigns, have the right to enter upon the Property during the Rodeo Period so long as such entry does not unreasonably interfere with Licensee's use of the Property hereunder. Licensee will provide Licensor with reasonable access to Licensor's facilities on the Property.

7. Licensee's Personal Property: All equipment and other property brought, placed or erected on the Property by Licensee shall be and remain the property of Licensee.

8. Liens: Licensee will keep the Property free from all liens, including but not limited to, mechanics liens and encumbrances by reason of use or occupancy by Licensee, or any person claiming under Licensee.

9. No Assignments: Licensee may not assign, sublet or otherwise transfer its interest under this Agreement without the prior written consent of the Licensor, not to be unreasonably withheld. Any attempted assignment, sublet or transfer made in violation of this provision shall be null and void.

10. Surrender of Premises: Licensee shall, at the end of each Rodeo Period or termination of this Agreement, vacate the Property in as good condition as it was at the time of entry thereon by Licensee. Upon vacating, Licensee shall leave the Property free and clear of all rubbish and debris.

11. Governing Law: The existence, validity, construction, operation and effect of this Agreement and all of its terms and provisions will be determined in accordance with the laws of the State of California.

12. Indemnification: Licensee shall hold harmless, defend and indemnify Licensor, its officers, agents and employees, and its successors and assigns, from and against all claims, loss, damage, actions, causes of actions, expense and/or liability arising from or growing out of loss or damage to property, including that of Licensor, or injury to or death of persons resulting by reason of this Agreement or the use or occupancy of the Property by Licensee or any person claiming under Licensee.

13. Termination: This Agreement may only be terminated by Licensee; provided, in the event Licensee relocates the Rancho Mission Viejo Rodeo off of the Property, the Licensor's obligations under this Agreement shall terminate. In any event, the Licensor agrees not to host any rodeo on the Property unless Licensee ceases operating the Rancho Mission Viejo Rodeo for a period of three consecutive years.

14. Attorneys' Fees: In the event of any action, suit or proceeding against the other, related to this Agreement, or any of the matters contained herein, the successful party in such action, suit or proceeding shall be entitled to recover from the other party reasonable attorney fees incurred.

15. Notices: All notices required to be given by either party will be made in writing and deposited in the United States mail, first class, postage prepaid, addressed as follows:

To Licensor: City of San Juan Capistrano  
32400 Paseo Adelanto  
San Juan Capistrano, CA 92675  
Attn: City Manager

To Licensee: Rancho Mission Viejo, LLC  
P. O. Box 9  
San Juan Capistrano, CA 92698  
Attn: Lissa Freese

The parties will immediately notify each other of any address change.

16. Complete Agreement: Licensor and Licensee acknowledge that the foregoing provisions and any exhibits attached hereto, together with the underlying Purchase and Sale Agreement, constitute the entire Agreement between the parties.

**[Signatures on Following Page]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the day and year herein first above written.

"LICENSOR"

CITY OF SAN JUAN CAPISTRANO,

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form by:

\_\_\_\_\_  
City Attorney

"LICENSEE"

RANCHO MISSION VIEJO, LLC,  
a Delaware limited liability company

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

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

EXHIBIT A

PROPERTY DESCRIPTION AND DEPICTION

**EXHIBIT J**

Form of Conservation Easement

(Attached)



Agreement/Habitat Conservation Plan (“HCP”) that, among other things, designates the 16,536 acres of Future RMV Habitat Reserve Dedication Areas for eventual inclusion as part of the HCP habitat reserve (“Habitat Reserve”) to mitigate for the impacts of development, including related infrastructure, on lands owned by RMV and/or its related, affiliated or successor entities. Compliance with the HCP and IA, including permanent conservation of the Future RMV Habitat Reserve Dedication Areas is required as a condition of federal Endangered Species Act Incidental Take Permit No. TE144140-0 issued on January 10, 2007 to RMV (the “Federal Permit”).

E. Activities described in the HCP for which regulatory coverage is granted under the Federal Permit, whether occurring in development areas or in portions of the Habitat Reserve, are referred to as “Covered Activities”.

F. The Future RMV Habitat Reserve Dedication Areas also include lands designated as Aquatic Resource Conservation Areas pursuant to the Special Area Management Plan (“SAMP”) for the San Juan Creek and western San Mateo Creek watersheds which was approved by the United States Army Corps of Engineers (“USACE”) in \_\_\_\_\_.

G. RMV and the County entered into that certain Open Space Agreement dated July 25, 2006 (“Open Space Agreement”) in furtherance and implementation of the County Project Approvals.

H. Grantor is the sole owner in fee simple of certain real property located within the Future RMV Habitat Reserve Dedication Areas containing approximately \_\_\_\_\_ acres, located in the County of Orange, State of California, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the “Property”). Under the terms of the Settlement Agreement, the HCP and IA, the Open Space Agreement, and the Federal Permit, the Property and remaining portions of the Future RMV Habitat Reserve Dedication Areas are to be made subject to the Conservation Easement pursuant to a phased program of easement recordation (the “RMV Phased Dedication Program,” as set forth in Attachment 1 to the IA), as development of the Ranch Plan PC proceeds in accordance with the County Project Approvals. As more particularly described in the Implementation Agreement and the Open Space Agreement, with each development phase, the designated portion of the Future RMV Habitat Reserve Dedication Areas corresponding to that development phase will be annexed to and become part of the area covered by the Conservation Easement (“Conservation Easement Area”). The Property thus constitutes the initial Conservation Easement Area.

I. Grantee has been organized to preserve and enhance natural and open space lands for aesthetic, ecological, recreational, scientific, open space, rangeland, charitable, and education purposes, and Grantee is qualified under California Civil Code Section 815.3 to receive, administer and maintain conservation easements. Specifically, Grantee is a tax-exempt nonprofit organization qualified under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and qualified to do business in California which has as its primary purpose the preservation and enhancement of natural and open space lands.

J. The Property and remaining portions of the Future RMV Habitat Reserve Dedication Areas possess wildlife and habitat values (collectively, “Conservation Values”) of

great importance to Grantee, the people of the State of California, and the people of the United States, including, among other things, the specific Conservation Values identified in Recital K, below.

K. The Property and remaining portions of the Future RMV Habitat Reserve Dedication Areas contain certain vegetation communities, designated "Conserved Vegetation Communities" in the HCP, that provide high quality habitat for certain species designated as "Covered Species" in the HCP. The Conserved Vegetation Communities are as follows: Coastal sage scrub, Chaparral, Grassland, Riparian, Marsh, Alkali meadow, Open water, Streamcourses, Coast live oak woodland and Coast live oak forest. The Covered Species are as follows: Burrowing owl (*Athene cunicularia*), Coastal cactus wren (*Campylorhynchus brunneicapillus couesi*), Coastal California gnatcatcher (*Polioptila californica californica*), Cooper's hawk (*Accipiter cooperii*), Grasshopper sparrow (*Ammodramus savannarum*), Least Bell's vireo (*Vireo bellii pusillus*), Long-eared owl (*Asio otus*), Southwestern willow flycatcher (*Empidonax trallii extimus*), Tricolored blackbird (*Agelaius tricolor*), White-tailed kite (*Elanus leucurus*), Yellow-breasted chat (*Icteria virens*), Yellow warbler (*Dendroica petechia*), Arroyo toad (*Bufo californicus*), Western spadefoot toad (*Spea [=scaphiophus] hammondi*), California glossy snake (*Arizona elegans occidentalis*), Coast patch-nosed snake (*Salvadora hexalepis virgulata*), Northern red-diamond rattlesnake (*Crotalus ruber ruber*), Orange-throated whiptail (*Aspidoscelis hyperythra [=cnemidophorus hyperythrus] beldingi*), Red coachwhip (*Masticophis flagellum piceus*), "San Diego" coast horned lizard (*Phrynosoma coronatum (blainvillei population)*), Southwestern pond turtle (*Emys [=clemmys] marmorata pallida*), Arroyo chub (*Gila orcutti*), Partially-armored threespine stickleback (*Gasterosteus aculeatus ssp. microcephalus*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), California scrub oak (*Quercus berberidifolia*), Chaparral beargrass (*Nolina cismontana*), Coast live oak (*Quercus agrifolia*), Coulter's saltbush (*Atriplex coulteri*), Many-stemmed dudleya (*Dudleya multicaulis*), Southern tarplant (*Centromadia parryi var. australis*), Thread-leaved brodiaea (*Brodiaea filifolia*).

L. The United States Fish and Wildlife Service ("Service"), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the Endangered Species Act, 16 U.S.C. Section 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661 – 666c, the Fish and Wildlife Act of 1956, 16 U.S.C. Section 742(f) *et seq.*, and other provisions of federal law.

M. This Conservation Easement has been reviewed and approved by the USFWS, the USACE and the County as satisfying the requirements of the Implementation Agreement and the SAMP, and (as to County only) the Open Space Agreement, with regard to the subject matter hereof.

N. This instrument, when recorded, will (1) document Grantor's grant to \_\_\_\_\_ of the subject Conservation Easement, and (2) set forth the rights and obligations of the parties with respect to the 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 United States and the State of California, including Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property in accordance with the terms and conditions hereafter set forth:

1. Purposes. The purposes of this Conservation Easement are to assure that (i) the Property will be retained forever in its natural, restored or enhanced condition consistent with the County Project Approvals, the Settlement Agreement, the HCP and IA, the Federal Permit, and the SAMP, and to allow only those certain Covered Activities on the Property that are allowed within the Habitat Reserve as set forth in the HCP and IA or otherwise specifically permitted herein, so as not to impair or interfere with the Conservation Values of the Property; (ii) the Property's ecological elements and scientific and aesthetic features and Conservation Values will be preserved and maintained in perpetuity consistent with the purpose of this Conservation Easement; (iii) the uses of the Property will be confined to those that are consistent with and in furtherance of the Habitat Reserve provisions of the HCP, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats addressed under the HCP as provided in the Implementation Agreement and SAMP; (iv) the Conservation Values will be achieved, in part, through continued ranching and grazing uses in accordance with the HCP Grazing Management Plan; and (v) the Property will be managed in perpetuity consistent with the Habitat Reserve Management Plan ("HRMP") of the HCP. Nothing herein shall impair or modify the obligations/commitments of RMV under the Settlement Agreement

2. Initial Conservation Easement Area. The Property is the initial Conservation Easement Area and is more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

3. Annexation of Additional Conservation Easement Area. All or any part of the Ranch Plan PC Area designated as, or otherwise determined to be, additional future Conservation Easement Area in accordance with the HCP and IA, the SAMP and the Open Space Agreement shall be annexed to and become subject to this Conservation Easement pursuant to the RMV Phased Dedication Program. A spreader of easement covering the portion of the additional property to be annexed (and which shall subject such additional property then being annexed to the terms, covenants and conditions of this Conservation Easement) shall be executed and recorded, by Grantor and/or other applicable landowner(s). The recordation of said spreader of easement shall constitute and effectuate the annexation of the said property described therein, making said property subject to this Conservation Easement; and, thereafter, said annexed property shall be part of the Conservation Easement Area. The sequence of annexations shall be in accordance with the actual phasing of development, as provided in the HCP and IA, the SAMP and the Open Space Agreement. For purposes of this Easement, a spreader of easement shall be a writing in recordable form which annexes property to the burdens and covenants of this Conservation Easement and which incorporates by reference all of the covenants, conditions, restrictions and other provisions of this Conservation Easement. In no event, however, shall any such spreader of easement revoke, modify or add to the covenants

established by this Conservation Easement with respect to the existing Property then subject hereto. The phased dedication program shall be governed by the HCP and IA, the SAMP and the Open Space Agreement and nothing provided herein shall in any way alter the obligations of Grantor under said agreements to annex any property to this Conservation Easement or impose any similar or dissimilar covenants, conditions or restrictions on any of its other property; and such other property shall not become part of the Conservation Easement Area which is subject to this Conservation Easement unless and until Grantor shall have recorded a spreader of easement as aforesaid.

4. Grantee's Rights. To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the rights specified below to Grantee:

(a) To preserve, protect, and sustain the Conservation Values of the Property;

(b) To enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, and to cooperate with the RMV Reserve Manager in carrying out the HCP HRMP, relative to management, monitoring and/or restoration of natural resources within the Property; provided that, except in the event of an emergency, all entry upon the Property by Grantee for the purpose of either enforcement or compliance monitoring (x) shall be by means of existing roads, trails and other routes and access points as may be reasonably approved by Grantor from time to time, (y) shall be upon not less than 24-hours prior written notice, which notice shall be provided to Grantor, including the anticipated time of entry, the purpose of such access and the number of individuals who will undertake such access, and (z) shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Property;

(c) To enforce the terms and provisions of this Conservation Easement, prevent any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement and, in coordination with the RMV Reserve Manager, to restore or require the restoration of such areas or features of the Property that may be damaged by any act, failure to act, or any use that is inconsistent with the purposes of this Conservation Easement;

(d) The use of Grantor's mineral, air and water rights pertaining to the Property necessary to preserve, protect and sustain the biological resources and Conservation Values of the Property which rights shall remain a part of and be put to beneficial use upon the Property, consistent with the purposes of this Conservation Easement; and

(e) All of Grantor's present and future development rights pertaining to the Property; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Property, nor any other property adjacent or otherwise. The foregoing shall not limit or restrict Grantor's reserved right to carry out any and all Covered Activities that are authorized to be conducted within the Habitat Reserve as set forth in the HCP and IA.

5. Prohibited Uses. All activities on or uses of the Property inconsistent with the purpose of this Conservation Easement are prohibited, including the following

- (a) Fuel modification zones adjacent to development;
- (b) Commercial and industrial uses;
- (c) Row crop agricultural practices;
- (d) Residential uses;
- (e) Active recreation not provided for in Section 11.2 of the HCP (e.g., mountain biking is a Compatible Use), including golf and athletic fields;
- (f) Collection or removal of any native plant, animal or microorganism, unless authorized for monitoring or research under the HRMP, or for other purposes authorized by the County or RMV Reserve Managers for their respective portions of the Habitat Reserve and consistent with relevant state and/or federal permits, authorizations or agreements;
- (g) Deliberate introduction of any non-native plant or wildlife species or microorganism not authorized under the HRMP;
- (h) Disturbance, collection, or removal of cultural resources unless conducted under a survey, salvage or research program authorized by the County or RMV Reserve Managers for their respective portions of the Habitat Reserve and consistent with relevant state and/or federal permits, authorizations or agreements;
- (i) Collection of rocks, soils and fallen trees unless conducted under a survey, salvage or research program authorized by the County or RMV Reserve Managers for their respective portions of the Habitat Reserve consistent with the HRMP;
- (j) Collection of cultural artifacts unless authorized by the County or appropriate state/federal agency;
- (k) Any activities that are incompatible with or may disturb or disrupt ongoing HRMP activities;
- (l) Use of firearms or weapons, hunting or trapping (unless carried out pursuant to the HRMP) and fireworks;
- (m) Wood fires outside designated fire rings, and wood fires anywhere in the Habitat Reserve during extreme fire conditions;
- (n) Cigarette, cigar, pipe or other smoking;
- (o) Vehicle operations off designated roads, with the exception of farming equipment within designated agricultural areas and activities related to maintaining grazing, such as fence repairs;

- (p) Hiking, mountain biking and equestrian activities off designated trails;
- (q) Swimming and/or wading in lakes, ponds and creeks, unless conducted as part of activities authorized by the HRMP (e.g., monitoring or research of aquatic species);
- (r) All pets off leash (6-foot maximum leash), all pets outside designated locations or off designated trails and failure to dispose of pet waste other than in trash receptacles;
- (s) Alcohol consumption, except as specifically authorized by the RMV Reserve Manager for specific special outdoor gatherings;
- (t) Dumping of ashes, trash, garbage or other unsightly, offensive or toxic material or the storage or use of biocides and agricultural chemicals except as such biocides and/or chemicals may be necessary: (i) implement the AMP; or (ii) to support the allowed agricultural uses;
- (u) Nurseries;
- (v) Construction offices;
- (w) Maintenance yards;
- (x) Commercial stables (except the St. Augustine's Training Center and Stables or successors in its current location);
- (y) Research and development facilities (except for the uses at the Northrop Grumman-Capistrano Test Site permitted by the lease);
- (z) Waste disposal operations and associated uses (except the Recycling and Recovery facility as described in Section 3.7 of the Settlement Agreement);
- (aa) Storage facilities;
- (bb) Mining and quarrying of materials;
- (cc) Materials recycling and recovery facilities (except for the Recycling and Recovery Facility described in Section 3.7 of the Settlement Agreement);
- (dd) New, expanded and/or relocated citrus or other orchard crops (not including the additional 50 acres of orchards allowed pursuant to Section 4.2(b) of the Settlement Agreement);
- (ee) New, expanded and/or relocated dry farming;
- (ff) Irrigated crops (except citrus or other orchard crops as provided above);
- (gg) Packing plants (except when located within allowed orchards);

- (hh) Any uses or activities that are not Existing Agricultural/Ranching Practices as defined in section 1.3 of the Settlement Agreement, except as expressly authorized by the Settlement Agreement;
- (ii) Caretaker or employee housing and related facilities except as authorized by Sections 3.8 and 4.2(a) of the Settlement Agreement;
- (jj) Feed lots;
- (kk) Active recreation and related facilities except Existing Agricultural/Ranching Practices;
- (ll) Passive public recreation except as authorized in the HCP;
- (mm) Fire station or permanent wildland fire training facility;
- (nn) Fuel modification zones;
- (oo) Exploration, excavating, dredging, drilling, extraction, removal, production, storage, transport of hydrocarbon substances or minerals on the surface of, or below and within a depth of 500 feet of the surface of, the Property. [Exploration and extraction of such substances below a depth of 500 feet of the surface of the Property is not prohibited, provided that said activities do not compromise or impair the integrity of the protected habitat and species resources located on the Property.]
- (pp) Without the prior written consent of Grantee and the Service, which consent may be withheld, separating the water rights appurtenant to the Property.

6. Grantor's Duties. 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 Property. In addition, Grantor shall undertake all necessary actions to protect the rights of Grantee under Section 4 of this Conservation Easement, including but not limited to, Grantee's rights under Section 4(d) above.

7. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Property, including the right to engage in or to permit or invite others to engage in all uses of the Property that are not expressly prohibited or limited by, and are consistent with the purposes of, this Conservation Easement. Without limiting the generality of the foregoing, Grantor expressly reserves the right to carry out any and all Covered Activities that are authorized to be conducted within the Habitat Reserve as set forth in the HCP and IA. Furthermore, the termination of the HCP and the Federal Permit shall not affect Grantors reserved rights, and any Covered Activities previously authorized shall continue to be consistent with the purposes of this Conservation Easement.

8. Limitations on Public Use. No use of the Property by the general public is authorized by this Conservation Easement; and any and all such general public use shall be

limited to the use of the regional and community hiking and/or riding trails which are described on existing recorded easements or other public record documents, or which are associated with Covered Activities, unless such use is with the express prior written consent, and otherwise subject to the supervision, of the Grantor and Grantee, consistent with the HCP, HRMP and \_\_\_\_\_ plan, and within the boundaries of specified hiking and/or riding trails delineated and described as such, and/or specified ranch access roads. Neither Grantor nor Grantee shall encourage or permit the general public to use or enter upon the Property except as expressly provided herein. For purposes hereof, the term "general public" shall not include designated employees and agents of the Service, persons accompanied by either Grantor or Grantee, or any of their employees, agents, representatives, contractors or subcontractors, entering onto the Property for, respectively, any reserved uses (as to Grantor) or any Grantee permitted uses as specified in the HCP, HRMP and/or \_\_\_\_\_ plan.

9. Remedies. The Service and the other third party beneficiaries of this Conservation Easement identified in Section 15(o) shall have the same rights as Grantee under this section to enforce the terms of this Conservation Easement. If Grantee determines that a violation of the terms of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation. At the time of giving any such notice, Grantee shall give a copy of the notice to the Service. 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 the terms of 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 Property, 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 Property to the condition in which it existed prior to any such violation or injury. Without limiting Grantor's liability therefor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Property.

If Grantee, in its reasonable discretion, determines that circumstances require immediate action to prevent or mitigate damage to the conservation values of the Property, Grantee may pursue its remedies under this Section 9 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 Section 815, *et seq.*, inclusive. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

9.1 Costs of Enforcement. Any costs incurred by Grantee or the third party beneficiaries specified in Section 15(o), where such entity 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 Grantor's breach of this Conservation Easement shall be borne by Grantor.

9.2 Discretion of Grantee, and Third Party Beneficiaries. Enforcement of the terms of this Conservation Easement by Grantee and the third party beneficiaries specified in Section 15(o) shall be at the discretion of the enforcing party, and any forbearance by Grantee, or any of the third party beneficiaries 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 by Grantee or the third party beneficiary of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of Grantee's rights (or any third party beneficiary's rights) under this Conservation Easement. No delay or omission by Grantee or a third party beneficiary in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

9.3 Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee or a third party beneficiary 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, 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, or a third party beneficiary or its employees. Notwithstanding the above, Grantor remains obligated to implement the relevant responses to Changed Circumstances identified in the HCP and required under the Federal Permit referenced under recital D above.

9.4 Third Party Beneficiary Right of Enforcement. All rights and remedies conveyed to Grantee under this Conservation Easement Deed shall extend to and are enforceable by the third party beneficiaries specified in Section 15(o). These rights are in addition to, and do not limit, the rights of enforcement under the Federal Permit.

10. Enforcement by Grantor. Grantor, any "Successor Grantors" (as defined below) and their successors shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of this Conservation Easement or any amendment thereto, including the right to specific enforcement and otherwise to prevent the violation of any such restrictions, conditions, covenants or conditions; provided, Grantor shall not have the right to terminate this Conservation Easement.

11. 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 neither Grantee nor any third party beneficiary shall have any duty or responsibility for the operation, upkeep or maintenance of the Property, the monitoring of hazardous conditions thereon, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this

Conservation Easement Deed, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders and requirements.

11.1 Taxes; No Liens. Grantor shall pay before delinquency all taxes, assessments, 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, and shall furnish Grantee and any third party beneficiary with satisfactory evidence of payment upon request. Grantor shall keep the Property free from any liens, 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.

11.2 Hold Harmless. Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Grantee Indemnified Party" and, collectively, "Grantee's Indemnified Parties"), and each third party beneficiary and its directors, officers, employees, agents, contractors, and representatives, and the heirs, personal representatives, successors and assigns of each of them (each a "Third Party Beneficiary Indemnified Party" and, collectively, "Third Party Beneficiary 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 this Conservation Easement to the extent permitted by state and/or federal law except to the extent caused by the negligence or willful misconduct of the Third Party Beneficiary Indemnified Parties.

11.3 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. Grantor shall provide prior written notice to Grantee and the Service at least 45 days before taking any action to extinguish the Conservation Easement and, prior to extinguishment, shall provide a conservation easement at an alternate site, acceptable to the Service.

11.4 Condemnation. Grantor shall immediately notify Grantee and the Service in writing of any action to condemn this Conservation Easement. The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined at Code of Civil Procedure Section 1240.680.

12. Transfer of Easement. This Conservation Easement may be assigned or transferred by Grantee upon written approval of the Service, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and the Service at least thirty (30) days prior written notice of the transfer. In particular, approval of any assignment may be withheld in the reasonable discretion of the Service if the transfer will result in a single owner holding both the Conservation Easement and the fee title to the Property and, upon such transfer, the doctrine of merger would apply to extinguish the Conservation Easement by operation of

law, unless prior to the assignment or transfer, an alternative mechanism acceptable to the Service to achieve the purposes of this Conservation Easement following such merger has been provided for. Grantee may assign this Conservation Easement only to an entity or organization authorized to acquire and hold conservation easements pursuant to Civil Code Section 815.3 (or any successor provision then applicable) or the laws of the United States and reasonably acceptable to the Service. 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.

13. 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, applicable provisions of the HCP and IA, the HRMP, and the \_\_\_\_\_ plan, and any amendments to those documents. Grantor further agrees to give written notice to Grantee and the Service of the intent to transfer any interest at least thirty (30) days prior to the date of such transfer. Grantee or the Service shall have the right to prevent subsequent transfers in which prospective subsequent claimants or transferees are not given notice of the covenants, terms, 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 the Service, which approval shall not be unreasonably withheld or delayed. Approval of any such transfer to the Grantee may be withheld in the reasonable discretion of the Service unless, prior to the transfer, an alternative mechanism acceptable to the Service to achieve the purposes of this Conservation Easement following such merger has been provided for. Upon the recordation of such writing accepting such assignment and assuming such duties, such assignee (the "Successor Grantor"), to the extent of such assignment, shall have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Grantor herein and Grantor shall be released and relieved of such rights and obligations provided that notwithstanding any such assignment or transfer, Grantor shall remain liable to perform and fund its obligations under the HCP, the HRMP, the \_\_\_\_\_ plans and Federal Permit until and unless an assignment of the Permit and release of Grantor's obligations thereunder is approved in writing by the Service as provided in the IA. The failure of Grantor, Grantee or the Service to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. This Section 13 shall not apply to a transfer of property pursuant to, or in lieu of, a condemnation of the Property or any portion thereof; however, Grantor agrees to give written notice to Grantee and the Service of such transfer at least thirty (30) days prior to the date of such transfer.

14. Notices. Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to the other parties shall be in writing and be served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class mail, postage fully prepaid, addressed as follows:

To Grantor: Senior Vice President  
Planning and Entitlement  
c/o Rancho Mission Viejo, LLC  
28811 Ortega Highway  
P.O. Box 9  
San Juan Capistrano, California 92693

To Grantee:

To: Service: United States Fish and Wildlife Service  
Carlsbad Fish and Wildlife Office  
6010 Hidden Valley Road  
Carlsbad, California 92009

or to such other address as Grantor, Grantee or the Service may designate by written notice to the other parties. 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.

15. General 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 and applicable federal law.

(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 Section 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 other persons or circumstances.

(d) Entire Agreement. This instrument, including the HCP and IA, HRMP, \_\_\_\_\_ Plans, and the Federal Permit, incorporated herein by this reference, 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 15(n).

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

(f) Successors. 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.

(g) Covenant Running with the Land. This Conservation Easement and covenants contained herein are (i) imposed upon the property encumbered by or otherwise subject to this Conservation Easement, (ii) shall run with and against the same and shall be a charge and burden thereon for the benefit of Grantee and/or the current holder of this Conservation Easement and (iii) are perpetual and irrevocable.

(h) 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 or omissions occurring prior to transfer shall survive transfer.

(i) 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.

(j) No Hazardous Materials Liability. Except as disclosed in any Phase 1 report provided to the Grantee prior to the recordation of this Conservation Easement, 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 11.2, Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee Indemnified Parties and, Third Party Beneficiary Indemnified Parties (each as defined in Section 11.2) from and against any and all Claims (as defined in Section 11.2) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, or otherwise associated with the Property at any time, except any Hazardous Materials placed, disposed, or released by Grantee, or a Third Party Beneficiary or any of Grantee's or a Third Party Beneficiary's employees or agents. This release and indemnification includes, without limitation, Claims for (i) injury to or death of any person or physical damage to any property; and (ii) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below).

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, or any Third Party Beneficiary, 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. Section 9601 *et seq.*; hereinafter, "CERCLA"); or

(2) The obligations or liabilities of a person described in 42 U.S.C. Section 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. Section 6901 *et seq.*; hereinafter "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. Section 6901 *et seq.*; hereinafter "HTA"); the Hazardous Waste Control Law (California Health & Safety Code Section 25100 *et seq.*; hereinafter "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code Section 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 and Service that activities upon and use of the Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(k) Warranty. Grantor represents and warrants that there are no outstanding mortgages or liens in the Property that have not been expressly subordinated to this Conservation Easement Deed, and that the Property is not subject to any other conservation easement.

(l) Additional Easements. Except in conjunction with carrying out its Covered Activities, Grantor shall not grant any additional easements, rights of way or other similar interests in the Property (other than a security interest that is subordinate to this Conservation Easement), without first obtaining the written consent of Grantee and the Service. Grantee or the Service may withhold such consent if it reasonably 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 Property. This Section 15(l) shall not prohibit

transfer of a fee or leasehold interest in the Property that is subject to this Conservation Easement and complies with Section 13. Further, this Section 15(l) shall not prohibit the grant of an easement in connection with a project which involves the transfer of land by Grantor pursuant to, or in lieu of, a condemnation of the Property or any portion thereof,

(m) Recording. Grantee shall record this Conservation Easement Deed in the Official Records of Orange County, California, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(n) Amendment; Inconsistency. Except as expressly hereinafter provided, this Conservation Easement may be modified only by written instrument executed by the record owner(s) of the property encumbered hereby, the then-holder of this Conservation Easement, and only if such modification is approved in advance in writing by the Service and County (as determined by the Director of Planning and Development Services) and, in each event, provided that such modification is otherwise consistent with the terms, policies and goals hereof, the Settlement Agreement, the HCP and IA and the Federal Permit.

(o) Third-Party Beneficiaries. Grantor and Grantee acknowledge that the Service, the County, the Resource Organizations, and USACE (with regard to any portion of the Property designated as Aquatic Resources Conservation Areas), shall be deemed, and are hereby, third party beneficiaries of this Conservation Easement and subsequently recorded "spreader easements" with a right of access to the Property and all areas covered by subsequently recorded "spreader easements" within the Future RMV Habitat Reserve Dedication Areas and a right to enforce the terms and provisions hereof. The conditions on access to the Property by Grantee under paragraph 4(b) shall apply to USFWS except: (1) when the USFWS has reason to believe a violation of the Federal Permit, or laws or regulations applicable to the Permit, has occurred or may be occurring which, in the USFWS's good-faith judgment, warrants immediate or noticeless access; or (2) entry, without consent, is otherwise for law enforcement purposes consistent with the Fourth Amendment to the Constitution. In addition Grantor and Grantee acknowledge that Service is expressly granted certain additional rights under this Conservation Easement, including but not limited to a right to prior written notice of certain specified actions and a right of approval of certain specified actions.

(p) Condemnation. In the event of any condemnation or sale of the Conservation Easement Area or any property encumbered thereby or otherwise subject thereto, Grantor shall be entitled to all of the condemnation proceeds attributable thereto or otherwise arising therefrom.

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

GRANTOR:

GRANTEE:

BY: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

EXHIBIT A

DESCRIPTION OF THE PROPERTY  
(Conservation Easement Area)

(Attached)

**EXHIBIT K**

Form of FIRPTA Affidavit

(Attached)

**FIRPTA CERTIFICATE**

Section 1445 of the Internal Revenue Code of 1986 (the "**Code**") provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including Section 1445 of the Code), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform \_\_\_\_\_, a \_\_\_\_\_ ("**Transferee**") that withholding of tax is not required upon the disposition of a U.S. real property interest, the undersigned hereby certifies the following on behalf of \_\_\_\_\_, a \_\_\_\_\_ ("**Transferor**"):

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. Transferor is not a disregarded entity as defined in §1.1445-2(b)(2)(iii);
3. Transferor's U.S. employer identification number is \_\_\_\_\_; and
4. Transferor's office address is: 620 Newport Center Drive, Suite 1300, Newport Beach, California 92660.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

Date: \_\_\_\_\_, 200\_\_

\_\_\_\_\_ ]

**EXHIBIT L**

Form of Notice to Licensee/Lessee

(Attached)

NOTICE TO LICENSEE/LESSEE

[Date]

[Project Name]  
[Address]  
[City/State/ZIP]

Dear Tenant:

Notice is hereby given to the licensee/lessee of \_\_\_\_\_ (the "Property") that \_\_\_\_\_, a \_\_\_\_\_ ("Seller"), the current owner of the Property, has sold the Property to \_\_\_\_\_, a \_\_\_\_\_ ("Purchaser") effective (date of takeover). Purchaser has assumed all of the obligations of landlord under your license/lease, including any obligations with respect to your security deposit, if any, which has been transferred to Purchaser.

Sincerely,

"Seller"

\_\_\_\_\_  
a \_\_\_\_\_  
\_\_\_\_\_

"Purchaser"

\_\_\_\_\_  
a \_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT M**

Use Restrictions – Parcels 7 and 8

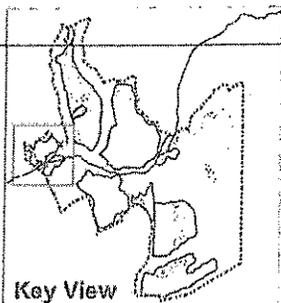
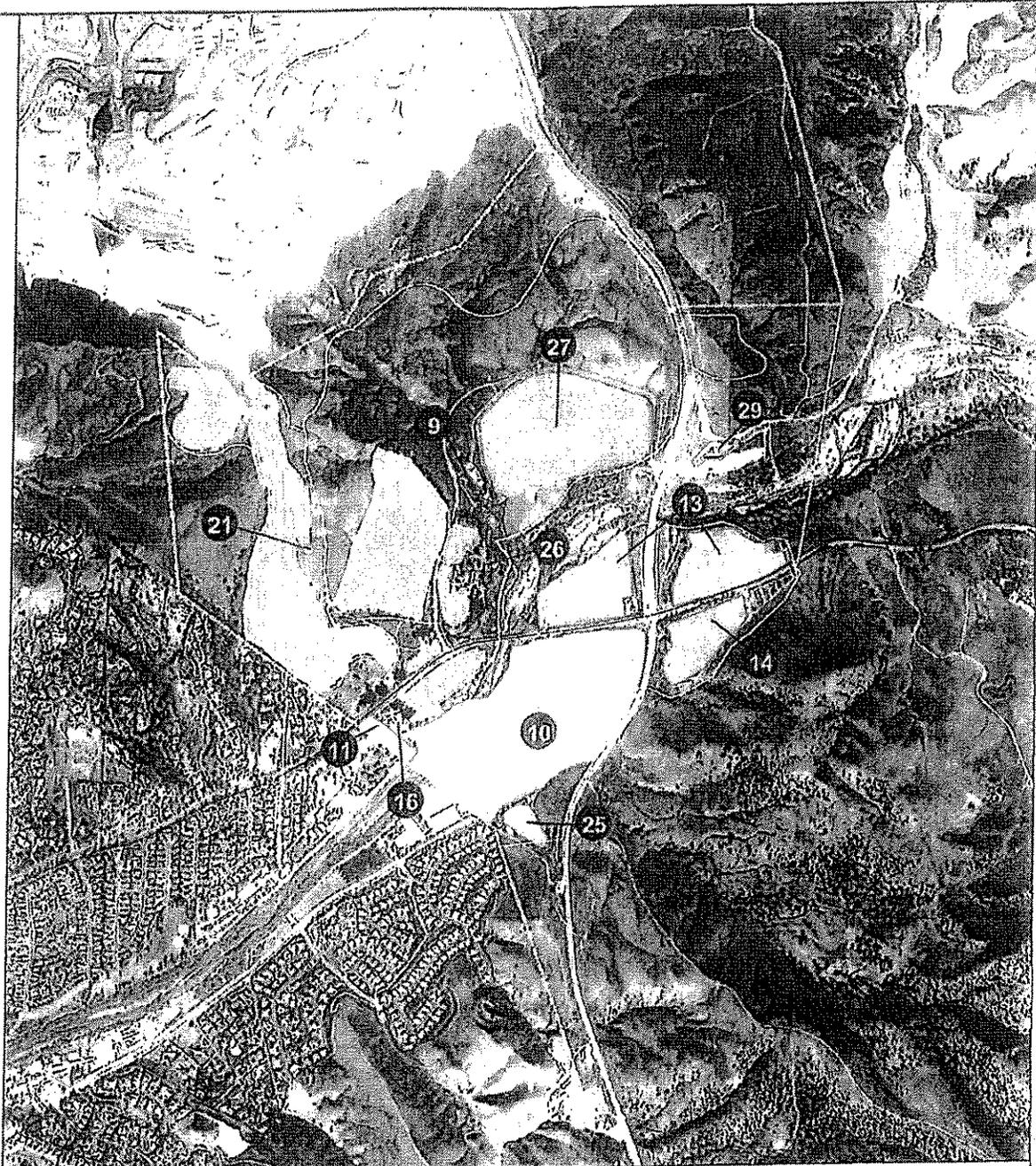
(M-1: Exhibit 4.1-3 of Ranch Plan EIR

M-2: Section III.H of PC Text

M-3: Section III.J of PC Text)

(Attached)

# **EXHIBIT M-1**



**Legend**

- 9 Leders Ranch Construction Yard
- 10 The Bierhelm Oaks Rancho Mission Viejo Riding Park
- 11 The Duke Corral
- 12 DM Color Express
- 13 TruGreen Nurseries
- 14 Ranch Buildings
- 15 Antenna Site (Lemon Grove)
- 16 Stone Sills
- 17 RMV Headquarters
- 18 Seasonal Row Crops
- 19 SMWD San Juan Creek Lift Station

**Planning Boundaries**

- Planning Area Boundary
- Development Boundary
- Ranch Plan Boundary

**Existing Land Use Legend**

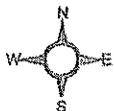
- Existing Uses
- Lease Areas
- RMV Residence
- Existing Agriculture
- Seasonal Row Crops
- Citrus Trees

**Existing Land Uses in Planning Area 1**

**Exhibit 4.1-3**

1" = 2,000'

The Ranch Plan



## **EXHIBIT M-2**

## II. AGRICULTURAL AND OTHER EXISTING AND ON-GOING USES

The purpose and intent of this Section is to allow for uses compatible with the existing agricultural and low intensity nature of the Ranch Plan PC area, and consistent with the A1 "General Agricultural" District Regulations of Zoning Code Section 7-9-55. These uses include non-agricultural uses consistent with the open space nature of agricultural uses. It is also intended that these uses (agricultural and non-agricultural) may be allowed as interim uses within Ranch Plan PC Planning Areas designated for future development.

1. **Agricultural Uses:** The following existing, relocated and future farming and ranching uses shall be allowed within any Planning Area, in addition to uses allowed by the A1 "General Agricultural" District Regulations per Zoning Code Section 7-9-55, subject to mitigation measures identified in the Ranch Plan Final Program EIR 589, per the procedures described in Section III.H.3 hereof:
  - a) Grazing (cattle, horses, sheep, goats, etc.).
  - b) Farming (citrus farming, dry farming, and row crops) .
  - c) Caretaker housing and related facilities in relation to on-going agricultural and ranching operations, including the "Ranch House" residence located south of Ortega Highway in Planning Area 10 and the "Horse Ranch" residence at 33101 Ortega Highway in Planning Area 4.
  - d) Employee quarters related to agricultural uses.
  - e) Livestock feeding ranches in compliance with applicable health and safety regulations.
  - f) Packing plants for agricultural products.
  - g) Permanent facilities for sale of agricultural products grown within the Ranch Plan PC Area.
  - h) Apiaries (if 150 feet from a street or highway, 40 feet from any property line and more than 400 feet from an occupied dwelling) .

2. **Existing Uses:** The following existing uses shall be allowed in appropriate locations throughout the Ranch Plan PC Area, per the procedures in Section III.H.3 hereof:

- a) Rancho Mission Viejo headquarters ("Oficina") at 28811 Ortega Highway, including a heliport.
- b) Ladera construction offices at 28811-A Ortega Highway.
- c) Rancho Mission Viejo maintenance yard at 28672 Ortega Highway.
- d) Ranching facilities also used periodically for recreational purposes (including "Cow Camp" at 31471 Ortega Highway, and "Amantes Camp" and "Campo Portola" within Planning Area 10).
- e) Communication transmitting, reception or relay facilities (including AirTouch/PacBell Wireless, Bell South, Saddleback KSBR, SDG&E, and SCE) and RMV Telecom antenna sites.
- f) Public/private utility buildings and structures.
- g) Existing infrastructure facilities including but not limited to all existing ranch roads, pipelines and utilities. Of particular note, reconstruction of the San Juan Creek crossing of roadways and utilities connecting Planning Area 3 to Ortega Highway shall be allowed in the event of storm damage.
- h) Wholesale nurseries (including Tree of Life Nursery, Color Spot Nursery, DM Color Express Nurseries, Tru-Green Wholesale Nurseries and O'Connell Landscaping yard).
- i) Commercial stables (including Oaks/Blenheim/Rancho Mission Viejo Riding Park, Oaks Corral/J. Irvine Smith, RJO Horse Ranch, St. Augustine's Training Center and Stables).
- j) ~~Research and development testing facilities and activities (including TRW, Northrop Grumman Space Technology and Propulsion Testing Site).~~
- k) Waste disposal operations and related uses (including Solag Disposal, Tierra Verde Industries and La Pata Greenwaste).
- l) Storage of recreational vehicles, campers, trailers and boats.
- m) Recycling and transfer/materials recovery facilities per Zoning Code Section 7-9-146.12 (including Elwes Materials Asphalt Recycling).
- n) Surface mining and quarrying of rock, sand, gravel, aggregate, earth, clay and similar materials per Zoning Code Section 7-9-104 (including California

Portland Cement/Catalina Pacific Concrete South, California Silica/Ogleby Norton, Transit Mixed Concrete Company/City Concrete, Olsen Pavingstone, Inc. and Sierra Soils).

- o) Resource mitigation sites for the preservation or replacement of native, riparian or other biological habitat, as approved by the appropriate regulatory agency (e.g., Army Corps of Engineers, U.S. Fish & Wildlife Service California Department of Fish and Game and/or the County).

### 3. Procedures:

#### a. Continuation of Existing Uses

- 1) Agricultural and existing uses listed in Sections III.H.1 and III.H.2, respectively, may continue in their present location(s) in perpetuity without need for subsequent permitting or approval.
- 2) Any buildings, structures or other facilities utilized in connection with an established/existing use may be repaired, replaced or modified without obtaining new permits or approvals; provided, however, that any and all construction activities performed in furtherance of the repair, replacement and/or modification of said buildings, structures and facilities shall comply with applicable building and safety codes.
- 3) In instances where a use listed in Sections III.H.1 and III.H.2 is allowed per a Use Permit, and that particular Use Permit is subject to a time limitation, the Use Permit may be renewed administratively per approval of the Director, PDS.

#### b. Expansion of Existing Uses

- 1) Agricultural Uses – Any agricultural use listed in Section III.H.1 may be expanded without the need to obtain a prior permit or other approval from the County. Notwithstanding, expansion of an agricultural use may require the issuance of a permit or other formal authorization from a federal or state agency prior to commencement or use of the expanded facility. Additionally, any construction activities performed in furtherance of the expanded use shall comply with applicable building and safety codes.
- 2) Existing Uses – Any existing use identified in Section III.H.2 may be expanded without the issuance of new County approvals or permits, provided that:
  - (a) Any expansion shall fully comply with all existing development and permitting standards for the particular use;

(b) All construction activities performed in furtherance of the expansion are conducted in accordance with applicable building and safety codes; and

(c) All necessary permits and/or authorizations from applicable federal and state agencies are obtained prior to commencement or use of the expanded facility.

c. Relocation of Existing Uses

1) Agricultural Uses – Any existing use identified in Section III.H.1 may be relocated within or throughout the Ranch Plan PC Area without the need for issuance of a new permit or other prior approval from the County. Notwithstanding, relocation of an existing agricultural use may require the issuance of a permit or other formal authorization from a state or federal agency prior to the desired relocation.

2) Existing Uses – Any existing use identified in Section III.H.2 may be relocated within or throughout the Ranch Plan PC Area, provided that:

(a) A Site Development Permit shall be required, per Zoning Administrator approval, in accordance with the provisions of Zoning Code Section 7-9-150.3(d);

(b) All necessary permits and/or authorizations from applicable federal and state agencies shall be obtained prior to relocation.

d. New Agricultural Uses: Consistent with the provisions of Section III.H.1, above, new agricultural uses (as well as any authorized uses identified within the A1 "General Agricultural" District) may be conducted within any Planning Area without the issuance of any County approvals or permits, provided that:

1) All new facilities, structures and buildings shall comply with existing development and design standards;

2) All construction activities performed in connection with the establishment of the new use(s) shall comply with applicable building and safety codes; and

3) All necessary permits and/or authorizations from applicable federal and state agencies shall be obtained prior to commencement of the new use.

# **EXHIBIT M-3**

## I. TEMPORARY USES PERMITTED

The purpose and intent of this Temporary Uses Permitted chapter of the Ranch Plan PC Text is to list all temporary uses that shall be allowed within all Planning Areas and use categories (with the exception of the Open Space (Section III.I) category, unless otherwise restricted below. Said temporary uses include, but are not limited to:

1. Construction activities (including the installation of construction offices and the storage of equipment and materials).
2. Construction office. The temporary use of a construction office during the construction of a main building on the same site shall be permitted upon the following conditions:
  - a. A temporary construction office shall be removed or shall be converted to a permitted use prior to the issuance of a certificate of use and occupancy for the main building or buildings. If construction is phased over a length of time, the permit may provide that certificates of use and occupancy may be issued for completed buildings, except the last buildings to be completed, prior to removal or conversion of the temporary use.
3. Continued use of an existing building during construction. The use of an existing, lawfully established building may continue during construction or relocation of another building on the same building site, in compliance with the following provisions:
  - a. Conformity with regulations. Prior to occupancy of a new building, the existing building will be brought into conformity with any additional regulation rendered applicable by the placement of any new building on the site. Conformity will be accomplished by removal, reconstruction, relocation, conversion, change of use or any combination thereof.
  - b. Guarantee of completion. The Director, PDS, shall require the landowner to provide a guarantee, which may include a bond, to ensure full compliance with applicable regulations upon completion of the new building or sooner if, in the opinion of the Director, PDS, work pertaining to the completion of all facilities required by law is not being diligently pursued.
4. Temporary excavation/extraction of construction aggregate or construction ~~related materials extraction shall be allowed during construction grading and on-~~ site earthmoving activities to promote project construction efficiencies and limit long-range transportation of construction aggregate and construction related material subject to all of the following conditions:
  - a. Such temporary excavation/extraction use would be included in applicable grading or Site Development Permits for a development project and consistent with the Ranch Plan PC and Final Program EIR 589.
  - b. Exportation of any surplus excavated/extracted construction aggregate or construction-related materials shall be limited to private or public construction projects within the boundaries of the Ranch Plan PC Area.
  - c. Exportation of any surplus excavated/extracted construction aggregate or construction related materials within the project site shall be allowed only

when actual construction grading and earthmoving activities have commenced and shall cease when it is determined that construction grading and earthmoving activities have terminated, have been indefinitely suspended, or are no longer being actively pursued for the development project.

5. Commercial coaches. A temporary commercial coach may be permitted subject to approval of a Site Development Permit in accordance with Section II.C, "Site Development Permits," and subject to the following:
  - a. Time limitation. A Site Development Permit application for a temporary commercial coach may be approved for a maximum of two (2) years from the date of approval.
  - b. Cash bond. A cash bond in the amount of five hundred dollars (\$500.00) for each commercial coach unit shall be posted with the Director, PDS, to guarantee the removal of each commercial coach unit upon the expiration of the Site Development Permit.
6. Christmas tree sales facility. A temporary Christmas tree sales facility shall be permitted subject to the following requirements:
  - a. Date of opening. A Christmas tree sales facility shall not be open for business during any calendar year prior to the day after Thanksgiving. However, ministerial permits necessary to establish the business may be issued by November 15.
  - b. Merchandise to be sold. A permitted Christmas tree sales facility shall not engage in the sale of any merchandise not directly associated with Christmas trees and Christmas decorations.
  - c. Electrical permit. The applicant shall secure an electrical permit from the Director, PDS if the facility is to be energized.
  - d. Removal of facility. The facility shall be removed and the premises shall be cleared of all debris and restored to the condition prior to the establishment of the facility within fourteen (14) days after Christmas.
  - e. Fire prevention standards. Each Christmas tree sales facility shall comply with fire prevention standards as approved and enforced by the County Fire Chief.

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7. Halloween pumpkin sales facility. A temporary Halloween pumpkin sales facility shall be permitted subject to the following requirements:
  - a. Date of opening. A Halloween pumpkin sales facility shall not be open for business during any calendar year prior to October 4.
  - b. Merchandise to be sold. A permitted Halloween pumpkin sales facility may not sell items not directly associated with pumpkins and Halloween decorations.
  - c. Electrical permit. The applicant shall secure an electrical permit from the Director, PDS if the facility is to be energized.

- d. Removal of facility. The facility shall be removed and the premises cleared of all debris and restored to the condition prior to the establishment of the facility by November 14.
  - e. Fire prevention standards. The facility shall comply with fire prevention standards as approved and enforced by the County Fire Chief.
8. Special outdoor gatherings. The temporary use of property for special outdoor gatherings including, but not limited to, pageants, fairs, carnivals, rodeos and other athletic, religious or entertainment events. Such activities are permitted, without regard for other land use regulations to the contrary, in any open space Planning Area in compliance with the following provisions:
- a. Activities on property owned by or leased to the County and public road rights-of-way may require an encroachment permit issued by the Director, PDS.
  - b. Private outdoor gatherings conducted within open space areas (including those open space areas regulated by Section III.I) shall not be subject to the restrictions and requirements established in Zoning Code Section 7-9-136.11, "Special Outdoor Gatherings".
  - c. The temporary use may be permitted for a period not to exceed ten (10) consecutive days. Events recurring more than four (4) times in a calendar year are not considered temporary.
  - d. The Director, PDS may require a cash bond or other guarantee for removal of the temporary use, cleanup and restoration of the activity site within seven (7) days of the activity conclusion.
  - e. Applications for permits/certificates required by subsections "a." and "b." above, shall be referred by the Director, PDS, to other affected County agencies as may be appropriate for review and comment.
  - f. Related issues including, but not limited to, police/security, food and water supply, use of tents and canopies, sanitation facilities, medical services, noise, signage, fire protection and traffic control shall be satisfactorily addressed as may be required by the Director, PDS, Sheriff, Fire Chief, or Health Officer in their administration of other County codes. Such other codes may require the applicant to obtain permits such as building, electrical, health and tent permits.
9. Farmers' Markets and off-site sale of agricultural products. A temporary stand for the sale of seasonal agricultural products not grown within the Ranch Plan PC Area shall be permitted subject to the following requirements:
- a. Establishment of use/time limit. Prior to beginning sale of any product, the applicant shall obtain a temporary Certificate of Use and Occupancy for land from the County. The Certificate shall be good for a period time of not to exceed 90 days from date of issue.
  - b. Merchandise to be sold. The stand shall be limited to the sale of agricultural products.
  - c. Electrical permit. The applicant shall secure an electrical permit from the Director, PDS if the facility is to be energized.

- d. Removal of facility. The facility shall be removed and the premises cleared of all debris and restored to the condition prior to the establishment of the facility within fourteen (14) days of the expiration of the time limit.
  - e. Fire prevention standards. The facility shall comply with fire prevention standards as approved and enforced by the County Fire Chief.
  - f. Site Development Permit. In addition to the above requirements, an approved Site Development Permit in accordance with Section II.C, "Site Development Permits," shall be required.
10. Fireworks displays, as allowed by the Orange County Fire Authority.
11. Subject to the approval of the Director, PDS, a landowner may conduct such other temporary uses upon his property as are consistent with the purpose and intent of this Section.

## EXHIBIT N

### Maximum Allowed Traffic

Subject to all applicable governmental laws, rules and restrictions, Seller places no restriction on City relating to the maximum number of trips to and from the Property on weekends and the following holidays: New Years, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas.

The maximum number of trips during the weekday P.M. peak hours from the equestrian facilities, sports field complexes and other allowed uses on the Property shall not exceed a total of 203 trips (combined inbound and outbound trips). The City may allocate these trips among the allowed uses in its discretion so long as the maximum number of trips specified above is not exceeded.

For purposes of calculating the number of trips from equestrian and sports field uses, a trip generation factor of 1.0 P.M. peak hour trip for each permanent equestrian stall, and a factor of 20.67 P.M. peak hour trips per sports field/soccer field shall be applied.

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#### Explanation of and Guide to Application of the "Maximum Allowed Traffic" Restriction

*Based on projections of future traffic associated with Planning Area 1 of the Ranch Plan, which includes the Property, Seller's primary concern is the traffic to be generated during the weekday P.M. peak hour (i.e., 4:45 p.m. to 5:45 p.m.). For that reason, the maximum allowed traffic restriction set forth above is keyed to the weekday P.M. peak hour. In short, the restriction requires the City to manage its operations and events to ensure that traffic generated from uses on the Property during that time period would not exceed 203 trips (combined inbound and outbound trips). As noted above, the City may allocate these trips among the allowed uses in its discretion so long as the maximum number of trips specified is not exceeded.*

*Given the nature of the uses to be conducted on the site, which are expected to be primarily a continuation of uses conducted on the Property over the past several years, it is not expected that the traffic limitation would unduly restrict the City's use of the Property. For example, most of the horse shows typically occur over 2 or more days and are low spectator events, with traffic to and from those activities being spread more or less evenly over those periods. Furthermore, horse trailers do not generally operate during the peak hours.*

*It should be noted that the above-stated trip generation rate of one (1) P.M. peak hour trip per horse stall does not pertain to the temporary stalls used in conjunction with the horse shows. That rate pertains to permanent stalls expected to be associated with the one (1) allowed commercial stable on the Property. Thus, for example, if there were 50 occupied horse stalls at the commercial stable, they would be expected to generate 50 trips during the P.M. peak hour.*

*With regard to sports field/soccer field uses on the Property, a factor of 20.67 P.M. peak hour trips would be applied as stated above. Thus, for example, if there were 4 sports fields/soccer fields in operation during weekday afternoon/evening hours, a total of 83 P.M. peak hour trips would be expected.*

*In summary, the cumulative trips associated with the horse shows, the permanent horse stalls and other allowed uses such as sports field uses (see below), would be considered in determining whether the maximum allowed traffic limitation was being complied with. Using the above examples, with 50 permanent horse stalls and 4 sports fields, a total of 133 P.M. peak hour trips would be generated, leaving 70 P.M. peak hour trips available for any horse shows or other events taking place at the same time.*

*It should be emphasized that trips to and from the Property on weekend days (i.e., Saturday and Sunday) and the holidays described above are not restricted. Thus, it would be expected that major events on the Property would be held on these days. In fact, given the maximum allowed traffic limitation, any event that would result in more than 203 P.M. peak hour trips, when the traffic from that event is added to traffic from other allowed uses on the Property, would be required to be held on the weekend.*

*In any event, the City is required to regulate any proposed major weekend activity such that it would not create significant adverse impacts on the circulation system and not adversely affect existing*

*and future residents in the area due to parking, dust, noise, light and glare or other impacts. To help reduce the potential for light and glare impacts, RMV has prohibited the use of permanent lighting on the site.*

*The application of normally required conditional use or other permit requirements of the County (or the City, after annexation of the Property), and CEQA review associated with such permitting, would be expected to adequately regulate such events and to ensure appropriate mitigation measures are applied where indicated.*

**EXHIBIT O**

Map of "Sensitive Resource Areas" and "Do Not Disturb Areas"

(Attached)

Parcel 8

Creek Open Space

Parcel 7

La Pata Open Space



**EXHIBIT P**

Prohibited Uses – La Pata and Creek Open Space Parcels

(Attached)

### Excerpt from SSHCP Conservation Easement regarding Prohibited Uses

*All activities on or uses of the Property inconsistent with the purpose of this Conservation Easement are prohibited, including the following*

- (a) *Fuel modification zones adjacent to development;*
- (b) *Commercial and industrial uses;*
- (c) *Row crop agricultural practices;*
- (d) *Residential uses;*
- (e) *Active recreation not provided for in Section 11.2 of the HCP (e.g., mountain biking is a Compatible Use), including golf and athletic fields;*
- (f) *Collection or removal of any native plant, animal or microorganism, unless authorized for monitoring or research under the HRMP, or for other purposes authorized by the County or RMV Reserve Managers for their respective portions of the Habitat Reserve and consistent with relevant state and/or federal permits, authorizations or agreements;*
- (g) *Deliberate introduction of any non-native plant or wildlife species or microorganism not authorized under the HRMP;*
- (h) *Disturbance, collection, or removal of cultural resources unless conducted under a survey, salvage or research program authorized by the County or RMV Reserve Managers for their respective portions of the Habitat Reserve and consistent with relevant state and/or federal permits, authorizations or agreements;*
- (i) *Collection of rocks, soils and fallen trees unless conducted under a survey, salvage or research program authorized by the County or RMV Reserve Managers for their respective portions of the Habitat Reserve consistent with the HRMP;*
- (j) *Collection of cultural artifacts unless authorized by the County or appropriate state/federal agency;*
- (k) *Any activities that are incompatible with or may disturb or disrupt ongoing HRMP activities;*
- (l) *Use of firearms or weapons, hunting or trapping (unless carried out pursuant to the HRMP) and fireworks;*

- (m) *Wood fires outside designated fire rings, and wood fires anywhere in the Habitat Reserve during extreme fire conditions;*
- (n) *Cigarette, cigar, pipe or other smoking;*
- (o) *Vehicle operations off designated roads, with the exception of farming equipment within designated agricultural areas and activities related to maintaining grazing, such as fence repairs;*
- (p) *Hiking, mountain biking and equestrian activities off designated trails;*
- (q) *Swimming and/or wading in lakes, ponds and creeks, unless conducted as part of activities authorized by the HRMP (e.g., monitoring or research of aquatic species);*
- (r) *All pets off leash (6-foot maximum leash), all pets outside designated locations or off designated trails and failure to dispose of pet waste other than in trash receptacles;*
- (s) *Alcohol consumption, except as specifically authorized by the RMV Reserve Manager for specific special outdoor gatherings;*
- (t) *Dumping of ashes, trash, garbage or other unsightly, offensive or toxic material or the storage or use of biocides and agricultural chemicals except as such biocides and/or chemicals may be necessary: (i) implement the AMP; or (ii) to support the allowed agricultural uses;*
- (u) *Nurseries;*
- (v) *Construction offices;*
- (w) *Maintenance yards;*
- (x) *Commercial stables (except the St. Augustine's Training Center and Stables or successors in its current location);*
- (y) *Research and development facilities (except for the uses at the Northrop Grumman-Capistrano Test Site permitted by the lease);*
- (z) *Waste disposal operations and associated uses (except the Recycling and Recovery facility as described in Section 3.7 of the Settlement Agreement);*
- (aa) *Storage facilities;*
- (bb) *Mining and quarrying of materials;*
- (cc) *Materials recycling and recovery facilities (except for the Recycling and Recovery Facility described in Section 3.7 of the Settlement Agreement);*

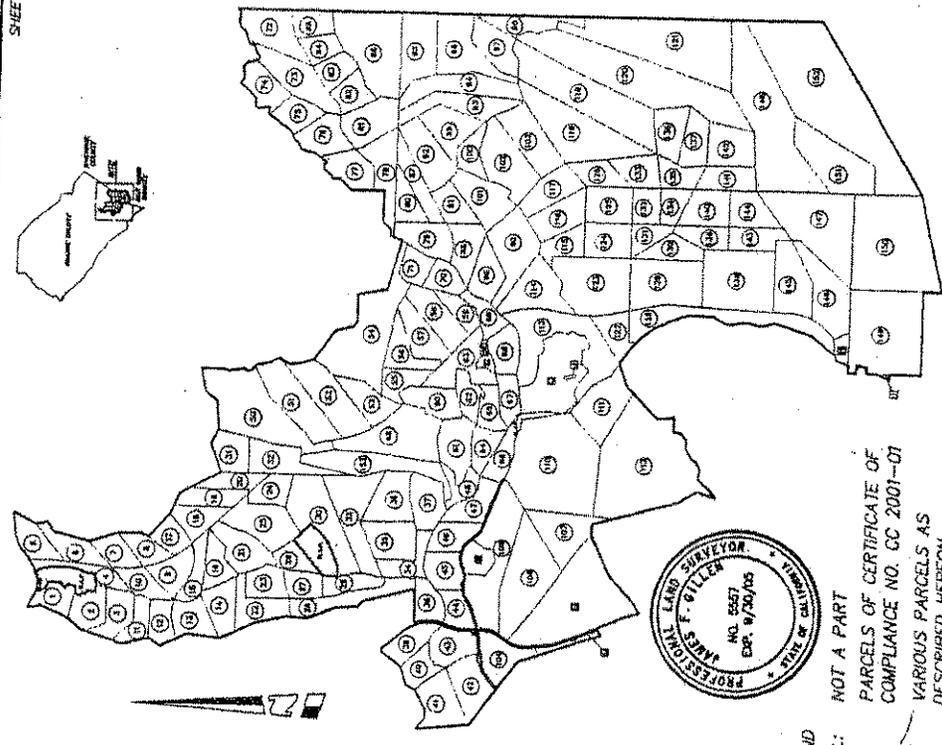
- (dd) *New, expanded and/or relocated citrus or other orchard crops (not including the additional 50 acres of orchards allowed pursuant to Section 4.2(b) of the Settlement Agreement);*
- (ee) *New, expanded and/or relocated dry farming;*
- (ff) *Irrigated crops (except citrus or other orchard crops as provided above);*
- (gg) *Packing plants (except when located within allowed orchards);*
- (hh) *Any uses or activities that are not Existing Agricultural/Ranching Practices as defined in section 1.3 of the Settlement Agreement, except as expressly authorized by the Settlement Agreement;*
- (ii) *Caretaker or employee housing and related facilities except as authorized by Sections 3.8 and 4.2(a) of the Settlement Agreement;*
- (jj) *Feed lots;*
- (kk) *Active recreation and related facilities except Existing Agricultural/Ranching Practices;*
- (ll) *Passive public recreation except as authorized in the HCP;*
- (mm) *Fire station or permanent wildland fire training facility;*
- (nn) *Fuel modification zones;*
- (oo) *Exploration, excavating, dredging, drilling, extraction, removal, production, storage, transport of hydrocarbon substances or minerals on the surface of, or below and within a depth of 500 feet of the surface of, the Property. [Exploration and extraction of such substances below a depth of 500 feet of the surface of the Property is not prohibited, provided that said activities do not compromise or impair the integrity of the protected habitat and species resources located on the Property.]*
- (pp) *Without the prior written consent of Grantee and the Service, which consent may be withheld, separating the water rights appurtenant to the Property.*

**EXHIBIT Q**

Ranch Plan Property (Benefited Area)

(Attached)

SHEET 1 OF 3



LEGEND  
 NOT A PART  
 PARCELS OF CERTIFICATE OF COMPLIANCE NO. CC 2001-01  
 VARIOUS PARCELS AS DESCRIBED HEREON.

SCALE NOT TO SCALE  
 DRAWN BY DAD  
 CHECKED BY PMC  
 DATE 6-16-04  
 JOB NO. 10-0755-01

SKETCH TO ACCOMPANY A LEGAL DESCRIPTION  
 RANCH PLAN  
 PLANNED COMMUNITY

**HUIT-ZOLLARS**  
 HUIT-ZOLLARS, INC.  
 430 Exchange, Suite 200, Irvine, CA 92602-3815  
 Phone: (714) 734-5800 Fax: (714) 734-5855  
 Approved: *[Signature]* 6/16/04

Description of Property

[See following pages]

NOTE:

PARCEL A IS SHOWN HEREON AS INDIVIDUAL PARCELS AS NUMBERS IN A CIRCLE ○  
 PARCELS B THROUGH I ARE SHOWN HEREON AS INDIVIDUAL PARCELS AS LETTERS IN A SQUARE □

LEGAL DESCRIPTION:

PARCEL A: PARCELS 1 THROUGH 107, INCLUSIVE, 110 THROUGH 126, INCLUSIVE, AND 128 THROUGH 153, INCLUSIVE, OF CERTIFICATE OF COMPLIANCE NO. CC 2001-01 IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN AND DESCRIBED IN THAT CERTAIN DOCUMENT RECORDED JULY 26, 2001 AS INSTRUMENT NO. 20010508835 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THE LAND AS DESCRIBED IN THE GRANT DEED TO THE FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY RECORDED MAY 30, 1996 AS INSTRUMENT NO. 19960269457, OF SAID OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER.

PARCEL B: PARCEL 2, IN SAID UNINCORPORATED TERRITORY, AS SHOWN ON THE MAP FILED IN BOOK 94, PAGES 23 THROUGH 27, INCLUSIVE, OF PARCEL MAPS, IN THE OFFICE OF SAID COUNTY RECORDER.

PARCEL C: PARCEL 1 OF PARCEL MAP 85-176, IN SAID UNINCORPORATED TERRITORY, AS SHOWN ON THE MAP FILED IN BOOK 248, PAGES 7 AND 8 OF PARCEL MAPS, IN THE OFFICE OF SAID COUNTY RECORDER.

EXCEPTING THEREFROM THE LAND AS DESCRIBED IN THE GRANT DEED TO LAST ROUND UP, INC. RECORDED SEPTEMBER 4, 1987 AS INSTRUMENT NO. 87-504837 OF SAID OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER.

PARCEL D: PARCEL 1 OF PARCEL MAP 93-159, IN SAID UNINCORPORATED TERRITORY, AS SHOWN ON THE MAP FILED IN BOOK 280, PAGES 49 AND 50 OF PARCEL MAPS, IN THE OFFICE OF SAID COUNTY RECORDER.

PARCEL E: PARCEL 1 OF PARCEL MAP 94-153, IN SAID UNINCORPORATED TERRITORY, AS SHOWN ON THE MAP FILED IN BOOK 287, PAGES 9 AND 10 OF PARCEL MAPS, IN THE OFFICE OF SAID COUNTY RECORDER.

PARCEL F: PARCEL 1 OF PARCEL MAP 95-161, IN SAID UNINCORPORATED TERRITORY, AS SHOWN ON THE MAP FILED IN BOOK 296, PAGES 11 AND 12 OF PARCEL MAPS, IN THE OFFICE OF SAID COUNTY RECORDER.

PARCEL G: PARCEL 2 OF LOT LINE ADJUSTMENT NO. LL 2003-004, IN SAID UNINCORPORATED TERRITORY, AS SHOWN ON EXHIBIT B ATTACHED TO THAT CERTAIN DOCUMENT RECORDED MARCH 19, 2003 AS INSTRUMENT NO. 2003002294469 OF SAID OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER.

TOGETHER WITH THOSE PORTIONS OF SECTION 24, TOWNSHIP 8 SOUTH, RANGE 7 WEST, OF RANCHO MISSION WEAO AS SHOWN ON THE MAP SECTIONIZING RANCHO MISSION WEAO, IN SAID UNINCORPORATED TERRITORY, FILED IN BOOK 9, PAGES 15 THROUGH 22, INCLUSIVE, OF RECORD OF SURVEYS IN THE OFFICE OF SAID COUNTY RECORDER, DESCRIBED IN PARCELS AS FOLLOWS:

PARCEL H: BOUNDED SOUTHERLY BY THE NORTHERLY LINE OF PARCEL 149 OF SAID CERTIFICATE OF COMPLIANCE NO. CC 2001-01, RECORDED JULY 26, 2001, AS INSTRUMENT NO. 20010508835 OF OFFICIAL RECORDS, BOUNDED NORTHEASTERLY BY THE SOUTHWESTERLY LINE OF PARCEL 146 OF SAID CERTIFICATE OF COMPLIANCE, BOUNDED NORTHERLY BY THE SOUTHERLY LINE OF PARCEL 128 OF SAID CERTIFICATE OF COMPLIANCE AND BOUNDED WESTERLY AND NORTHWESTERLY BY THE SOUTHEASTERLY LINE OF PARCEL 127 OF SAID CERTIFICATE OF COMPLIANCE.

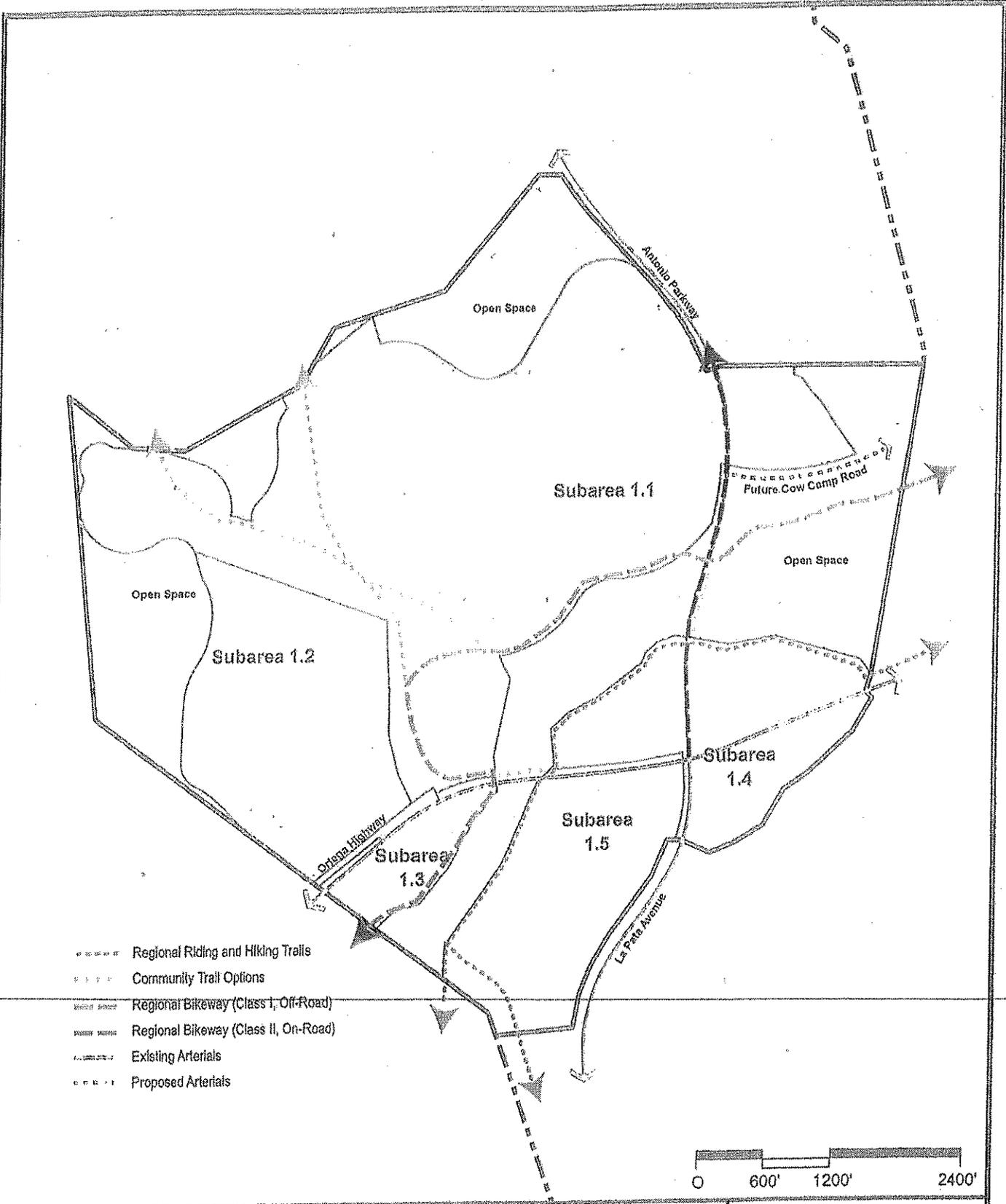
PARCEL I: BOUNDED EASTERLY BY THE WESTERLY LINE OF PARCEL 149 OF THAT CERTIFICATE OF COMPLIANCE NO. CC 2001-01, RECORDED JULY 26, 2001, AS INSTRUMENT NO. 20010508835 OF OFFICIAL RECORDS AND BOUNDED WESTERLY AND SOUTHERLY BY THE GENERAL EASTERLY LINE OF PARCEL 5 AS SHOWN ON CERTIFICATE OF COMPLIANCE NO. CC 87-06 RECORDED AUGUST 7, 1987 AS INSTRUMENT NO. 87-449871, BOTH OF OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER.

PARCEL J: THE LAND AS DESCRIBED IN THE GRANT DEED TO LAST ROUND UP, INC. RECORDED SEPTEMBER 4, 1987 AS INSTRUMENT NO. 87-504837 OF SAID OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER.

**EXHIBIT R**

Trails and Bikeways Concept for Planning Area 1

(Attached)



**PLANNING AREA 1**  
**TRAILS AND BIKEWAYS CONCEPT**  
**RANCH PLAN PLANNED COMMUNITY**

EXHIBIT: 11



EXHIBIT S

Waiver of Relocation Rights

The undersigned ("**Lessee**") hereby certifies to \_\_\_\_\_, a \_\_\_\_\_ ("**Landlord**"), and \_\_\_\_\_, a \_\_\_\_\_, and its successors and assigns (collectively, "**Buyer**"), as of the date of this Waiver:

A. Lessee is the Lessee under that certain Lease dated \_\_\_\_\_, relating to \_\_\_\_\_ (the "**Premises**"), together with any amendments thereto (collectively, the "**Lease**").

B. Lessee has no right to any relocation assistance or benefit whatsoever upon termination of this Lease and Lessee expressly waives any right to such assistance and/or benefit under any applicable laws.

C. Lessee acknowledges that this Waiver is being given in order to induce Buyer to purchase the property of which the Premises are a part, and to take on the obligations of Landlord. Buyer is entitled to rely upon this Waiver.

Dated: \_\_\_\_\_, 200\_\_

"LESSEE"

By: \_\_\_\_\_  
\_\_\_\_\_  
(Print Name) (Title)

ATTACHMENT 4

PROJECT #3 – RMV ACQUISITION  
LAFCO IMPLEMENTATION AGREEMENT

**LAFCO  
IMPLEMENTATION AGREEMENT**

**by and between**

**RMV COMMUNITY DEVELOPMENT, LLC, and DMB SAN JUAN  
INVESTMENT NORTH, LLC  
("RMV")**

**and**

**CITY OF SAN JUAN CAPISTRANO  
("City")**

**LAFCO  
IMPLEMENTATION AGREEMENT**

THIS LAFCO IMPLEMENTATION AGREEMENT (this "**Agreement**") is made and entered into as of \_\_\_\_\_, 2009, between **RMV COMMUNITY DEVELOPMENT, LLC**, a California limited liability company, and **DMB SAN JUAN INVESTMENT NORTH, LLC**, a Delaware limited liability company (collectively, "**RMV**"), and **CITY OF SAN JUAN CAPISTRANO**, a California municipal corporation ("**City**"), with reference to the following. RMV and City are collectively referred to herein as the "**Parties**".

A. On August 18, 2009 (the "**PSA Effective Date**") the Parties entered into a Purchase and Sale Agreement and Escrow Instructions (the "**PSA**") concerning RMV's proposed sale to the City of approximately 132 acres in the unincorporated county ("**Property**"). The Property is located south of Ortega Highway and west of La Pata Road and is adjacent to the City's municipal boundary. The Property is a portion of a larger area commonly known as the "**Ranch Plan property**" that is owned by RMV and related entities.

B. The Property would be acquired using the proceeds of bonds to be issued by City for that purpose.

C. Under the PSA, the Close of Escrow for acquisition of the Property is scheduled to occur no later than one hundred eighty (180) days after the PSA Effective Date. The PSA anticipated that the Property would be annexed to the City sometime following the Close of Escrow.

D. City has now determined that it would be in its best interest to have the Property inside the City's boundary at the time of acquisition and has therefore requested that RMV cooperate with it in its efforts to annex the Property and expand its sphere of influence ("**SOI**") over the Property (the annexation, and expansion of the SOI, are collectively referred to hereinafter as the "**Annexation**") such that the effective date of the Annexation ("**Annexation Effective Date**") would occur simultaneously with the Close of Escrow.

E. RMV has agreed to cooperate with the City in the Annexation process subject to the terms and conditions set forth below.

F. On September 15, 2009, at a duly noticed City Council meeting, City adopted a resolution of application to the Orange County Local Agency Formation Commission ("**LAFCO**") to take proceedings for the Annexation pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.

G. Unless otherwise specified, all capitalized terms herein will have the meaning set forth in the PSA.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Annexation Application and Processing. City shall submit an application for the Annexation of the Property to LAFCO, and thereafter work with LAFCO to process the application and obtain approval for the Annexation, all in accordance with the purchase and annexation schedule (“**Annexation Schedule**”) attached hereto as Exhibit A and incorporated herein by this reference. The Annexation Schedule may be modified from time to time with the mutual consent of the Parties. The City Manager of City is hereby authorized to consent to modifications of the Annexation Schedule on behalf of City.

2. Cooperation by RMV. Subject to each of the terms and conditions of this Agreement (specifically including, but not limited to, Sections 3 and 4 hereof) RMV agrees to cooperate with City so that (a) a complete application can be submitted to LAFCO per the Annexation Schedule and (b) any necessary information subsequently required from RMV is timely provided to allow for the processing of the annexation application.

3. Timing of Annexation; Close of Escrow. The Parties agree that the Annexation Effective Date shall be the date of the Close of Escrow. Each of the following actions, which shall occur in the following sequence, shall be conditions of the Close of Escrow:

a. Simultaneous recordation of the Certificate of Completion (of Annexation) issued by LAFCO and payment of the Purchase Price and RMV Cost Reimbursements (see Section 8 below) to RMV.

b. Recordation of the Grant Deed.

4. Termination.

a. Prior to the date of the City’s acceptance of bids for the bonds referenced herein, RMV shall have the right to terminate this Agreement at any time in its sole and absolute discretion upon ten (10) days prior written notice to City. Upon receipt of RMV’s notice to terminate, City shall immediately withdraw its application for annexation of the Property and request that LAFCO terminate all processing of said application. If LAFCO does not for any reason permit withdrawal of the application and terminate proceedings thereon, RMV shall have the right to withdraw its consent to waiver of protest proceedings, to protest the Annexation and to participate in such proceedings when they occur.

b. After the City’s acceptance of the bids for the bonds, RMV shall have the right to terminate this Agreement only for cause.

c. Unless earlier terminated as provided herein, this Agreement shall automatically terminate on the Annexation Effective Date and Close of Escrow.

5. City Planning Actions; CEQA Compliance. City shall take all actions required in order to effect the required open space General Plan Amendment and Pre-Zone of the Property in connection with Annexation, and shall insure that said actions are in compliance with CEQA and all other applicable laws, and are completed within the timeframes indicated in the Annexation Schedule.

6. Issuance of Bonds. City shall take all actions necessary to enable it to issue bonds for acquisition of the Property in accordance with the Annexation Schedule and shall insure that such actions are in compliance with all applicable laws. City agrees to include language in its Resolution Authorizing Issuance of Bonds ("**Bond Resolution**") specifically stating that the bond proceeds will be used to fund acquisition of the Property. Said Bond Resolution shall otherwise be reasonably acceptable to RMV and shall be adopted by City at least sixty (60) days prior to the Close of Escrow.

7. Additional Escrow Actions. The following provisions shall constitute Additional Escrow Instructions for the Escrow Holder (as allowed under Section 9.1 of the PSA) with the further proviso that they shall be subject to Section 10 of this Agreement.

a. City's Additional Deliveries Into Escrow. In addition to City's required deliveries into escrow as identified in Section 6.2 of the PSA, City shall deposit an amount equal to the RMV Cost Reimbursements in immediate, same-day federal funds wired for credit into the Escrow Holder's escrow account and deposited in Escrow Holder's escrow account no later than 1:00 p.m. (California time) one (1) business day prior to the Closing Date.

b. Additional Escrow Holder Actions. In addition to the actions to be taken by the Escrow Holder as identified in Section 9.1 of the PSA, the Escrow Holder shall take the following actions at the times specified:

(i) On the Closing Date, the Escrow Holder shall notify the LAFCO executive officer that all pre-conditions to Closing have been satisfied and request that the Certificate of Completion (of Annexation) be recorded as soon as possible in the official records of Orange County. The Escrow Holder shall deliver the RMV Cost Reimbursements and the Purchase Price to RMV simultaneous with the recordation of the Certificate of Completion (of Annexation).

(ii) Upon receipt of a conformed copy of the recorded Certificate of Completion (of Annexation), the Escrow Holder shall proceed with the recordation and/or release of documents in accordance with subsections 9.1(c) through (h) of the PSA.

8. Expenses. City shall pay all costs of any kind whatsoever associated with the submittal and processing of the annexation application including but not limited to all LAFCO fees, etc. City shall also reimburse RMV for all of RMV's out-of-pocket costs incurred in connection with RMV's support of the annexation application and processing including, but not limited to, RMV's legal fees (collectively, the "**RMV Cost Reimbursements**"). RMV shall submit copies of all invoices to be paid as part of the RMV Cost Reimbursements to City at least ten (10) days prior to the Close of Escrow.

9. Other Annexations Affecting Ranch Plan Property. City agrees not to initiate annexation of any part of the Ranch Plan property (as shown on Exhibit Q of the PSA), other than the Property acquired pursuant to this acquisition, unless a pre-annexation agreement among RMV, the City and LAFCO has been approved by those three parties. The foregoing provision shall supersede and replace Section 16.1(c) of the PSA and the corresponding provision in Paragraph C.1(c) of the Deed, and shall survive the termination of this Agreement.

10. Relationship with PSA. To the extent any provision of this Agreement is inconsistent with the PSA, the provisions of this Agreement shall supersede those of the PSA and shall be controlling. In that event, the provisions of the PSA shall be considered amended to the extent necessary to avoid the inconsistency.

11. Indemnification. City shall indemnify, defend (with counsel of RMV's choice) and hold harmless RMV and all of their respective officers, directors, stockholders, partners, members, agents, representatives, managers and employees, and each of them, from and against all liabilities, claims, damages, losses and expenses of any nature whatsoever (including, but not limited to, any costs or expenses for attorneys' fees and all incidental or consequential damages) arising out of, or in any way connected with, the subject matter of this Agreement. The provisions of this Section 11 shall survive the termination of this Agreement.

12. Notice. Any and all notices given or delivered by any Party hereto shall be delivered in person or by Federal Express or similar private commercial courier for next business day delivery or otherwise deposited in the United States mail in the County of Orange, California, duly certified or registered, postage prepaid, and addressed as set forth below:

To RMV:        Rancho Mission Viejo, LLC  
                  P.O. Box 9  
                  San Juan Capistrano, California 92698  
                  Attn: Richard Broming,  
                  Senior Vice President – Planning and Entitlement

To City:        City of San Juan Capistrano  
                  32400 Paseo Adelanto  
                  San Juan Capistrano, CA 92675  
                  Attention: City Manager

13. Miscellaneous.

a.        This Agreement, along with the underlying PSA, represents the entire agreement between the Parties hereto on the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral.

b.        This Agreement may be modified only by written instrument executed by both Parties hereto.

c.        Time is of the essence of each provision of this Agreement.

d.        Any failure by RMV to insist upon a strict performance by City of any of the terms and provisions hereof shall not be deemed to be a waiver of any of the terms and provisions hereof.

e.        This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

f. If any suit or action is brought to enforce or construe any provision of this Agreement, the prevailing party shall be entitled to recover its costs and expenses arising out of such litigation, including attorneys' fees and court costs, from the non-prevailing party; and each party hereto waives any and all rights to a trial by jury with respect to any dispute or action hereunder or otherwise to enforce or construe this Agreement.

g. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.

h. The Parties hereto are entering into this Agreement solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the Parties hereto, and their successors and assigns.

[signatures on following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

**RMV**

RMV Community Development, LLC,  
a California limited liability company

By: Rancho Mission Viejo, LLC,  
a Delaware limited liability company  
as authorized agent and manager

By: \_\_\_\_\_  
Dan Kelly  
Senior Vice President  
Government Relations

By: \_\_\_\_\_  
Richard Broming  
Senior Vice President  
Planning and Entitlement

DMB San Juan Investment North, LLC,  
a Delaware limited liability company

By: Rancho Mission Viejo, LLC,  
a Delaware limited liability company,  
as authorized agent and manager

By: \_\_\_\_\_  
Dan Kelly  
Senior Vice President  
Government Relations

By: \_\_\_\_\_  
Richard Broming  
Senior Vice President  
Planning and Entitlement

**CITY**

City of San Juan Capistrano.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form by:

\_\_\_\_\_  
City Attorney

AGREED TO THIS \_\_\_\_\_  
DAY OF \_\_\_\_\_, 200\_\_  
AS TO PROVISIONS RELATING  
TO ESCROW HOLDER:

FIDELITY NATIONAL TITLE COMPANY

By \_\_\_\_\_  
Its \_\_\_\_\_

EXHIBIT A

**Annexation Schedule**

[see following pages]

## EXHIBIT A

### City of San Juan Capistrano / Rancho Mission Viejo Purchase / Annexation Process TIME AND RESPONSIBILITY SCHEDULE

Revised on:  
Thursday, December 10, 2009

SYCR-BC = Bond Counsel - Stradling, Yocca, Carlson & Rauth  
 SYCR-DC = Disclosure Counsel - Stradling, Yocca, Carlson & Rauth  
 FRA = Financial Advisor - Fieldman, Rolapp & Associates  
 SJC = Buyer/Issuer - San Juan Capistrano  
 BNY = Paying Agent - Bank of New York Mellon  
 RMV = Seller - Rancho Mission Viejo  
 LAFCO = Local Agency Formation Commission  
 OCB = Orange County Board of Supervisors

Date	Description	Responsible Parties	Status
Friday, September 25, 2009	LAFCO staff prepares Status Letter for applicant identifying any items missing from application package	LAFCO	Complete
Wednesday, September 30, 2009	LAFCO staff prepares Preliminary Staff Report and sends to affected/interested agencies for comments on proposed annexation and sphere of influence change	LAFCO	Complete
Wednesday, September 30, 2009	LAFCO staff submits vicinity map of coterminous annexation sphere of influence territory to Assessor/Auditor for identification of tax rates areas and amount of negotiable property tax	LAFCO	Complete
Wednesday, September 30, 2009	City Council Agenda packet published for October 6, 2009	All	Complete
Tuesday, October 06, 2009	City Council meeting to adopt Resolution authorizing issuance of Bonds and approving legal documents, POS, CDA and NOS	SJC	Complete
Tuesday, October 06, 2009	City Council adopts property tax exchange resolution	SJC	Complete
Tuesday, October 06, 2009	City Council considers Implementation Agreement	SJC	Complete
Tuesday, October 06, 2009	City Council considers Ordinance forming Bond Oversight Committee	SJC	Complete
Wednesday, October 7, 2009	Provide owner letter of consent to LAFCO	RMV	Complete
Friday, October 09, 2009	Send out credit rating package to S&P and [TBD]	FRA	Complete
Tuesday, October 13, 2009	Planning commission General Plan Amendment and Pre-Zoning public hearing conducted	SJC	Complete
Thursday, October 22, 2009	Rating presentation with S&P and [TBD]	SJC/FRA/SYCR	Complete
Thursday, October 22, 2009	Discussion of how to invest bond proceeds	SJC/FRA/SYCR	Complete
Tuesday, November 10, 2009	Orange County adopts property tax exchange resolution	OCB	Complete

## EXHIBIT A

### City of San Juan Capistrano / Rancho Mission Viejo Purchase / Annexation Process TIME AND RESPONSIBILITY SCHEDULE

Date	Description	Responsible Parties	Status
Friday, November 13, 2009	Ratings received from S&P and [TBD]	SJC/FRA/SYCR	Complete
Wednesday, November 18, 2009	Public notice mailed to registered voters/property owners within 300' radius, affected/interested parties, and other governmental agencies. Also, notice published in the Orange County Register, and posted at meeting room	LAFCO	Complete
Wednesday, November 18, 2009	Public notice mailed to registered voters/property owners within 300' radius, affected/interested parties, and other governmental agencies. Also, notice published in the Capo Valley News, and posted at meeting room	SJC	Complete
Wednesday, November 25, 2009	LAFCO staff prepares staff report, resolutions, etc.	LAFCO	Complete
Tuesday, December 01, 2009	<b>City Council performs following actions: 1) Adopts resolution approving General Plan Amendment; 2) Introduces Ordinance approving Pre-Zone</b>	<b>SJC</b>	<b>Complete</b>
Wednesday, December 02, 2009	LAFCO Agenda packet published for December 9, 2009 LAFCO meeting	LAFCO	Complete
Wednesday, December 02, 2009	LAFCO staff report mailed out to Commission and all affected/interested parties/	LAFCO	Complete
Wednesday, December 02, 2009	LAFCO EO issues Certificate of Filing	LAFCO	
Wednesday, December 09, 2009	LAFCO meeting and public hearing to amend City's sphere of influence and approve annexation of RMV property, subject to conditions	LAFCO	
Tuesday, December 15, 2009	City Council second reading of Pre-zone Ordinance	SJC	
Tuesday, January 5, 2010	City Council approves Water and Sewer Service Agreement with SMWD	SJC	
Tuesday, January 5, 2010	Publish Notice of Intention to Sell ("NOIS") in Bond Buyer (GC Section 53692)	SYCR/FRA	
Wednesday, January 6, 2010	Print and mail NOS & POS and post on website for electronic dissemination	SYCR/FRA	
Tuesday, January 12, 2010	Open electronic bids/award bonds (competitive sale) and report to City Council the results of the sale	SJC/SYCR/FRA	
Wednesday, January 13, 2010	Print and mail final Official Statement	SJC/SYCR/FRA	
Thursday, January 14, 2010	Pre-zone Ordinance becomes law	SJC	
Friday, January 15, 2010	Pre-Closing at Stradling's Office at 1:30 pm PST	All	
Tuesday, January 19, 2010	Closing by phone @ 8:00 am PST, funds wired to escrow	All	
Wednesday, January 20, 2010	Annexation and sphere of influence recording with County Clerk	LAFCO	

## EXHIBIT A

### City of San Juan Capistrano / Rancho Mission Viejo Purchase / Annexation Process TIME AND RESPONSIBILITY SCHEDULE

Date	Description	Responsible Parties	Status
Wednesday, January 20, 2010	Escrow closes, funds paid out of escrow to the property owner, and property ownership is transferred (Annexation is effective)	All	
<b><u>ALTERNATE SCHEDULE, IF NECESSARY</u></b>			
Thursday, December 17, 2009	Publish Notice of Intention to Sell ("NOIS") in Bond Buyer (GC Section 53692)	SYCR/FRA	
Friday, December 18, 2009	Print and mail NOS & POS and post on website for electronic dissemination	SYCR/FRA	
Wednesday, January 06, 2010	LAFCO staff report mailed out to Commission and all affected/interested parties/	LAFCO	
Wednesday, January 06, 2010	LAFCO EO issues Certificate of Filing	LAFCO	
Wednesday, January 13, 2010	Back-up LAFCO Hearing	LAFCO	
Thursday, January 14, 2010	Open electronic bids/award bonds (competitive sale) and report to City Council the results of the sale	SJC/SYCR/FRA	
Tuesday, January 19, 2010	Print and mail final Official Statement	SJC/SYCR/FRA	
Monday, February 01, 2010	Pre-Closing at Stradling's Office at 1:30 pm PST	All	
Tuesday, February 02, 2010	Closing by phone @ 8:00 am PST, funds wired to escrow	All	
Monday, February 15, 2010	Annexation and sphere of influence recording with County Clerk	LAFCO	
Monday, February 15, 2010	Escrow closes, funds paid out of escrow to the property owner/property ownership is transferred (Property annexation complete)	All	

ATTACHMENT 5

PROJECT #3 – RMV ACQUISITION  
ABSTRACT OF LICENSE AND LEASE AGREEMENT

**ASSET: LICENSE – EQUESTRIAN & SPORTS FIELD**

**ABSTRACT**

*Date Prepared:* 12/16/2009

*Property Address :* At the southwest quadrant of the intersection of Ortega Highway and La Pata

*City:* San Juan Capistrano

*County:* Orange *State:* California

Basic Data

*Date of License:* January 1, 2009

*Licensor:* Rancho Mission Viejo, LLC, as agent and manager for RMV Community Development, LLC and DMB San Juan Investment North, LLC

*Original Licensee:* The Oaks/Blenheim Exhibitions, LLC

*Current Licensee:* Blenheim Facility Management, LLC

*License Term (# of months):* 36 months

*Contact:* R.J. Brandes

*License Commencement Date:* January 1, 2009

*Contact Phone No.:*

*Rent Commencement Date:* January 1, 2009

*Office Address:* P.O. Box 609  
San Juan Capistrano, CA 92693

*License Expiration Date:* Earlier of (i) 12 months after written notice from Licensor or Licensee, or (ii) December 31, 2011

*Guarantor:* N/A

*Renewal Option:* None

*Area Affected:* Rancho Mission Viejo Riding Park

*Primary Uses:* Used solely for the purpose of hosting sporting and equestrian events and church related activities so long as it does not increase traffic beyond existing levels.

*Use Restrictions:* Other uses shall be subject to prior review and written consent of Licensor, and such consent must be requested in writing not less than 30 days prior to the commencement of any such event or use. Licensee's proposed use shall be confirmed and authorized by Licensor not less frequently than each quarter by written request and written acceptance thereof. Licensee may park horse trailers and related vehicles on north side of San Juan Creek during equestrian events with permission. Licensee shall have right to permit Sierra Soils to use a portion of the property. Licensor reserves the exclusive use for the final 2 weeks of August annually for the Rancho Mission Viejo Rodeo.

Rent

<u>Base Rent:</u>	<u>Annual Amount</u>	<u>Rent/ per acre</u>	<u>Period</u>
\$16,666,67 per month	\$200,000		Jan 1-Dec 31, 2009
\$16,666,67 per month	\$200,000		Jan 1-Dec 31, 2010
\$16,666,67 per month	\$200,000		Jan 1-Dec 31, 2011

*Operating Costs* Licensee shall pay on demand fees which are attributable to reasonable costs and expenses of maintaining private and/or public roads or rights-of-ways utilized.  
Licensee shall be responsible for (i) expenses arising from use, operation, maintenance and repair of the

property, and (ii) heat, water, gas, electricity and other utilities.

*Insurance Requirements:*

CGL insurance, including auto, blanket contractual liability and personal injury and property damage for not less than \$2,000,000 combined single limited bodily injury, death and property damage liability per occurrence.

Workers compensation to protect Licensee and Licensor

Policies shall be primary and shall name Licensor as an additional insured, with provision that any other insurance carried by Licensor shall be noncontributing and shall waive all rights of subrogation.

*Real Estate Taxes:*

Real estate taxes shall be paid by property owner

*Security Deposit:*

N/A

**Highlights:**

*Sublet/Assign:* No assignment without prior written consent of Licensor  
Licensee may sublet to Sierra Soils

*Purchase Option:* None

*First Refusal to Purchase:* None

*Cancellation/Termination Rights:* Licensor may terminate the license if (i) abandoned, (ii) Licensee's default under License and failure to cure within 30 days of written notice, (iii) Licensee's material breach of the prohibition on entering or damaging riparian resource areas, (iv) insolvency or bankruptcy of Licensee, or (v) 12 months after written notice from Licensor.

*Relocation of Licensee:* Licensee shall have no right to any relocation assistance or benefit upon termination of the License.

**Special Provisions:**

*Environmental Indemnity Provisions:*

Upon expiration or early termination, Licensee shall prepare a Phase I environmental assessment report. Licensee shall be responsible for all cleanup and remediation work. Licensee agrees to assume all obligations of The Oaks/Blenheim Equestrian Exhibitions, LLC to restore and clean-up the property, including restoring the existing berm. Licensee shall be liable and responsible for cleanup and remediation attributable to Sierra Soils.

*Signage:*

Licensee may install signage along the property identifying the location of facility and activities/events conducted thereon, provided the signage is approved by Licensor and identifies the property as the Rancho Mission Viejo Riding Park

*Rules and Regulations*

Licensee shall comply with Licensor's rules and regulations

*Encroachment*

Licensor reserves the right to install on portions of the property infrastructure of any kind to carry out development of the Ranch Plan, to improve Ortega Highway and La Pata Road, and to construct the proposed regional riding and hiking trails

*Riparian Resource Area*

Licensee shall not enter the Riparian Resource Areas, and shall immediately notify Licensor of any damage to the Riparian Resource Areas. Licensee shall be responsible for restoration and remediation of any damaged Riparian Resource Areas.

**ASSET: LEASE – SMITH CORRAL AREA  
ABSTRACT**

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<i>Date Prepared:</i>	May 31, 2000 (original) December 15, 2009 (update)	<i>Property Address :</i>	Ortega Highway (southwesterly of Antonio / La Pata)
		<i>City:</i>	San Juan Capistrano
		<i>County:</i>	Orange
		<i>State:</i>	California

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**Basic Data**

<i>Date of Lease:</i>	September 1, 1999	<i>Landlord:</i>	RANCHO MISSION VIEJO, LLC, as agent and manager for RMV COMMUNITY DEVELOPMENT, LLC (as successor in interest to DMB SAN JUAN INVESTMENT NORTH)
<i>Original Tenant:</i>	ELLEN B. ROSENBAUM, TRUSTEE OF THE FAUQUIER TRUST		
<i>Current Tenant:</i>	THE OAKS, a Delaware corporation	<i>Lease Term (# of months):</i>	16 months
<i>Contact:</i>	Mrs. Joan Irvine Smith	<i>Lease Commencement Date:</i>	September 1, 1999
<i>Contact Phone No.:</i>		<i>Rent Commencement Date:</i>	September 1, 1999
<i>Office Address:</i>	P.O. Box 1453 San Juan Capistrano, CA 92675	<i>Lease Expiration Date:</i>	December 31, 2000
<i>Guarantor:</i>	None	<i>Renewal Option:</i>	Automatic one (1) year renewal unless (i) either party delivers written notice of termination to the other party at least one (1) year prior to Lease termination, (ii) default by Tenant or (iii) the Lease is terminated according to its terms.
<i>Acres Leased:</i>	Approximately 1.75 acres.	<i>Current Expiration:</i>	<u>December 22, 2005 letter:</u> Landlord advised Tenant that Landlord planned to terminate Lease as of December 31, 2006, but Landlord offered to coordinate with Tenant regarding Tenant's continued use of the Property until Landlord actually needed land for development of Ranch Plan project.

***Permitted Uses:***

Fenced grazing pasture and related incidental uses.

***Use Restrictions:***

Other than the Permitted Uses, no other uses/activities permitted on the Property the without prior written consent of Landlord. Tenant must comply with all laws and may not hunt unless in cooperation with a controlled "kill" program established by the California Dept. of Fish & Game.

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Rent

<u>Initial Base Rent</u>	<u>Annual Amount Rent</u>	<u>Rent/ per acre</u>	<u>Period</u>
\$2,500	\$2,500 (but subject to annual increase [see below])		Initial Base Rent due for sixteen (16) months (from September 1, 1999 through December 31, 2000)
<u>Additional Rent</u>	<u>Annual Amount</u>	<u>Rent/ per acre</u>	<u>Period</u>
Lease is a net lease. Tenant responsible for Operating Expenses and any other amounts payable pursuant to Lease.	As Applicable		Throughout Lease Term
<u>Renewal Period:</u>	<u>Current Annual Amount (Per Agreement)</u>	<u>Rent/ per acre</u>	<u>Period</u>
Base Rent increased by ten percent (10%) per annum for each Annual Renewal Term	\$4,000 for 2009 \$4,400 for 2010		Applies to each Renewal Term beyond the Original Term of sixteen (16) months

*Percentage Rent:* Not Applicable

*Late Payments & Penalties:* Late charge equal to ten percent (10%) of the delinquent amount applies if payment is not received within five (5) days of due date. Additionally, all delinquent amounts bear interest at the maximum allowable rate.

*Insurance Requirements:* Tenant to maintain commercial public liability insurance in the amount of \$1 million for each of the following: each personal injury, each accident and each damage to property. Tenant to provide certificates of insurance to Landlord as proof of coverage. Landlord to be named as additional insured, with Tenant's policy(ies) serving as primary coverage..

*Operating Expenses/Pass Thrus:* Tenant is solely responsible for all Operating Expenses relative to the Property.

*Real Estate Taxes:* Tenant is responsible for all real property taxes and all personal property taxes.

*Escalation:*

- Local CPI:
- above base year:
- above base amt.:

*Security Deposit:* Not Applicable

Highlights (Note any lease items considered unfavorable or requiring further investigation):

*Sublet/Assign:* Assignment and/or subleasing requires prior written approval by Landlord. Landlord shall receive fifty percent (50%) of any profit received by Tenant from any permitted assignment or sublease. Any permitted assignee or lessee must be jointly and severally liable with Tenant.

*Purchase Option:* None

*First Refusal to Purchase:* None

*Cancellation/Termination Rights:* Termination rights exist under condemnation and damage/destruction provisions.

*Relocation of Tenant:* Only addressed in relation to condemnation proceedings.

*Subordination:* The Lease shall be subordinate to all ground leases, deeds of trust, mortgages and any amendments thereto.

*Unfunded Broker Commissions:* Each party expressly represents and warrants that no brokers were involved with the transaction.

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**Special Provisions:**

*Environmental and Hazardous Materials Restrictions; Indemnity Provisions:*

Tenant may not place any solvents (treated or untreated) or harmful liquids in the drainage or sewer systems; and Tenant shall not dump or store waste materials, refuse or other materials (or allow any such materials to remain on the Property) except in proper enclosed trash areas.

Tenant shall not cause or permit any Hazardous Materials to be brought upon, stored, used, generated, released or disposed of on, under from or about the Property without Landlord's prior written consent.

Tenant is obligated to indemnify Landlord against Hazardous Materials issues, including the obligation to provide reporting, to perform clean-up and to prepare environmental audits. Moreover, Tenant is obligated to return the property to the condition that the Property was in prior to the introduction of Hazardous Materials.

*Water Rights:*

Landlord reserves all water rights, except domestic and irrigation to the extent required for use on the Property. If water is available on the Property, Landlord agrees to sell water to Tenant on the same terms/conditions under which water is made available to other tenants of Landlord.

*Tenant Default:*

The following events constitute Tenant defaults under the Lease:

- (i) Failure to make payment under the Lease (where said failure continues for five (5) days following due date);
- (ii) Failure to observe any other provision of Lease, where failure continues for thirty (30) days (where default is within the control of Tenant and may be cured within thirty (30) days). If default cannot be cured within thirty (30) days, Tenant is obligated to cure the default within a reasonable time (not to exceed ninety (90) days).
- (iii) Bankruptcy filing (and related).
- (iv) Abandonment of the premises for thirty (30) continuous days.

*Tenant's Offset Rights:*

Not Addressed

*Condemnation—Tenant's Right to Terminate/Right to Proceeds/Landlord's Obligation to Rebuild:*

In the event of condemnation, the Lease shall terminate as to any part of the Property that is taken. Tenant waives all rights to condemnation proceeds, EXCEPT for payments associated with the loss of/damage to trade fixtures, equipment and removable personal property, and moving and relocation expenses.

*Casualty Damage—Tenant's Right to Terminate/Right to Insurance Proceeds/Landlord's Obligation to Rebuild:*

If repairs due to casualty may be completed within ninety (90) days and insurance proceeds are available, Landlord shall repair the damage at its expense (EXCEPT for any items placed on or about the property by Tenant). Rent shall be abated during any such repair period.

If repair work due to casualty will require more than ninety (90) days to complete, but less than one hundred eighty (180) days, Landlord may (i) terminate the Lease or (ii) repair the damage if insurance proceeds are available. During any repair period, Rent shall be proportionately abated.

If repair work due to casualty will require more than one hundred eighty (180) days to completed, Landlord and Tenant shall each have the option to terminate the Lease. If neither party elects to terminate the lease, Rent will be abated during the period that the Property is unfit for occupancy (but only if rental abatement insurance proceeds are available).

*Restrictions on Landlord's Ability to Construct Improvements:*

Landlord has the right to construct and maintain certain improvements on the Property, as more particularly defined in the Lease (and described below).

*Rights Retained by Landlord:*

- (i) All mineral rights
- (ii) Rights of way (for roads, cattle and railways) as Landlord may deem necessary or convenient)
- (iii) Right to construct, operate and maintain transmitters, receivers, antennae, electrical or telephone transmission and distribution lines and facilities, pipelines, flumes and conduits
- (iv) Right to maintain, operate and replace existing reservoirs, pipelines, ditches conducts, flumes, antennae, transmission or distribution lines and facilities, waterways, roadway, cattleways, byways, streets and highways in, over, or upon the Property.
- (v) Water rights.

*Continuation Rights:*

Even though an Event of Default may have occurred and is continuing, the Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession.

ATTACHMENT 6

PROJECT #3 – RMV ACQUISITION  
APPRAISAL (Redacted)

**SUMMARY APPRAISAL REPORT**

**RANCHO MISSION VIEJO  
PARCELS 7 & 8 - PLANNING AREA 1  
(APN's 125-172-07 & 17)  
SWC ORTEGA HIGHWAY & LA PATA AVENUE  
ORANGE COUNTY, CALIFORNIA**

**Submitted to:**

Cindy Russell  
Assistant City Manager  
City of San Juan Capistrano  
32400 Paseo Adelanto  
San Juan Capistrano, CA 92675

**Submitted by:**

Gary L. Vogt, MAI  
Gary L. Vogt & Associates  
33191 Paseo Blanco  
San Juan Capistrano, CA 92675

**Date of Report:**

August 4, 2009

**Date of Value:**

July 1, 2009

**GARY L. VOGT & ASSOCIATES**  
REAL ESTATE APPRAISERS AND CONSULTANTS  
33191 PASEO BLANCO  
SAN JUAN CAPISTRANO, CA 92675

TELEPHONE: (949) 489-8029  
FACSIMILE: (949) 489-8028  
E-MAIL: glvogt@cox.net

GARY L. VOGT, MAI  
MEMBER, APPRAISAL INSTITUTE  
CERTIFIED GENERAL NO. AG007272

August 4, 2009

Cindy Russell  
Assistant City Manager  
City of San Juan Capistrano  
32400 Paseo Adelanto  
San Juan Capistrano, CA 92675

RE: Parcels 7 & 8 - Planning Area 1  
Rancho Mission Viejo  
(APN's 125-171-07 & 17)

Dear Ms. Russell:

In accordance with the Professional Services Agreement dated May 19, 2009, I have examined the above-referenced property for the purpose of estimating the market value of the fee simple interest. The effective date of this appraisal is July 1, 2009.

As a result of my investigation and analysis, I have concluded that the market value of the appraised property was \$31,000,000 as of July 1, 2009.

**THIRTY-ONE MILLION DOLLARS**  
**\$31,000,000**

It should be understood that the above opinion of market value considers the property in its "as is" physical condition and is based upon land uses available under the property's existing entitlements as a part of the Rancho Mission Viejo planned community.

Your attention is invited to the accompanying Summary Appraisal Report which sets forth certain descriptions, exhibits, market data, calculations, analyses, assumptions and limiting conditions from which, in part, the value conclusion was derived. In particular, your attention is directed to the Special Assumptions and Limiting Conditions set out on page four of the appraisal.

Respectfully Submitted:

Gary L. Vogt, MAI  
Certified General Appraiser  
CA No. AG007272

## EXECUTIVE SUMMARY

**Location:** Southwest corner Ortega Highway and La Pata Avenue, Unincorporated Orange County, California

**Assessor Parcel Nos.:** 125-171-07 & 17

**Parcel Size:** ±132.36 gross acres  
±64.6 net developable pad acres

**Physical Condition:** Mostly gently sloping benchland bisected by unimproved San Juan Creek

**Access:** Extensive frontage along Ortega Highway on the north and La Pata Avenue on the east. San Juan Creek Road currently terminates midway along the southwest side.

**Utilities:** Generally available in immediate area from Santa Margarita Water District, SD & GE, The Gas Company, and Cox Communications. Current plan is to obtain sewer service from City of San Juan Capistrano

**Zoning/Entitlements:** Zoned PC (Planned Community) as part of the larger Rancho Mission Viejo masterplan. General Plan designation is Suburban Residential (0.5 to 18 du/ac) on southeast side of creek and Urban Activity Center on northwest side. Also covered by executed Development Agreement with the County of Orange.

Vesting Tentative Tract Map Nos. 17053 & 17055 approved in March of 2007. Grading plans approved for northwest side of creek.

**Current Use:** Equestrian and Orchard

**Highest and Best Use:** Development to residential or other permitted uses in accordance with existing entitlements and as market conditions warrant.

**Purpose of Appraisal:** Estimate market value of fee simple interest in the vacant land considered in its "as is" physical condition and entitlement status

**Date of Value:** July 1, 2009

**Market Value Estimate:** **\$31,000,000** which is equivalent to:  
±132.36 gross acres @ \$234,210/acre  
or  
±64.6 net pad acres @ \$479,876/acre

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## CERTIFICATION

The undersigned does hereby certify as follows:

1. I inspected the subject property.
2. I have no present or contemplated future interest in the real estate that is the subject of this appraisal report nor do I have any personal interest or bias with respect to the subject matter or the parties hereto.
3. To the best of my knowledge and belief, the statements of fact contained in this report are true and correct.
4. The analyses and opinions contained herein are limited only by the reported qualifying assumptions and limiting conditions (imposed by the terms of my assignment or by the undersigned) and are my personal, unbiased professional analyses and opinions.
5. This appraisal report has been made in conformity with and is subject to the Uniform Standards of Professional Appraisal Practice and the Code of Professional Ethics of the Appraisal Institute. Further, the use of this appraisal report is subject to the requirements of the Appraisal Institute relative to review by its duly authorized representatives.
6. No one other than the undersigned prepared the analyses, conclusions, and opinions concerning real estate valuation that are set forth in this report. Donald J. Fike assisted in the preparation of the discounted cash flow study.
7. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
8. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
9. The Appraisal Institute and the California Office of Real Estate Appraisers conduct programs of continuing education for designated members and licensed appraisers. MAI's and licensed appraisers who meet the minimum standards of the programs are awarded periodic educational certification. As of the date of this report, I have completed the requirements of the continuing education programs of the Appraisal Institute and the California Office of Real Estate Appraisers.

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Gary L. Vogt, MAI  
Certified General Appraiser  
CA No. AG007272

## ASSUMPTIONS AND LIMITING CONDITIONS

The Uniform Standards of Professional Appraisal Practice require the appraiser to "clearly and unequivocally set forth all facts, assumptions and conditions upon which the appraisal is based." In compliance therewith, and to assist the reader in interpreting this report, such limiting conditions and assumptions are set forth as follows:

1. That the date of value to which the conclusions and opinions expressed in this report apply is set forth in the appraisal report. Further, that the dollar amount of any value opinion herein reported is based upon the purchasing power of the American dollar existing on that date.
2. That the appraiser assumes no responsibility for economic or physical factors which may affect the opinions herein stated occurring at some date after the date of the letter transmitting this report.
3. That the appraiser reserves the right to make such adjustments to the valuation as may be required by consideration of additional data or more reliable data that may become available.
4. That no title report covering the appraised property was reviewed by the appraiser. Except as may be discussed hereinafter, it is a premise of this appraisal that fee simple title was marketable at date of value and free and clear of any encumbrances or restrictions which would have a material adverse impact upon the property's utility and/or marketability. It is also assumed that the entire appraised property is under the ownership and control of a single entity.
5. That maps, plats, and exhibits included herein were obtained from various sources and are for illustration only as an aid in visualizing matters discussed within the report. They should not be considered as surveys or relied upon for any other purpose, nor should they be removed from, reproduced, or used apart from this report.
6. That no opinion is intended to be expressed for matters which require legal expertise or specialized investigation or knowledge beyond that customarily employed by real estate appraisers.
7. That there are no toxic wastes, contaminants, hazardous materials, or other environmental condition on or within the appraised property that may significantly and adversely affect its market value and/or utility for the permitted uses. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them.
8. That there exist no undisclosed restrictions or prohibitions concerning the possible use or development of the property for any purpose for which it is otherwise available.
9. That the property is appraised assuming that all applicable zoning and land use regulations have been complied with unless otherwise stated. Further, the property is assumed to be under responsible ownership, competent management, and available for its highest and best use.

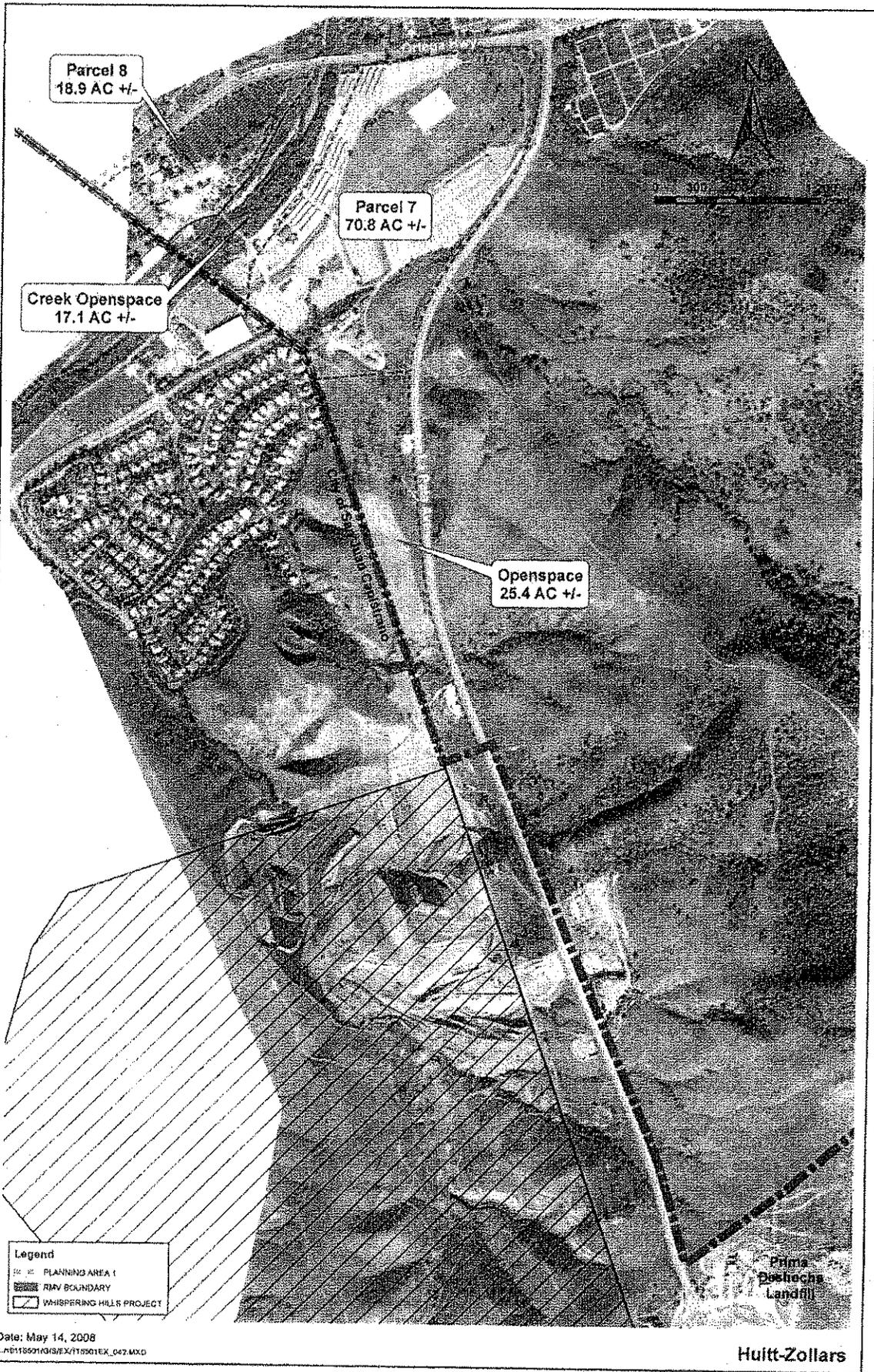
**ASSUMPTIONS AND LIMITING CONDITIONS:**

10. That since earthquakes are not uncommon in the area, no responsibility is assumed due to their possible effect on the appraised property .
11. That no soils or geology reports covering the appraised property were reviewed by the appraiser. It is a premise of this valuation that soil and geological conditions are stable, or capable of being stabilized through conventional grading and construction techniques, and upon development in accordance with sound engineering practices, will be capable of supporting standard construction consistent with highest and best use.
12. That this report is based, in part, upon information assembled from a wide range of sources. While the incorporated data is believed to be reliable, it cannot be guaranteed and no warranty is implied or intended for its accuracy. An impractical and uneconomic expenditure of time would be required in attempting to furnish unimpeachable verification in all instances.
13. That this appraisal report has been prepared for the exclusive use and benefit of the City of San Juan Capistrano. It should not be used or relied upon by any other party or for any other purpose. Any other party who uses or relies upon any information in this report, without the written consent of the preparer, does so at their own risk.

### **SPECIAL ASSUMPTIONS AND LIMITING CONDITIONS**

In addition to the general assumptions and limiting conditions set out on the prior pages, this appraisal is made subject to the following special assumptions and limiting conditions:

1. That no engineering survey was made by the appraiser. The assumed gross land area of  $\pm 132.36$  acres is taken from Orange County Assessor maps. The assumed net developable pad area of  $\pm 64.6$  acres is taken from Vesting Tentative Tract Map Nos. 17053 and 17055. Such information is assumed to be correct; however no warranty of same is implied or intended.
2. That for purposes of this appraisal, the land is assumed to be vacant, free of any leases or other such encumbrances, and immediately available for development to its highest and best use in accordance with normal market supply and demand conditions. It should be understood that the existing equestrian-related improvements have not been inspected or valued.
3. That sewer services will be provided to the appraised property by the City of San Juan Capistrano with sewer connection fees and offsite sewer construction costs generally consistent with those assumed hereinafter.
4. That the street improvements currently underway on Ortega Highway and La Pata Road as part of Phase III of the South County Road Improvement Program (SCRIP) are adequate to permit development of the subject property to its highest and best use in accordance with existing land use entitlements.
5. That the property value estimate contained herein relies in part upon land development cost estimates provided by the property owner. While the available cost estimates appear to be generally consistent with reported costs for other similar land development projects, they have not been verified with an independent third party source. Accordingly, it is an underlying assumption and premise of this appraisal that the cost estimates used in this report are complete, accurate, and representative of market-based costs for such work at date of value. It should be understood that if the actual land development costs are significantly higher or lower than the estimates used in this appraisal, the opinion of market value contained hereinafter may be invalid.
6. That the appraisal relies in part upon historical land transaction data from the Ladera Ranch development. Such information was provided to the appraiser by Rancho Mission Viejo on the condition that it remain confidential. Accordingly, such information is retained in the appraisal work file and is only available for review with the prior approval of Rancho Mission Viejo.



## GENERAL INFORMATION

### PURPOSE, FUNCTION, AND INTENDED USE OF APPRAISAL:

The appraised land consists of approximately 132 gross acres of land located at the southwest corner of Ortega Highway and La Pata Avenue in unincorporated Orange County, California. The property is a part of the Rancho Mission Viejo Master Development Plan and is commonly referred to as Parcels 7 and 8 of Planning Area 1.

The purpose of the appraisal is to estimate the current market value of the fee simple interest in the property as a separate market entity. The land is valued in its "as is" physical condition and entitlement status.

The client for this assignment is the City of San Juan Capistrano and it is my understanding that the intended use of the appraisal is to assist the City in evaluating a possible purchase of the property.

### DATE OF VALUE:

The date of value of this appraisal is July 1, 2009.

### DEFINITION OF VALUE:

The term "Market value" as used in this report is defined as<sup>1</sup>:

"the most probable price which a property will bring in a competitive and open market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress."

Implicit in this definition is consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- buyer and seller are typically motivated
- both parties are well informed and each acting in his own best interest
- the property is exposed for a reasonable time in the open market
- payment is made in terms of cash in U.S. Dollars or in terms of financial arrangements comparable thereto; and
- the price represents the normal consideration for the property sold unaffected by special financing or sales concessions granted by anyone associated with the sale.

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<sup>1</sup>

The Dictionary of Real Estate Appraisal, Appraisal Institute, Fourth Edition

## SCOPE OF WORK

The Uniform Standards of Professional Appraisal Practice require that the appraiser identify the scope of work necessary to complete the appraisal assignment. In compliance therewith, the following is a brief summary of the steps undertaken during the course of this appraisal assignment to gather, confirm, and analyze relevant data.

- Inspected and photographed the subject property and its environs in June and July of 2009. Investigated and documented physical and legal factors impacting the property, including topography, streets and access, utilities, drainage, zoning, special assessments, existing uses, and surrounding influences and development trends. Interviewed representatives of the property owner and officials of the City of San Juan Capistrano officials. Among the materials reviewed were:
  - Rancho Mission Viejo Zoning and General Plan Documents
  - Vesting Tentative Tract Map Nos. 17053 and 17055
  - Site Development Cost Estimates provided by the property owner
- Collected and analyzed pertinent information on local and regional forces that affect real property value, including social, economic, governmental, and environmental factors. Among the materials reviewed were:
  - Economic Forecasts by Chapman University, UCLA, Cal State Fullerton, Cal State Long Beach, and the LA Economic Development Corporation (LAEDC)
  - Population and employment data published by the State of California
  - Retail, Office, and Industrial market information published by CB Richard Ellis and Voit Commercial
- Searched available data sources for pertinent residential market data. Primary sources for residential land sale information were Co-Star Comps, First American Real Estate Solutions, local developers, and other appraisers. New home sales data were obtained by survey of active projects and from periodic reports published by DataQuick Information Systems, Hanley Wood, and MarketPoint Realty Advisors.
- Performed a highest and best analysis of the appraised land.
- Analyzed available market information and developed an indicated of current market value primarily using the developmental approach (discounted cash flow analysis).
- Documented the value conclusion in this Summary Appraisal Report and the appraisal work file.

This report is intended to represent an "appraisal assignment" as defined by the *Uniform Standards of Professional Appraisal Practice*. That is, it is intended that the assignment be performed such that the results of the analyses, opinions, and conclusions are those of a disinterested third party.

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## **QUALIFICATIONS**

## QUALIFICATIONS OF GARY L. VOGT, MAI

### **PROFESSIONAL BACKGROUND:**

- 1970-1975: Real Property Agent and Staff Appraiser, Orange County Department of Real Property Services, Santa Ana, CA
- 1975-1982: Real Estate Appraiser and Consultant, George Hamilton Jones, Inc., Newport Beach, CA
- 1982-Present: Self-employed Real Estate Appraiser and Consultant,  
Gary L. Vogt & Associates  
33191 Paseo Blanco, San Juan Capistrano, CA  
Phone: (949) 489-8029  
Fax: (949) 489-8028  
E-mail: glvogt@cox.net

### **PROFESSIONAL ACCREDITATIONS AND CIVIC AFFILIATIONS:**

- Member - Appraisal Institute (Certificate No. 5842):  
National Experience Examiner, 1989-91  
Board of Directors, Southern California Chapter, 1992-94  
Assistant Regional Member, Ethics Administration Division, 1994-96  
Certified General Appraiser, State of California (Certificate No. AG007272)  
Member - International Right of Way Association  
Member - Transportation Commission, City of San Juan Capistrano, 1997-2002

### **EDUCATION:**

- B.A., Economics, California State University, Los Angeles
- Advanced Real Estate and Appraisal Study from American Institute of Real Estates Appraisers, Society of Real Estate Appraisers, Appraisal Institute, and International Right of Way Association
- Instructor, Real Estate Appraisal, Coastline Community College

### **COURT QUALIFICATIONS:**

- Qualified as expert witness for purposes of real estate valuation in Orange County Superior Court and Federal Bankruptcy Court. Also appointed to numerous formal and informal arbitration panels.

### **SCOPE OF WORK EXPERIENCE:**

Work experience is concentrated primarily in Southern California but also includes assignments in Central and Northern California and Hawaii.

Experience includes valuation of most categories of real property including office buildings, industrial buildings, apartments, shopping centers, condominium projects, marinas, mobile home parks, single family residential, residential subdivision land, commercial land, industrial land, apartment land, master planned communities, wetlands, ranch land, large undeveloped acreage parcels, and special use properties. Real property interests appraised include fee simple, leased fee, leasehold, fractional interests, fair rental value, partial acquisitions, temporary easements, utility and drainage easements, sub-surface tunnel easements, slope easements, and rights of way.

**REPRESENTATIVE APPRAISAL ASSIGNMENTS:**

<b>Client</b>	<b>Job Description</b>
Department of the Navy	Appraisal of ±1,500 acre Tustin Marine Corps Air Station assuming conversion to master-planned community with residential, commercial, and business park uses  Valuation of 400,000 SF NEXCOM warehouse & distribution center in Chino, CA
Newco Management Co.	Valuation of 103,000 SF office building in San Bernardino, CA and 175,000 SF office & retail project in San Juan Capistrano, CA
The Irvine Company	Valuation of Newport Coast, Newport Ridge, and Crystal Cove planned communities for formation of Assessment District Nos. 88-1, 92-1 & 01-1  Valuation of drainage and utility easements from ±193 acre University of California Agricultural Research Station in Irvine
City of Riverside	Valuation of partial takings from nine ownerships for widening of Arlington Avenue
County of Riverside	Valuation of R/W from five ownerships for Galena Street / I-15 Interchange  Valuation of partial takings from 64 ownerships for widening of Reche Canyon Rd.
Department of the Navy & Southern California Edison	Estimate of market value for 134 acres of land surrounding San Onofre Nuclear Power Station
University of California	Valuation of vacant land in University Research Park for ground lease
City of San Juan Capistrano	Valuation of five existing city parks for establishment of In-Lieu park fees.  Valuation of various open space parcels
County of Orange	Valuation of 1,600 acres of raw land in City of Highland, San Bernardino County  Valuation of twenty-eight tidelands parcels adjacent to Harbor Island, Newport Bay
City of Irvine	Valuation of rights of way from six ownerships for street widening at Culver Drive and Michelson Drive and Culver Drive and Walnut Avenue  Valuation of various residential and commercial projects for Assessment District Nos. 85-7, 87-8, 93-14, 97-16, 97-17, 00-18, 03-19, 04-20, 05-21 & 07-22
Metropolitan Water District	Valuation of waterline easements from nine ownerships in Rancho California  Valuation of deep tunnel easements and surface construction easements from four ownerships near Redlands
Irvine Unified School District	Valuation of Quail Hill, Shady Canyon, Turtle Ridge, Woodbury, Portola Springs, and Stonegate residential communities for CFD Nos. 01-1, 04-1, 04-2, 06-1 & 07-1.
Best, Best & Krieger	Valuation of 127,000 SF office building in Riverside, CA
City of Corona	Valuation of ten existing City park sites for establishment of In-Lieu park fees.
Tustin Unified School District	Valuation of Orchard Hills and Lower Peters Canyon planned communities for CFD Nos. 97-1 & 07-1.
City of San Clemente	Valuation of proposed "North Beach" commercial site  Valuation of 9-acre vacant parcel at Avenida Vista Hermosa & Avenida La Pata
South Orange County Community College District	Valuation of ±68-acre portion of former Tustin Marine Corps Air Station for proposed Learning Village

## REPRESENTATIVE CLIENTS:

### Financial Institutions:

Home Savings of America  
Merrill Lynch Capital Markets  
Downey Savings and Loan  
Manufactures Bank  
PaineWebber Inc.

Bank of America  
Wells Fargo Bank  
First Interstate Bank  
Stone & Youngberg

### Corporations / Developers:

Mission Viejo Company  
The Irvine Company  
William Lyon Company  
Standard Pacific Corporation  
Van Daele Development  
M. H. Sherman Company  
Manor Care, Inc.  
AirTouch Cellular  
TRW Space & Electronics  
Centerstone Development

Kaiser Permanente  
Warmington Homes  
Shea Homes  
Santa Margarita Company  
Aetna Realty Advisors  
O'Hill Partners  
Carson Estate Company  
Preferred Property Development  
Rossmoor Partners  
Warmington Land Company

### Government / Public Agencies:

Laguna Beach Unified School District  
Saddleback Unified School District  
Southern California Edison Company  
Orange County Water District  
City of Newport Beach  
University of California  
Hemet Unified School District  
Federal Deposit Insurance Corporation  
City of Irvine  
City of Corona  
City of Tustin  
City of Santa Clarita  
Orange County Transit District  
City of Orange  
Etiwanda School District  
City of Fullerton  
Alvord Unified School District  
City of West Covina  
Mt. San Jacinto College District  
City of Lake Forest

City of Riverside  
Solano Beach School District  
Metropolitan Water District of So. Calif.  
City of San Juan Capistrano  
County of Orange  
City of San Clemente  
Resolution Trust Corporation  
City of Costa Mesa  
City of Perris  
Rancho Santiago College  
County of Los Angeles  
Moreno Valley School District  
City of Brea  
Riverside County Flood Control District  
Transportation Corridor Agencies  
Community Redevelopment Agency, City of LA  
Tustin Unified School District  
Department of the Navy  
City of Fontana

### Law Firms:

Best, Best and Krieger, Riverside & Irvine  
Paul, Hastings, Janofsky & Walker, Costa Mesa  
Gibson, Dunn & Crutcher, Washington, D. C.  
Harwood, Adkinson and Bernauer, Newport Beach  
Stern, Neubauer, Greenwald & Pauly, Santa Monica  
Urland, Morello, Dunn and Maynard, Santa Ana  
Rutter, O'Sullivan, Greene and Hobbs, Los Angeles  
Palmieri, Tyler, Wiener, Wilhelm and Waldron, Irvine  
Wise, Wiezorek, Timmons and Wise, Long Beach  
Drummy, King, White and Gire, Costa Mesa  
Bowie, Arneson, Wiles & Giannone, Newport Beach

Fulbright & Jaworski, Los Angeles  
Phelps, Schwarz & Phelps, Pasadena  
Oliver, Barr and Vose, Los Angeles  
Allen Matkins Leck Gamble & Mallory  
Turner & Mulcare, San Mateo  
Thompson & Colgate, Riverside  
Call Clayton & Jensen, Newport Beach

DONALD J. FIKE

D. J. FIKE & ASSOCIATES, INC.

REAL ESTATE FINANCIAL CONSULTING

PROFESSIONAL QUALIFICATIONS

(562) 598-2690 Tel  
(562) 598-1558 Fax  
460 Linares Ave, Long Beach, CA 90803  
E-Mail don.fike@gte.net

EDUCATION

B.A. Economics, Phi Beta Kappa, University Of Southern California  
M.B.A., Accounting & Finance, UCLA  
Appraisal Institute Courses, Capitalization A & B, Report Writing, Standards

PROFESSIONAL & LICENSING

Real Estate Broker, California  
Certified Financial Planner (CFP) (Inactive)

CONSULTING PRACTICE SINCE 1983

Conducts a diversified consulting practice with a wide variety of assignments in both COMMERCIAL and RESIDENTIAL real estate.

PROVIDES	- Financial Analysis	FOR	- Purchase or Sale
	- Appraisal Services		- Space Or Ground Lease
	- Operations Planning		- Finance
	- Project Packaging		- Joint Venture
	- Negotiations Support		- Partial & Partnership Interests
	- Litigation Support		- Estate Planning

Consulting practice draws on previous operations experience in all areas of real estate and investment analysis.

Expert witness Los Angeles County Superior Court, Orange County Superior Court, Federal Bankruptcy Court.

DONALD J. FIKE, PROFESSIONAL QUALIFICATIONS, Continued

PRIOR EXPERIENCE

1982 - 1983 - Financial Planner - Hansch Financial Group. Conducted personal and corporate financial planning and investment sales practice. Developed financial planning model used by major insurers and broker dealers.

1981 - 1982 - Executive Vice President, Adams Financial Group. Acquired property for and structured syndications. Designed and wrote offering prospectuses in conjunction with CPA and Attorney. Purchased, operated and sold several apartment properties in Oregon, Texas and Utah.

1980 - 1981 - Vice President & General Manager, Asset Management Division, The Koll Company. Managed asset management division with 6,000,000 rentable square feet and rent collections of \$36.0 million per year.

1978 - 1979 - Vice President & Controller, Coast Property Management. Managed operations and supervised accounting for a development and asset management company owning retail and office projects.

1971 - 1977 - Coldwell Banker Management Corporation.

Operations Manager, Asset Management Division (manager of closed end pension funds.) Managed commercial property in several states. Provided acquisitions support for property purchases and REIT swaps. Developed cash flow models for control of multiple development projects within each closed end fund.

Real Estate Analyst, Mortgage Banking Division. Screened, packages and presented properties to institutional purchasers. Negotiated and closed purchases.

Manager of Loan Processing, Mortgage Banking Division. Managed group closing \$250,000,000 of commercial real estate loans. Member of Mortgage Banking Steering Committee for a \$1.0 Billion servicing portfolio, construction lending group and several commercial loan origination offices.

Systems Analyst, Administrative Support Group. Developed screening models for location of new Coldwell Banker Commercial Brokerage Offices. Developed real estate analysis software.

1969 - 1971 - Builders Resources Corporation. Developed computer models for analysis and control of cash flows for 65 residential for sale projects. Developed software for analysis of existing real estate projects and syndications. Developed client management system for major syndicator.

DONALD J. FIKE, PROFESSIONAL QUALIFICATIONS, Continued

PARTIAL CLIENT LIST

Access Property Services  
Amdal Development Corporation  
American Eagle Communities  
Aran & Miller  
Arden Realty  
Bank Of America  
Bircher Enterprises  
Burnett Companies  
Briarcliff Development  
Business Properties Development Company  
Century American Development  
CIP Real Estate  
The French Company  
Hover Development Company, Inc.  
Institutional Housing Partners, Inc.  
James R. Wood Company  
The Laing Company  
Larry W. Heglar & Associates  
Lee & Associates  
LYON Capital Ventures  
McWalters & Kelterer  
Meeker Companies  
MiraSera Development Company  
Monterey Development Group  
Mitsui Fudosan, (U.S.A.), Inc.  
New Cities Development Group  
New Urban West, Inc.  
Pacesetter Homes & Business Properties  
Pacific Cascade Group  
Parker Properties  
Pulte Home Corporation  
Rose Hills Memorial Park  
R.W.R. Homes, Inc.  
Sanwa Bank  
Santa Margarita Company  
Schaffel Development Company  
Scripps Ranch Business Properties  
Shea Homes & Business Properties  
Sony Pictures Entertainment  
Spurgin Development Company  
Sumitomo Bank of California  
Taylor Woodrow Homes  
Troxler & Associates  
Vintage Communities

DONALD J. FIKE, PROFESSIONAL QUALIFICATIONS, Continued

TYPICAL CONSULTING ASSIGNMENTS

Assignments may be 1) Developing assumptions and financial projections, 2) Consulting to develop operating plans and financial structure, 3) Involvement in presentation or negotiation meetings.

Prepare financial analysis to be used for valuation and/or presentation for financing, joint venture, sale, or continuing investor/lender relations.

Prepare development cash flow analysis to determine land residual value.

Major tenancies: 1) Determine impact of major tenant lease on project cost, financing potential and value. 2) Analysis for major tenant of value of equity participation and tradeoff in terms of lease costs.

Analyze impact of joint venture or financing structure for developer and investor.

Lease by lease analysis of commercial projects to determine: 1) cost to complete, refinance potential and sale value for an owner. 2) Acquisition value and financing structure including impact of tenant turnover on rents, expense reimbursements, refurbishment and leasing costs.

Analysis of a mixed use project to determine impact of changes in product types, sizes and phasing.

Ground leases: 1) Analysis of project value subject to a ground lease. 2) Structure development project to balance objectives of ground owner and developer/lessee.

Due Diligence at Property Acquisition or Financial Restructure.

Provide litigation support & expert witness testimony.

Net present value analysis of partial ownership interests.

Analysis of major residential land development project under various absorption scenarios to determine parcels to build out with units and parcels to sell as finished lots.

Preparation of complete financing presentation package.

Development of computer software tailored to client analysis or control needs.

DONALD J. FIKE, PROFESSIONAL QUALIFICATIONS, Continued

SELECTED ASSIGNMENTS

AMERICAN EAGLE COMMUNITIES – Privatization of Military Housing Projects. Financial projections, proposal preparation, proposal presentation, and negotiating support for competitions for transfer of married family housing into public/private partnerships. American Eagle participated in more than 20 competitions and obtained and is now executing 6 contracts with the Army, Air Force and Navy with in excess of 8,000 units. This includes the 3,000 unit multiple locatin project for married family housing in Puget Sound for the Department of the Navy. Worked with bond underwriters, S&P and Moody's to provide in excess of \$750,000,000 in bond financing.

HARBOR VILLAGE, LOS ANGELES - Complete teardown and replacement of 400 units of HUD housing owned by the Housing Authority of Los Angeles. Located at Vermont and Pacific Coast Highway in Harbor City. Site controlled by a pre-paid 99 year ground lease. Construction of a new gated community totalling 624 units. Rental units - 400 units replaced with new townhome and single family units financed with taxed advantaged financing, owned and operated by the Related Companies. For Sales units - 224 single family and townhome units built by Laing Homes in a joint venture with Institutional Housing Partners & HP Developments LLC.

LADERA PLANNED COMMUNITY, ORANGE COUNTY, CA - Master Planned Community of Ladera includes 5,000 plus residential units and 100 plus commercial acres. Currently under construction by the Rancho Mission Viejo Company.

SUMMIT AT ALISO VIEJO, CA - Office buildings and support service space totalling 1,700,000 square feet in four phases. Analysis leading to initial joint venture. Continuing analysis of phases as they commence construction.

Trails Village Center and Lake Mead & Buffalo Center, SUMMERLIN, LAS VEGAS, NV - Two neighborhood shopping centers (Von's and Longs Drugs) in the planned community of Summerlin. Projects are a joint venture between Summerlin and Business Properties.

Briarcliff Development – Analysis of multiple use commercial development project in Kansas City, MO, including Office, Industrial, Retail, and Apartment Construction.

Institutional Housing Partners – Provide Financial Analysis and Consulting for this CALPERS Advisor on equity financing for Residential Construction and Land Development projects in excess of one billion dollars of housing and land sales.

Amdal Development Corporation – Analysis of multiple product senior housing project including Senior Apartments, Condominiums, Assisted Living Facility, and Skilled Nursing facility.

U.S. Marine Corps Air Station, Tustin California – Appraisal Support for value of one thousand acre urban infill property to be transferred from military to mixed civilian use.

Fort Carson Colorado – Analysis of cash flows for response to RFQ for privatization of military housing at Fort Carson. This included construction of 840 new housing units, replacement of 456 units and renovation of 1,367 units.



ATTACHMENT 7

PROJECT #3 – RMV ACQUISITION  
LAFCO ANNEXATION APPLICATION AND  
LAFCO STAFF REPORT DATED DECEMBER 9, 2009

NOTICE OF PUBLIC HEARING

LOCAL AGENCY FORMATION COMMISSION

NOTICE IS HEREBY GIVEN that a public hearing will be held by the Local Agency Formation Commission of Orange County to consider the proposed ORTEGA/LA PATA ANNEXATION TO THE CITY OF SAN JUAN CAPISTRANO (CA 09-19).

The actions involved in this proposal include the annexation of approximately 132 acres of territory located in the unincorporated area of Rancho Mission Viejo, southwest of the intersection of Ortega Highway and La Pata Avenue, immediately north and east of the existing San Juan Capistrano city limits. The proposal also includes a concurrent sphere of influence (SOI) amendment, to include the proposed annexation territory within the City of San Juan Capistrano's SOI.

The hearing will be held on Wednesday, December 9, 2009 at 9:00 a.m. at the Orange County Hall of Administration, 10 Civic Center Plaza, Planning Commission Hearing Room, Santa Ana, CA 92701.

At the hearing, the Commission will consider oral and written testimony by any interested person or affected agency and the report of the Executive Officer. The proposal file may be examined at 12 Civic Center Plaza, Room 235, Santa Ana, CA 92701. For more information, please call Joe Serrano, Project Manager, at (714) 834-2556.

JOYCE CROSTHWAITE  
Executive Officer

Dated: November 18, 2009  
File Reference Number: CA 09-19

CERTIFICATE OF FILING

LOCAL AGENCY FORMATION COMMISSION, ORANGE COUNTY

"Ortega/La Pata Annexation to the City of San Juan Capistrano" (CA 09-19)

I, Joyce Crosthwaite, Executive Officer of the Local Agency Formation Commission of the County of Orange, do hereby certify that:

1. The application referenced and described below has been submitted to me and has been found to be in the form prescribed by the Orange County Local Agency Formation Commission.
2. The application contains the information and data requested and required by this Commission and applicable provisions of State law and has been accepted for filing on December 2, 2009.
3. The subject proposal and all related documents are on file in the office of the Local Agency Formation Commission, 12 Civic Center Plaza, Room 235, Santa Ana, CA 92701, and may be examined by any individual person upon request.

**Application Title:** Ortega/La Pata Annexation to the City of San Juan Capistrano (CA 09-19)

**Applicant:** City of San Juan Capistrano  
**Address:** 32400 Paseo Adelanto, San Juan Capistrano, CA 92675

**General Location:** The proposed annexation is located southwest of the intersection of Ortega Highway and La Pata Avenue, immediately north and east of the existing San Juan Capistrano city limits.

**Date of Hearing:** December 9, 2009

**Subject Agencies:** City of San Juan Capistrano

**Affected Agencies:** County of Orange, City of San Juan Capistrano, Santa Margarita Water District

This certificate of filing is issued pursuant to Section 56658 of the Government Code, State of California. All time requirements and limitations for processing and consideration of this application specified by State law and/or rules and regulations of the Orange County Local Agency Formation Commission shall become effective on the date of issuance of this certificate.

December 2, 2009

  
Joyce Crosthwaite, Executive Officer



**PROJECT APPLICATION FORM**  
of the  
**ORANGE COUNTY LOCAL AGENCY FORMATION COMMISSION**

**Orange County Local Agency Formation Commission**  
12 Civic Center Plaza, Room 235  
Santa Ana, CA 92701  
TEL (714) 834-2556  
FAX (714) 834-2643

This form is to be used for applying to the Orange County Local Agency Formation Commission for a city or district annexation, reorganization, detachment, or a sphere of influence amendment. To facilitate your preparation of the required materials, a pre-application meeting with LAFCO staff is encouraged. The meeting can be used to address applicant questions, Commission policies, timing, boundaries, and other application issues. LAFCO staff looks forward to assisting you with your project.

*Please fill out this application completely. If a question does not apply to your proposal, indicate "N/A". Orange County LAFCO is a "paperless" office. It is important that you list all email addresses where indicated on the application. Correspondence, staff reports, resolutions and other LAFCO forms and mailings, whenever possible, will be distributed electronically.*

**APPLICATION FOR:** (check all that apply)

- Annexation to: City of San Juan Capistrano
- Detachment from:
- Reorganization (2 or more changes of organization) of:
- Other (explain):
- \*Sphere of Influence Amendment for: Proposed Annexation Area

*\*If requesting a sphere of influence amendment, please answer the following three questions:*

1. Why is a sphere of influence amendment needed? The existing Sphere of Influence is the City of San Juan Capistrano municipal limits. The Sphere of Influence amendment is requested to include the boundaries of the one hundred thirty-two (132) acre property (excluding Ortega Highway and La Pata Avenue) that is the subject of this annexation.

2. How would a sphere of influence affect the present and future need for services in the project area? The City of San Juan Capistrano can provide services to the project area. The City water service is provided through the Santa Margarita Water District.

3. How would a sphere of influence amendment impact social and economic communities of interest in the project area? There would be no economic impact, however, current uses would be protected in perpetuity thereby creating a positive social impact for the City and community. The property currently consists of equestrian, park, recreation and open space uses and the City of San Juan Capistrano intends to maintain and preserve the existing uses by designating the area as General Open Space (GOS) on the General Plan Land Use Map and corresponding open space designations for the City of San Juan Capistrano Zoning Map.

**GENERAL DESCRIPTION OF PROPOSAL:**

*What changes of organization are included? What agencies are involved? Etc.*

The City of San Juan Capistrano is requesting; 1) a Sphere of Influence amendment, and 2) Annexation action, for an approximate one-hundred thirty-two (132) acre area as described in the attached legal description, Exhibit A and Annexation Map, Exhibit B.

**STATEMENT OF JUSTIFICATION:**

*Explain the purpose of each request or change of organization. Explain how the proposal provides more logical boundaries or improves the provision of service.*

The City of San Juan Capistrano has entered into a Purchase and Sale Agreement and Escrow Instructions with the property owner, RMV Community Development, LLC and DMB San Juan Investment North, LLC to acquire the 132 acre project area. The City intends to maintain and preserve the equestrian, park, recreation and open space areas for residents and visitors to enjoy for generations. No development or change of uses is proposed. In addition, the Purchase and Sale Agreement and Escrow Instructions set forth conditions and deed restrictions that limit the subject property to current uses when the property sale is completed.

**WHO INITIATED THIS PROPOSAL?** Please select one from the drop-down list:

**City Council**

*Applications can be initiated by either: (1) a petition signed by five percent of the affected landowners or five percent of the affected registered voters from the annexing area, or (2) a resolution by the legislative body of an affected city, county or special district.*

The following is attached to this application form:

- Resolution (please attach) **(Attachment 3)**
- Landowner Petition (please attach)
- Registered Voter Petition (please attach)

**LOCATION AND ADDRESS OF PARCEL(S):**

No technical address for the project area exists, refer to the property Legal Description, Exhibit A and Annexation Map, Exhibit B.

**LIST OF ASSESSOR PARCEL NUMBERS:** (Available from the Orange County Assessor)

**Refer to the Legal Description, Exhibit A and Annexation Map, Exhibit B.**

**MAP AND LEGAL DESCRIPTION:**

*A map and legal description of the proposal, even if prepared by a private engineering firm, must be submitted directly to the Orange County Surveyor for review and final approval. An application can be filed with LAFCO without a map and legal, but a proposal cannot be scheduled for LAFCO hearing prior to receipt of a County Surveyor-approved map and legal description. You may contact the County Surveyor at the Resources and Development Management Department, Geomatics/Land Information Systems Division, at (714) 834-4378.*

*Additionally, the map and legal description must meet the State Board of Equalization's requirements. The BOE's "Change of Jurisdictional Boundary" requirements are available for download at <http://www.boe.ca.gov/proptaxes/sprdcont.htm>. Please note, the BOE requires an additional vicinity map that shows the project area in relation to a larger geographic area.*

A map and legal description has been:

- Certified by the County Surveyor and is attached to this application.  
 Submitted for review to the County Surveyor.  
 Other (please explain)

**APPLICANT'S REPRESENTATIVE (if any):**

Name: City of San Juan Capistrano, Community Development Department  
Address: 32400 Paseo Adelanto  
Phone: (949) 234-4410 FAX: (949) 661-5451  
Contact Person: Grant Taylor Title: Assistant Community Development Director  
email: gtaylor@sanjuancapistrano.org

**PROPERTY OWNER(S):**

*If more than two property owners for proposal area, please provide the name, address and contact information, on a separate page.*

Name: RMV Community Development, LLC and DMB San Juan Investment North, LLC  
Address: 28811 Ortega Highway, P. O. Box 9, San Juan Capistrano, CA 92693

Contact Person: Dan Kelly, Senior Vice President, Governmental Relations & Corporate Communications

Address: 28811 Ortega Highway, P. O. Box 9, San Juan Capistrano, CA 92693  
Phone: (949) 240-3363, Ext. 287 FAX: (949) 248-1763 email: dkelly@ranchomv.com

**SUBJECT AGENCIES THAT WILL GAIN OR LOSE TERRITORY:**

A "subject agency" means each city or district for which a change of organization or reorganization is proposed. If more than three subject agencies, please provide the names and information on a separate page.

Name: GAIN – City of San Juan Capistrano  
 Address: 32400 Paseo Adelanto  
 Phone: (949) 234-4410 FAX: (949) 661-5451  
 Contact Person: Grant Taylor Title: Assistant Community Development Director  
 email: gtaylor@sanjuancapistrano.org

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Phone: \_\_\_\_\_ FAX: \_\_\_\_\_ email: \_\_\_\_\_  
 Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Phone: \_\_\_\_\_ FAX: \_\_\_\_\_ email: \_\_\_\_\_  
 Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

**AFFECTED AGENCIES IN PROPOSAL AREA:**

An affected agency is a city or district with overlaying boundaries or spheres of influence. If more than three affected agencies, please provide the names and information on a separate page.

Name: City of San Juan Capistrano, Community Development Department  
 Address: 32400 Paseo Adelanto  
 Phone: (949) 234-4410 FAX: (949) 661-5451  
 Contact Person: Grant Taylor Title: Assistant Community Development Director  
 email: gtaylor@sanjuancapistrano.org

Name: County of Orange, OC Public Works  
 Address: 300 N. Flower Street, Santa Ana, CA 92703-5000  
 Phone: (714) 667-3217 FAX: (714) 834-2395  
 Contact Person: Jess Carbajal Title: Interim Director  
 email: jess.carbajal@rdmd.ocgov.com

Name: Santa Margarita Water District  
 Address: 26111 Antonio Parkway, Mission Viejo, CA 92688  
 Phone: (949) 459-6590  
 Contact Person: Dan Ferons Title: Chief Engineer/Director of Operations  
 email: Danf@smwd.com

**INTERESTED AGENCIES:**

*Interested agencies are cities or districts which provide the same facilities or services in the proposal area that a subject agency will provide. If more than two interested agencies, please provide name and information on a separate page.*

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Phone: \_\_\_\_\_ FAX: \_\_\_\_\_ email: \_\_\_\_\_  
 Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Phone: \_\_\_\_\_ FAX: \_\_\_\_\_ email: \_\_\_\_\_  
 Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

**PERSONS REQUESTED TO BE NOTIFIED:**

*If more than two names, please provide the names and information on a separate page.*

Name: Grant Taylor, City of San Juan Capistrano  
 Address: 32400 Paseo Adelanto, San Juan Capistrano, CA 92675  
 Phone: (949) 234-4410 FAX: (949) 661-5451 email: gtaylor@sanjuancapistrano.org

Name: Dan Kelly, Rancho Mission Viejo  
 Address: 28811 Ortega Highway, P. O. Box9, San Juan Capistrano, CA 92693  
 Phone: (949) 240-3363 Ext. 287 FAX: (949) 248-1763 email: dkelly@ranchomv.com

**REGISTERED VOTER/PROPERTY OWNER MAILING LIST:**

*Government Code Section 56661 requires that landowners within the proposal area, and registered voters both within the proposal area and within 300 feet of the exterior boundary of the property, be notified of a LAFCO hearing at least 21 days in advance of the hearing that includes a proposed reorganization. Orange LAFCO policy requires the applicant to provide mailing labels, envelopes and appropriate postage as part of the application submittal.*

The following notification information has been provided (check all that apply):

- Address labels affixed to mailing envelopes with appropriate postage for registered voters/property owners within proposal area and within 300 feet of exterior boundary
- Applicant requests that LAFCO produce registered voter/property owner notification  
NOTE: Applicant will be charged for all associated costs.
- Application does not require registered voter/property owner notification  
Explanation: \_\_\_\_\_

**SCHOOL DISTRICTS:**

Please list school district(s) affected by the proposal.

School District: Capistrano Unified School District  
 Address: Valle Road, San Juan Capistrano, CA 92675  
 Phone: (949) 234-9449 FAX: (949) 493-3728  
 Contact Person: Cary Brockman Title: Manager, Facilities Planning  
 email: cbrockman@capousd.org

**QUESTIONNAIRE:**

Please respond to all items in the following questionnaire. Indicate N/A when a question does not apply. Any additional information pertinent to the application should be included with the application at the time of submittal.

**I. LANDOWNER CONSENT**

Have all property owners involved with the proposal given their written consent?

YES (If yes, please complete Property Owner Consent form, Attachment 1.)

**(Property Owners Consent Letter attached as Attachment 1)**

NO (If no, please provide the name, address, and Assessor's Parcel Numbers of those property owners not consenting.)

**II. LAND USE**

**Acreage of Proposal:** One Hundred Thirty-Two (132) acres

**Site Information:**

	LAND USE	PREZONING OR ZONING DESIGNATION	GENERAL PLAN DESIGNATION
CURRENT:	Equestrian, Park, Recreation and Open Space	County: Planned Community City: NA	County: Suburban Residential, Open Space, and Urban Activity Center City: NA
PROPOSED:	No development or change of use. Maintain and preserve equestrian, park, recreation and open space	County: NA City: (More Detailed Designations for Zoning to be determined by City)	County: NA City: General Open Space

**Surrounding Land Uses:**

	<b>LAND USE</b>	<b>ZONING DESIGNATION</b>	<b>GENERAL PLAN DESIGNATION</b>
<b>NORTH:</b>	Rancho Mission Viejo Administrative Facilities and open space	County: Planned Community City: NA	County: Suburban Residential, Open Space, and Urban Activity Center City: NA
<b>SOUTH:</b>	San Juan Hills High School	County: NA City: Planned Community – Comprehensive Development Plan (CDP) 04-01	County: NA City: Planned Community
<b>EAST:</b>	Open Space	County: Planned Community City: NA	County: Open Space and Urban Activity Center City: NA
<b>WEST:</b>	Open Space, Residential Subdivision (San Juan Creek HOA), Open Space, San Juan Creek. Single-Family Residential (south to north)	County: NA City: Planned Community – Comprehensive Development Plan (CDP) 86-2, General Open Space, Open Space Recreation, Residential Single 10,000	County: NA City: Planned Community, General Open Space, Medium Density Residential, Open Space Residential, Medium Low Density Residential (south to north)

A. The proposal area is entirely or partially within the sphere of influence of all of the following:

**CITY:** NA

**SPECIAL DISTRICTS:** Santa Margarita Water District, 26111 Antonio Parkway, Mission Viejo, CA 92688, (949) 459-6590

B. Describe any land use entitlements or permits approved or pending for the proposal area:

See attached Exhibit D, Ranch Plan Entitlement Description for Planning Area 1, Parcels 7 and 8

C. Describe any public easements/oil well operations/major highways/watercourses/topographical features:

**See attached Exhibit C, Encumbrance Map**

D. Number of acres considered Prime Agricultural Land\*: 0 acres  
\*As defined by the Soil Conservation Services (i.e., being prime, unique, or of statewide importance) **AND** by Government Code Section 51201(c) and 56064.

E. Number of acres considered Agricultural Lands\*: 0 acres  
\*As defined by Government Code Section 56016

### III. DEMOGRAPHICS

A. Number/Type of Dwelling Units within the proposal area:

Existing: 0

Proposed: 0

B. Is the proposal area considered "inhabited" (i.e. do more than 12 registered voters reside on the territory/property)?

YES  NO

### IV. FACTORS FOR COMMISSION CONSIDERATION

There are 15 factors that are required by State Law to be considered by LAFCO in the review of a proposal (Government Code §56668). With respect to factors listed below, please provide any project-specific information (not already addressed in your application) that may be helpful in the Commission's review of your project. You may attach additional pages to this application if you need additional space.

- Population and population density; land area and land use; per capita assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated areas, during the next 10 years.
- Need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs of those services and controls in the area; probable effect of the proposed incorporation, formation, annexation, or exclusion and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas. "Services," as used in this subdivision, refers to governmental services whether or not the services are services which would be provided by local agencies subject to this division, and includes the public facilities necessary to provide those services.
- The effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county.

- The conformity of both the proposal and its anticipated effects with both the adopted commission policies on providing planned, orderly, efficient patterns of urban development, and the policies and priorities set forth in Section 56377.
- The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by Section 56016.
- The definiteness and certainty of the boundaries of the territory, the nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory, and other similar matters affecting the proposed boundaries.
- Consistency with city or county general and specific plans.
- The sphere of influence of any local agency which may be applicable to the proposal being reviewed.
- The comments of any affected local agency or other public agency.
- The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for those services following the proposed boundary change.
- Timely availability of water supplies adequate for projected needs as specified in Section 65352.5.
- The extent to which the proposal will affect a city or cities and the county in achieving their respective fair shares of the regional housing needs as determined by the appropriate council of governments consistent with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7.

**Comment: Since the proposed Sphere of Influence amendment and Annexation action would continue the existing uses of equestrian, park, recreation and open space there will be no gain/loss of housing supply by the City or County, respectively.**

- Any information or comments from the landowner or owners.
- Any information relating to existing land use designations.
- The extent to which the proposal will promote environmental justice. As used in this subdivision, "environmental justice" means the fair treatment of people of all races, cultures, and incomes with respect to the location of public facilities and the provision of public services.

**Comment: The proposed Sphere of Influence amendment and Annexation action protects the existing uses of equestrian, park, recreation and open space in perpetuity thereby creating permanent future uses for all residents and visitors.**

V. PLAN FOR PROVIDING SERVICES

Describe the services that are provided or are to be provided to subject property:

Service	Current Service Provider	Proposed Service Provider	Describe Level/Range of Service of Proposed Service Provider	Approximate Date Service will be Available	Method to Finance
Water	City of San Juan Capistrano and Santa Margarita Water District	No Change	NA	NA	NA
Sewer	Santa Margarita Water District	No Change	NA	NA	NA
Police	Orange County Sheriff	No Change	NA	NA	NA
Fire	Orange County Fire Authority	No Change	NA	NA	NA
Public Works	Orange County Public Works	City of San Juan Capistrano Public Works	City Level Public Works Operation	Upon Final Annexation Action	City of San Juan Capistrano
Parks & Recreation	Orange County Parks	City of San Juan Capistrano Parks	City Level Parks and Recreation Operation	Upon Final Annexation Action	City of San Juan Capistrano
Other Services (list)	NA	NA	NA	NA	NA

What effect will this proposal have on the type or level of services both within and outside the proposal area?

Minimal if any. There is no development proposed and no alteration of land uses. The proposal is simply for the City to amend the Sphere of Influence, annex the property into the City of San Juan Capistrano and acquire the property from the property owners, and maintain the existing equestrian, park, recreation and open space uses.

## VI. SPECIAL REVENUES

- A. Do agencies whose boundaries are being changed have existing bonded debt?

 YES  NO

If yes, please describe: \_\_\_\_\_

- B. Will the territory be subject to any new or additional special taxes, benefit charges, or fees?

 YES  NO

If yes, please describe: \_\_\_\_\_

- C. Is the city/district requesting an exchange of property tax revenues as the result of this proposal?

 YES  NO

If yes, is a master property tax exchange agreement applicable to this jurisdictional change?

 YES  NO

## VII. ENVIRONMENTAL ANALYSIS

- A. Who is the "lead agency" for this proposal?
- City of San Juan Capistrano

- B. What type of environmental document has been prepared?

None – Categorically Exempt – Class: The action is exempt under the "general rule", CEQA Guidelines Section 15061(b)(3). The project is also categorically exempt due to - Class 13 (Section 15313, Acquisition of Lands for Wildlife Conservation Purposes); Class 16 (Section 15316), Transfer of Ownership of Land In Order to Create Parks; Class 19 (Section 15319), Annexations of Existing Facilities and Lots for Exempt Facilities; and, Class 25 (Section 15325), Transfers of Ownership of Interest in Land to Preserve Existing Natural Conditions.

Environmental Impact Report (If an EIR has been prepared, attach the lead agency's resolution listing significant impacts anticipated from the project, mitigation measures adopted to reduce or avoid significant impacts, and a Statement of Overriding Considerations, if adopted.)

Negative Declaration (please attach)

Mitigated Negative Declaration (please attach)

Subsequent Use of Previous EIR: \_\_\_\_\_

## VIII. FINAL COMMENTS

- A. Describe any terms and/or conditions that should be included in LAFCO's resolution of approval.

- 1) Completion of General Plan Amendment and Pre-zoning actions by City
- 2) Approval of the Annexation is conditioned upon a simultaneous annexation and acquisition of the Property by the City on terms reasonably acceptable by the Owners of the Property

3) Ability of Owners to withdraw consent and City ability to withdraw application prior to effective date of annexation

B. Provide any other comments or justifications regarding this proposal.

In order to close escrow with the owners, the City of San Juan Capistrano must annex the 132 Acre project area.

C. Note any changes in the approved project that are not reflected in these materials. Attach any pertinent staff reports and supporting documentation related to this proposal.

None

The following supplemental documentation is attached:

Exhibit A - Legal Description

Exhibit B - Proposed Annexation

Exhibit C - Encumbrance Map

Exhibit D - Ranch Plan Entitlement Description for Planning Area 1, Parcels 7 and 8

Attachment 1 - Property Owner Conditional Letter of Consent

Attachment 2 - Indemnification Agreement for Applicant

Attachment 3 - City of San Juan Capistrano City Council Resolution Authorizing Application to LAFCO

**XI. DISCLOSURE OF POLITICAL EXPENDITURES**

Orange County LAFCO requires applicants to report all expenditures for political purposes related to an application and proceedings to be reported to the Commission's Executive Officer in compliance with Government Code Sections 56700.1 and 57009. The following is attached to this application form:

Financial reports and disclosures (*please attach*)

**XII. CERTIFICATION**

I certify, under penalty of perjury by the laws of the State of California, that the information contained in this application is true and correct. I acknowledge and agree that the Orange County Local Agency Formation Commission is relying on the accuracy of the information provided and my representations in order to process this application proposal.

Signature: \_\_\_\_\_

*Grant Taylor*

Name: Grant Taylor

Title: Assistant Community Development Director

Date: September 17, 2009

**ATTACHMENT 1**

***Property Owner Consent Form***

(All legal owners must sign a consent form or submit a letter of signed consent.)

I, \_\_\_\_\_, consent to the annexation/reorganization of my property located at \_\_\_\_\_ (or Assessor Parcel Numbers \_\_\_\_\_) to the \_\_\_\_\_ [agency(ies)].

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

**Refer to the attached Property Owners Letter (Attachment 1)**

10-1159-20 (D)  
08-27-09

EXHIBIT A  
ANNEXATION NO. \_\_\_\_ - \_\_\_\_  
TO THE CITY OF SAN JUAN CAPISTRANO

That portion of Rancho Mission Viejo (or La Paz), in the Unincorporated Territory of the County of Orange, State of California, as shown on the map recorded in Book 1, Pages 63 and 64, of Patents, Records of Los Angeles County, in the office of the County Recorder of Los Angeles County, described as follows:

From the point of beginning, being an angle point on the existing boundary of the City of San Juan Capistrano as created by the City of San Juan Capistrano "Reorganization No. 61", said point also being described as "Rancho Mission Viejo Corner No. 3" as shown on the Record of Survey filed in Book 9, Pages 15 through 22, inclusive, of Records of Survey in the office of the County Recorder of Orange County:

Course 1: North 52°57'24" West 1912.81 feet along the Southwesterly line of said Rancho Mission Viejo to the Southerly right-of-way line of Ortega Highway, as described in Exhibit "C" in the Grant Deed to the County of Orange, recorded August 1, 2008 as Instrument No. 2008000368965 of Official Records, in the office of said Orange County Recorder;

Thence along said Southerly right-of-way line the following courses:

Course 2: North 53°03'40" East 15.49 feet,

Course 3: South 36°56'20" East 3.50 feet,

Course 4: North 53°03'40" East 308.58 feet to the beginning of a curve concave Northerly having a radius of 7044.30 feet,

Course 5: Northeasterly 299.61 feet along said curve through a central angle of 2°26'13",

Course 6: North 50°37'27" East 81.26 feet,

Course 7: South 39°22'52" East 3.07 feet,

Course 8: North 50°37'08" East 210.25 feet,

EXHIBIT A  
LEGAL DESCRIPTION-CONTINUED  
ANNEXATION NO. \_\_\_\_ - \_\_\_\_  
TO THE CITY OF SAN JUAN CAPISTRANO  
PAGE 2

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Course 9: North  $57^{\circ}51'04''$  East 71.12 feet to the beginning of a non-tangent curve concave Southerly having a radius of 1474.06 feet, a radial line of said curve to said point bears North  $39^{\circ}24'19''$  West,

Course 10: Northeasterly 210.68 feet along said curve through a central angle of  $8^{\circ}11'20''$ ,

Course 11: South  $25^{\circ}11'17''$  East 13.07 feet,

Course 12: North  $80^{\circ}23'21''$  East 29.94 feet,

Course 13: North  $61^{\circ}08'36''$  East 68.00 feet,

Course 14: North  $29^{\circ}11'32''$  West 11.61 feet,

Course 15: North  $42^{\circ}04'13''$  East 30.05 feet to the beginning of a non-tangent curve concave Southeasterly having a radius of 1530.00 feet, a radial line of said curve to said point bears North  $24^{\circ}59'51''$  West,

Course 16: Northeasterly 254.57 feet along said curve through a central angle of  $9^{\circ}32'00''$ ,

Course 17: South  $15^{\circ}27'51''$  East 50.00 feet to the beginning of a non-tangent curve concave Southeasterly having a radius of 1480.00 feet, a radial line of said curve to said point bears North  $15^{\circ}27'51''$  West,

Course 18: Northeasterly 224.13 feet along said curve through a central angle of  $8^{\circ}40'36''$ ,

Course 19: North  $83^{\circ}12'45''$  East 357.70 feet,

Course 20: North  $6^{\circ}47'15''$  West 40.00 feet,

Course 21: North  $83^{\circ}12'45''$  East 400.00 feet,

Course 22: North  $6^{\circ}47'15''$  West 19.74 feet to the beginning of a non-tangent curve concave Southerly having a radius of 6326.27 feet, a radial line of said curve to said point bears North  $3^{\circ}13'37''$  West,

Course 23: Easterly 24.26 feet along said curve through a central angle of  $0^{\circ}13'11''$ ,

EXHIBIT A  
LEGAL DESCRIPTION-CONTINUED  
ANNEXATION NO. \_\_\_\_ - \_\_\_\_  
TO THE CITY OF SAN JUAN CAPISTRANO  
PAGE 3

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08-27-09

Course 24: North 86°59'34" East 256.57 feet to the beginning of a curve concave Northerly having a radius of 4579.70 feet,

Course 25: Easterly 139.48 feet along said curve through a central angle of 1°44'42",

Course 26: South 87°43'55" East 90.93 feet to the beginning of a non-tangent curve concave Northerly having a radius of 4591.70 feet, a radial line of said curve to said point bears South 5°52'42" East,

Course 27: Easterly 275.99 feet along said curve through a central angle of 3°26'38",

Course 28: North 87°16'57" East 71.92 feet,

Course 29: South 10°12'54" East 4.17 feet,

Course 30: South 59°04'37" East 84.63 feet,

Course 31: North 85°16'40" East 18.27 feet to a point on a non-tangent curve concave Northwesterly having a radius of 1550.00 feet, a radial line of said curve to said point bears North 85°17'19" East, said curve also being the Westerly right-of-way line of La Pata Avenue, as shown on Certificate of Compliance CC 2001-01, recorded July 26, 2001 as Instrument No. 20010508635 of said Official Records;

Thence along said Westerly right-of-way line of La Pata Avenue, the following courses:

Course 32: Southwesterly 1103.15 feet along said curve through a central angle of 40°46'40",

Course 33: South 36°03'59" West 561.99 feet to the beginning of a curve concave Southeasterly having a radius of 1650.00 feet,

Course 34: Southwesterly 1204.79 feet along said curve through a central angle of 41°50'09",

Course 35: South 5°46'10" East 1046.07 feet to the beginning of a curve concave Northeasterly having a radius of 3050.00 feet,

Course 36: Southeasterly 852.36 feet along said curve through a central angle of 16°00'43",

EXHIBIT A  
LEGAL DESCRIPTION-CONTINUED  
ANNEXATION NO. \_\_\_\_\_ - \_\_\_\_\_  
TO THE CITY OF SAN JUAN CAPISTRANO  
PAGE 4

10-1159-20 (D)  
08-27-09

Course 37: South 21°46'53" East 618.29 feet to the Southeasterly line of the Westerly portion of Parcel 2 of Lot Line Adjustment LL 2003-004, recorded March 19, 2003 as Instrument No. 2003000294469 of said Official Records,

Course 38: South 68°13'07" West 278.93 feet along said Southeasterly line to said Southwesterly line of Rancho Mission Viejo,

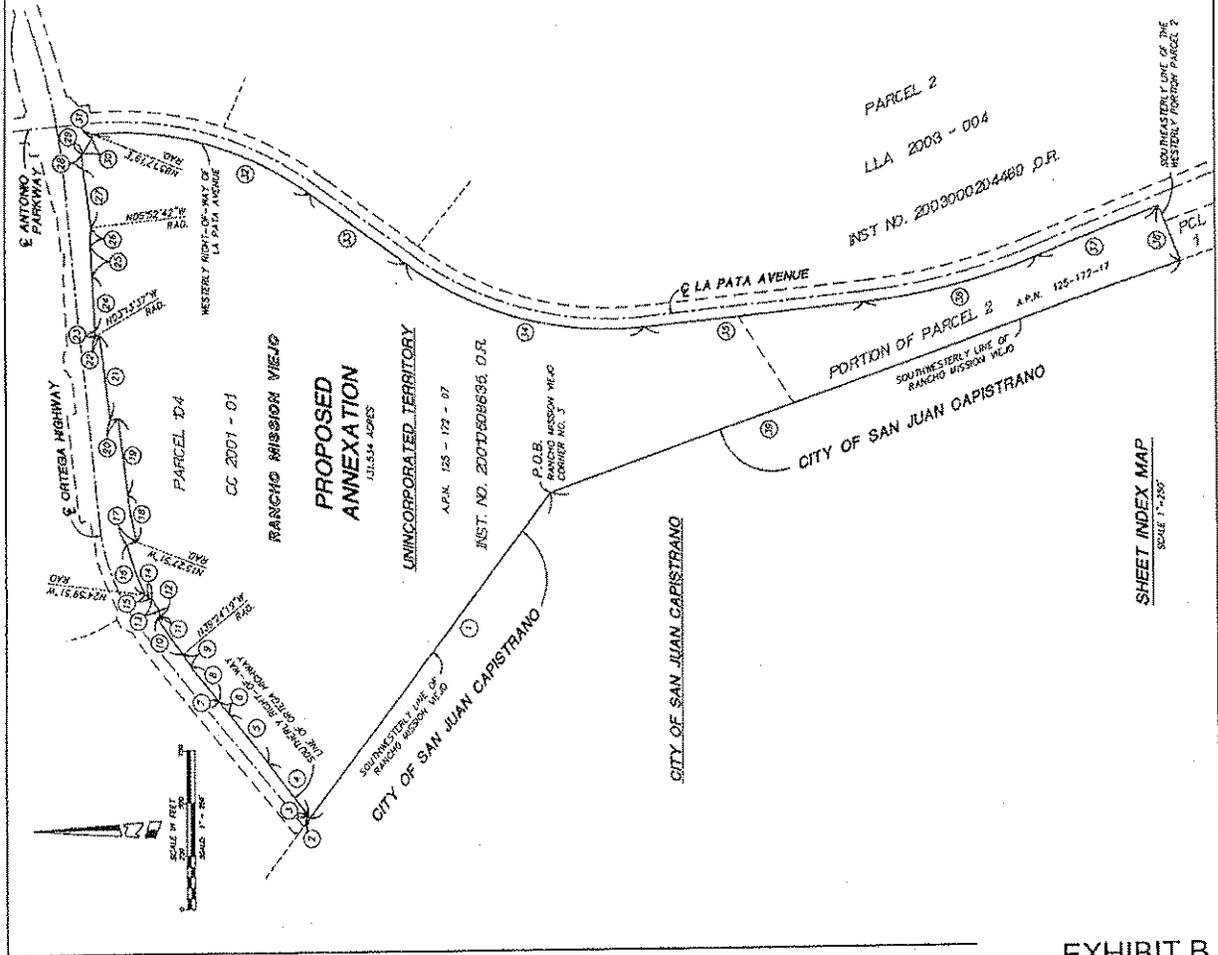
Course 39: North 19°17'44" West 3177.27 feet along said Southwesterly line to the POINT OF BEGINNING.

Containing an area of 131.534 acres, more or less.

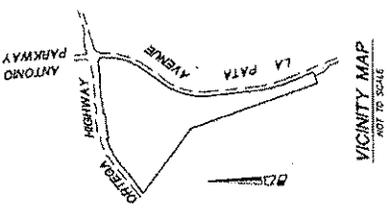
As shown on Exhibit B attached hereto and by this reference made a part hereof.

  
\_\_\_\_\_  
JAMES F. GILLEN, PLS 5557





**NOTE**  
 THIS ANNEXATION CONTAINS LITIGIA & ADJES  
 ACCESSORS PARCEL NUMBERS 124-172-07  
 124-172-17



**DATA TABLE**

NO.	BEARING / DELTA	RADIUS	LENGTH
1	N85°27'21"W	1,372.51'	1,372.51'
2	N85°37'42"E	15.19'	15.19'
3	N85°37'42"E	388.50'	388.50'
4	N85°37'42"E	289.91'	289.91'
5	N85°37'42"E	7,044.20'	7,044.20'
6	N85°37'42"E	81.76'	81.76'
7	N85°37'42"E	1,079'	1,079'
8	N85°37'42"E	2,048.00'	2,048.00'
9	N85°37'42"E	2,048.00'	2,048.00'
10	N85°37'42"E	1,714.08'	1,714.08'
11	N85°37'42"E	1,510.07'	1,510.07'
12	N85°37'42"E	2,048.00'	2,048.00'
13	N85°37'42"E	2,048.00'	2,048.00'
14	N85°37'42"E	11,157'	11,157'
15	N85°37'42"E	30,255'	30,255'
16	N85°37'42"E	24,557'	24,557'
17	N85°37'42"E	34,131'	34,131'
18	N85°37'42"E	1,430.00'	1,430.00'
19	N85°37'42"E	157.70'	157.70'
20	N85°37'42"E	46.00'	46.00'
21	N85°37'42"E	46.00'	46.00'
22	N85°37'42"E	24.25'	24.25'
23	N85°37'42"E	24.25'	24.25'
24	N85°37'42"E	2,652.37'	2,652.37'
25	N85°37'42"E	4,597.70'	4,597.70'
26	N85°37'42"E	30,153'	30,153'
27	N85°37'42"E	21,327'	21,327'
28	N85°37'42"E	4,391.70'	4,391.70'
29	N85°37'42"E	4.17'	4.17'
30	N85°37'42"E	24.63'	24.63'
31	N85°37'42"E	18.37'	18.37'
32	N85°37'42"E	25.60'	25.60'
33	N85°37'42"E	1,550.00'	1,550.00'
34	N85°37'42"E	1,204.79'	1,204.79'
35	N85°37'42"E	1,046.07'	1,046.07'
36	N85°37'42"E	851.36'	851.36'
37	N85°37'42"E	2,048.00'	2,048.00'
38	N85°37'42"E	2,048.00'	2,048.00'
39	N85°37'42"E	1,172.57'	1,172.57'

THIS ANNEXATION IS TO BE MADE IN CONFORMANCE WITH ARTICLE 10 OF THE CITY CHARTER AND THE CITY CODE. THE ANNEXATION IS SUBJECT TO THE APPROVAL OF THE CITY COUNCIL AND THE CITY MANAGER. THE ANNEXATION IS NOT TO BE MADE IN CONFORMANCE WITH THE CHARTER OR CITY CODE UNLESS THE CITY COUNCIL AND CITY MANAGER HAVE APPROVED THE ANNEXATION. THE ANNEXATION IS NOT TO BE MADE IN CONFORMANCE WITH THE CHARTER OR CITY CODE UNLESS THE CITY COUNCIL AND CITY MANAGER HAVE APPROVED THE ANNEXATION.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008.

ATTEST: I, \_\_\_\_\_, CITY CLERK.

ATTEST: I, \_\_\_\_\_, CITY CLERK.

**EXHIBIT "B"**  
 ANNEXATION NO. \_\_\_\_\_  
 TO THE CITY OF SAN JUAN CAPISTRANO

**HUITT-ZOLLARS**  
 400 BROADWAY, SUITE 200, SAN JUAN CAPISTRANO, CA 92076-1000  
 (951) 744-1000

**REGISTERED PROFESSIONAL LAND SURVEYOR**  
 No. 10000

I, \_\_\_\_\_, COUNTY CLERK, DO HEREBY CERTIFY THAT THE ABOVE IS A TRUE AND CORRECT COPY OF THE ANNEXATION AS FILED IN THE OFFICE OF THE COUNTY CLERK, SAN JUAN CAPISTRANO, CALIFORNIA, ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008.

**SHEET INDEX MAP**  
 SCALE 1"=200'



## ATTACHMENT D

### RANCH PLAN ENTITLEMENT DESCRIPTION FOR PLANNING AREA I PARCELS 7 AND 8

#### **General Plan:**

The Ranch Plan project updated the County General Plan (Land Use Element) with an amendment for the Ranch Plan area in November of 2004. Parcel 7 within Planning Area 1 was designated 1B, Suburban Residential, permitting suburban residential communities ranging from 0.5 to 18 dwelling units per acre. Parcel 8 within Planning Area 1 was designated Urban Activity Center permitting certain residential and non-residential uses.

#### **Zoning:**

The Ranch Plan project was zoned "Planned Community" in November 2004. The Planned Community zoning district in Orange County allowed for the development of the Ranch Plan Planned Community Program Text for the application of zoning for the entire Ranch Plan area, including Planning Area 1.

The Ranch Plan Planned Community Program Text was amended in July of 2007 to identify more detailed levels of development for Planning Area 1. The Planned Community Program Text allows amendment of its Development Map and Statistical Table as individual planning areas are planned for development. For Planning Area 1, the Development Map and Statistical Table (attached) currently permit a total of 572 acres of total development acres and 238 acres of Open Space for a planning area total of 810 acres. The development area contains 488 acres of Residential use with a maximum of 1,170 dwelling units and, 84 acres of Urban Activity Center use permitting residential and non-residential uses such as Neighborhood Center Commercial, Business Park and Senior Living Facilities. The development levels or the acreage size within or between *Planning Areas* can be changed administratively up to ten percent (10%) by approval of the Director, OC Planning. Beyond ten percent requires the approval of the Planning Commission through an amendment to the *Master Area Plan(s)*; (*Planned Community Program Text*, Section II.A.4 and General Provisions 12-15). As discussed below, any proposal to *reallocate* dwelling units within a Planning Area is an administrative action and can be approved by the Director, OC Planning.

All uses and their acreages within the PA 1 Master Area Plan are regulated by the approved (as amended for PA 1) Development Map and Statistical Table as a part of a Master Area Plan and Subarea Plans for Parcels 7 and 8 (Subarea Plan 1.3 and 1.5 respectively). The *reallocation* of current uses contained within the approved Master

Area Plan for Planning Area 1 was fully contemplated as part of the Ranch Plan Planned Community Program Text.

The ability to relocate uses between Subareas of the Master Area Plan is specifically addressed in the PC Program Text in Section III.A.4.g as follows:

- g. Any reallocation of the number of dwelling units between Planning Subareas within the same Planning Area shall not require a change to the PC Development Map as long as the total dwelling unit count and the total square footage for non-residential uses for that Planning Area are not exceeded.*

The process for Subarea reallocations is further clarified by the PC Program Text in Section III.B.4.f as follows:

- f. No Area Plan amendment shall be required when units are reallocated between Planning Subareas contained within a single Area Plan so long as the total number of dwelling units or acreage in the Planning Area does not change, and the transfer of units is completely accounted for per revisions to both the PC Statistical Table and the applicable Master Area Plan statistical tables(s).*

The above noted provisions allow for reallocations of both Subarea Plan residential and non-residential uses and acreages within a Master Area Plan per administrative "clean up" amendments to the Master Area Plan and each applicable Subarea Plan.

#### **Subdivision Approval:**

Vesting Tentative Map 17055 was approved for Parcel 7 on April 11, 2007 and currently permits the subdivision of 87.5 acres into nine numbered lots for 158 dwelling units and a community park, as well as 22 lettered lots for landscape and other uses. Vesting Tentative Map 17053 was approved for Parcel 8 on March 14, 2007 and currently permits a subdivision of 30.5 acres into four numbered lots for Urban Activity Center uses and storm drain facilities, as well as six lettered lots for landscape and other uses. Any proposal to *change* the lots approved in the vesting maps will require an amendment action by the Orange County Subdivision Committee. *Reallocations* of allowable use or dwelling units within the Planning Area 1 maximum allowed is considered administrative and can be approved by the Director, OC Planning.

#### **CEQA Findings:**

The proposed uses were originally approved as part of Final EIR 589 which addressed development for the Ranch Plan. Addendum No. 1 to Final EIR 589 further addressed specific uses planned for Planning Area 1 with the approval of the Master Area Plan and Subarea Plans. It is not anticipated that additional environmental documentation would be required to reallocate uses within Planning Area 1 so long as traffic impacts do not increase as a result of said reallocation.

32400 PASEO ADELANTO  
SAN JUAN CAPISTRANO, CA 92675  
(949) 493-1171  
(949) 493-1053 FAX  
www.sanjuancapistrano.org



MEMBERS OF THE CITY COUNCIL

SAM ALLEVATO  
LAURA FREESE  
THOMAS W. HRIBAR  
MARK NIELSEN  
DR. LONDRES USO

September 11, 2009

The Honorable Orange County LAFCO Commissioners  
Orange County LAFCO  
12 Civic Center Plaza, Room 235  
Santa Ana, CA 92701

Re: Annexation of Property to the City of San Juan Capistrano

Dear Honorable Commissioners:

In order to commence proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (the "Act"), this letter serves as notice that the City of San Juan Capistrano ("City") intends to adopt a resolution of application to the Orange County Local Agency Formation Commission ("LAFCO") to annex approximately 132 acres of uninhabited property east of the City (the "Property") and to revise the City's sphere of influence to include the Property (the "Change of Organization"). The Property consists of four (4) separate parcels designated as Parcel 7 ( $\pm 70.572$  acres), Parcel 8 ( $\pm 18.403$  acres), the Creek Open Space Parcel ( $\pm 17.142$  acres) and the La Pata Open Space Parcel (two parcels with  $\pm 25.417$  acres combined), respectively. Strategically located at the intersection of two major arterials, Ortega Highway and La Pata Avenue, the City regards the Property as the eastern gateway to the City of San Juan Capistrano.

The City has executed a Purchase and Sale Agreement ("Agreement") to acquire the Property from its current owners, RMV Community Development, LLC and DMB San Juan Investment North, LLC ("Owners"), who have consented to the submittal of this letter and will provide written consent to the Change of Organization. The City plans to submit a resolution of application to LAFCO on or about September 17, 2009. As required by the Act, prior to the effective date of the Change of Organization, the City will prezone the Property and adopt a resolution amending the City's General Plan in order to establish a land use designation for the Property.

In order to provide for the timely and appropriate transfer of the Property from the Owners to the City, the resolution of application will include the following proposed condition of approval: Approval of the Change of Organization is conditioned on a simultaneous annexation and acquisition of the Property by the City on terms reasonably acceptable to the Owners. The City and the Owners respectfully request that the Honorable Commissioners include this condition when it adopts a resolution making a determination on the Change of Organization.

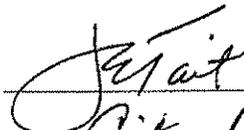
The City's resolution of application and Owners' consent thereto will also request that LAFCO conduct proceedings without an election and waive protest proceedings under the Act, as the Property is uninhabited, pursuant to the provisions of Government Code section 56663, subdivisions (a) and (c).

Furthermore, this letter acknowledges that the Owners are permitted to withdraw their consent and the City is permitted to withdraw the application at any time prior to the effective date of the Change of Organization.

The City looks forward to submitting its application for the Change of Organization to LAFCO.

Respectfully submitted,

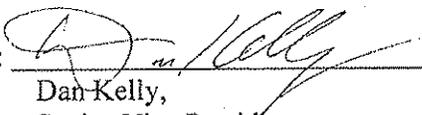
City of San Juan Capistrano

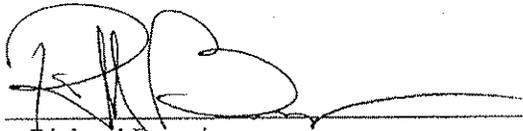
By:   
Its: City Manager

With the consent of the Owners,

RMV Community Development, LLC,  
a California limited liability company

By: Rancho Mission Viejo, LLC  
a Delaware limited liability company  
as authorized agent and manager

By:   
Dan Kelly,  
Senior Vice President  
Government Relations

By:   
Richard Broming  
Senior Vice President, Planning and  
Entitlement

DMB San Juan Investment North, LLC  
a Delaware limited liability company

By: Rancho Mission Viejo, LLC  
a Delaware limited liability company  
as authorized agent and manager

By:   
Dan Kelly  
Senior Vice President  
Government Relations

By:   
Richard Broming  
Senior Vice President, Planning and  
Entitlement

ATTACHMENT 2**Indemnification Agreement**

As part of this application, applicant and real party in interest, if different, agree to defend, indemnify, hold harmless, and lease the Orange County Local Agency Formation Commission, its agents, officers, attorneys, and employees from any claim, action, or proceeding brought against any of them, the purpose of which is to attack, set aside, void, or annul the approval of this application or adoption of the environmental document which accompanies it. This indemnification obligation shall include, but not be limited to, damages, costs, expenses, attorney fees, or expert witness fees that may be asserted by any person or entity, including the applicant, arising out of or in connection with the approval of this application, whether or not there is concurrent passive or active negligence on the part of the Orange County Local Agency Formation Commission, its agents, officers, attorneys, or employees.

Executed at San Juan Capistrano California on the 17<sup>th</sup> day of September, 2009.

**APPLICANT**By: **Joe Tait**Title: **Interim City Manager**Mailing Address: **32400 Paseo Adelanto, San  
Juan Capistrano, CA 92675****REAL PARTY IN INTEREST**  
(if different from Applicant)By: J. TaitTitle: Interim City ManagerMailing Address: 32400 Paseo Adelanto  
San Juan Capistrano, CA 92675

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JUAN CAPISTRANO, CALIFORNIA, MAKING APPLICATION TO AND REQUESTING THE LOCAL AGENCY FORMATION COMMISSION (LAFCO) OF ORANGE COUNTY TO TAKE PROCEEDINGS PURSUANT TO THE CORTESE-KNOX-HERTZBERG LOCAL GOVERNMENT REORGANIZATION ACT OF 2000 FOR THE CITY OF SAN JUAN CAPISTRANO TO ANNEX PROPERTY AND EXPAND ITS SPHERE OF INFLUENCE FOR ACQUISITION OF APPROXIMATELY ONE HUNDRED THIRTY TWO (132) ACRES FROM RANCHO MISSION VIEJO CONTAINING THE OAKS EQUESTRIAN FACILITY, PARK, RECREATION AND OPEN SPACE AREAS PURSUANT TO THE ATTACHED LEGAL DESCRIPTION AND MAPS LOCATED SOUTH OF ORTEGA HIGHWAY, WEST OF LA PATA AVENUE, NORTH OF SAN JUAN HILLS HIGH SCHOOL AND EAST OF THE CITY LIMITS.

WHEREAS, City of San Juan Capistrano desires to initiate proceedings pursuant to the Cortese-Knox-Hertzberg Local Reorganization Act of 2000, Division 3, commencing with Section 56000 of the Government Code, for the annexation of unincorporated territory to the City; and

WHEREAS, the City will file an application with the Local Agency Formation Commission (LAFCO) to annex unincorporated territories and expand its sphere of influence referenced in Exhibit A, attached hereto and by this reference incorporated herein; and

WHEREAS, this proposed annexation shall be consistent with Government Code Section 56886 and other applicable law existing as of the date of the filing of this Resolution; and

WHEREAS, the reasons for this proposed annexation are to preserve and provide existing equestrian, park, recreation and open space areas within the City of San Juan Capistrano for its residents and visitors; and

WHEREAS, the subject property is an irregular shaped 132 acre parcel of land located south of Ortega Highway, West of La Pata Avenue, north of San Juan Hills High School and east of the City of San Juan Capistrano municipal limits; and

WHEREAS, the City has entered into a purchase and sale agreement with the owners of the subject property for its acquisition by the City.

FURTHER, pursuant to the Act, the City requests that LAFCO condition the annexation upon the simultaneous annexation and acquisition of the Property by the City on terms reasonably acceptable to the Owners of the Property, and as the Property is uninhabited, that the proceedings be conducted without an election and waiver of protests proceedings.

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of San Juan Capistrano, California, does hereby approve the Resolution of Application for Annexation and requests the Local Agency Formation Commission (LAFCO) of Orange County take proceedings for the annexation of territories to the City and expand its sphere of influence, as shown in Exhibit A, attached hereto and incorporated herein by this reference, according to the terms and conditions stated above and in the manner provided by the Cortese-Knox-Hertzberg Local Government Reorganization Act.

PASSED, APPROVED, AND ADOPTED this      day of September, 2009.

---

MARK NIELSEN, MAYOR

ATTEST:

---

MARGARET R. MONAHAN, CITY CLERK

ATTACHMENT 8

PROJECT #3 – RMV ACQUISITION  
CORRESPONDENCE RECEIVED  
RELATED TO PROJECT

## Cindy Russell

---

**From:** Maria Morris  
**Sent:** Friday, December 11, 2009 8:49 AM  
**To:** Cindy Russell  
**Subject:** FW: City council public hearing Item F-1 (12-1-09) Objection to GPA, Rezone & EA determination of N.O.E.  
**Attachments:** Opinion requested of Bond Counsel 11-23-09 (final).doc

Hi Cindy – Here is Lennie's email.

- Christy

---

**From:** justice4l [mailto:justice4l@cox.net]  
**Sent:** Thursday, December 10, 2009 3:15 PM  
**To:** Maria Morris  
**Subject:** Fw: City council public hearing Item F-1 (12-1-09) Objection to GPA, Rezone & EA determination of N.O.E.

Hi Maria,

Can you please forward this email and attachment to the "Citizens Bond Advisory Committee" (CBAC) for their meeting tonight and include this in the record. I was surprised that the committee was not given the benefit of knowing that there were challenges to the validity of the bond proceeds being applied to the 132-acre RMV "Riding Park" purchase. I am sure the City wishes to provide full disclosure to the Committee Members prior to asking them for their approval, so the issues raised would be important for the CBAC to review.

I have yet to hear a response from Bond Counsel as to the issues addressed. Given the importance of the CBAC's task, I assume that Bond Counsel will be there tonight to advise the committee members. I ask that Bond Counsel respond by giving their opinion as to the issues raised in my letter and that they advise the committee members as to any potential liabilities CBAC would face when issuing any approvals regarding conformance to the provisions in the full text of Measure Y.

Thank you!

Lennie DeCaro

----- Original Message -----

**From:** [justice4l](mailto:justice4l)  
**To:** [Maria Morris](mailto:maria.morris@sanjuancapistrano.org)  
**Cc:** [City Manager ; osandoval@wss-law.com](mailto:osandoval@wss-law.com) ; [luso@sanjuancapistrano.org](mailto:luso@sanjuancapistrano.org) ; [sallevato@sanjuancapistrano.org](mailto:sallevato@sanjuancapistrano.org) ; [Tom Hribar](mailto:Tom.Hribar@sanjuancapistrano.org) ; [lfreeze@sanjuancapistrano.org](mailto:lfreeze@sanjuancapistrano.org) ; [mnielsen@sanjuancapistrano.org](mailto:mnielsen@sanjuancapistrano.org)  
**Sent:** Monday, November 30, 2009 9:14 PM  
**Subject:** City council public hearing Item F-1 (12-1-09) Objection to GPA, Rezone & EA determination of N.O.E.

Maria Morris,

I ask that you provide this email and attachment to be included as part of the administrative record for the city council hearing on 12-01-09.

Thank you!

Lennie DeCaro

Councilmembers, City Manager, and City attorney,

I assume you have been informed of the issues I brought up with bond counsel et al, in the attached letter, however, if not, please review this attachment prior to obligating our city to the GPA, rezone and acceptance of the Notice of Exemption. I trust that you will act in the best interests of our town and I believe that after reading the issues I have raised in the attachment, you will agree that there are in fact numerous issues that would preclude our city from entering into this agreement under the open space measure. I ask that you refrain from passing the GPA, rezone and acceptance of the NOE.

There is one additional note that I didn't mention in the letter to bond counsel and that is the fact that the "bond oversight committee" has yet to be appointed. It appears the cart was put before the horse on the decision to issue bonds on this acquisition. It is required that the advisory committee review recommendations to the council for expenditures of bond proceeds and will report on whether such expenditures conform to the purposes stated below. The city was extremely fortunate to have such accomplished residents apply for this committee, yet the city is forging ahead without the benefit of their "required" oversight.

Regards,

Lennie DeCaro

P.S. The following is for your reference:

**Measure Y Ballot Label:**

Y-San Juan Capistrano, Open Space, Natural Areas, and Clean Water Protection and Preservation Measure

To acquire and improve land to protect and preserve open space, natural areas, creeks and streams, historic areas, undeveloped hillsides and natural ridges from potential residential and commercial development and to provide additional recreational amenities such as bike and walking trails, equestrian facilities, parks and sports fields, shall the City of San Juan Capistrano issue 30 million dollars in bonds, at legal rates, with guaranteed annual independent audits, public expenditure review and no money for City administrators' salaries?

**FULL TEXT OF MEASURE Y: CITY OF SAN JUAN CAPISTRANO**

**OPEN SPACE, NATURAL AREAS, AND CLEAN WATER PROTECTION AND PRESERVATION MEASURE**

**Summary of Bond Measure**

Many residents came to San Juan Capistrano for its unique open space, natural beauty and history. This measure will help preserve and enhance our natural areas, creeks, historic lands, hillsides, trails, recreation, wildlife, and air and water quality, and reduce future traffic congestion. For these purposes, the City of San Juan Capistrano seeks authority from the voters to issue 30 million dollars in bonds at legal rates with guaranteed annual independent financial audits, public review of expenditures, and no funds used for city administrators' salaries.

**Accountability Covenants for the Bond Measure**

As required by Section 53410 of the Government Code, the following accountability measures are made a part of the Bond Measure.

(a) The specific purpose of the bonds is to acquire and/or improve land to preserve and enhance natural areas, creeks, historic lands, hillsides, trails, recreation, wildlife, and air and water quality in the City of San Juan Capistrano, which may include but are not limited to amenities such as bike paths, walking and running trails, equestrian facilities, parks, and sports fields;

(b) The proceeds from the sale of the City's bonds will be used only for the purposes specified above, and not for any other purpose;

(c) The proceeds of the Bonds will be deposited into a Open Space Fund to be held by the Treasurer of the City; and

(d) The Treasurer of the City shall file an annual report with the City Council, commencing not later than January 1, 2010, and annually thereafter, which report shall contain pertinent information regarding the amount of funds collected and expended, as well as the status of the purposes listed above.

(e) In addition to the foregoing, the City Council, by majority vote, will cause the appointment of a Citizens' Oversight Committee no later than 60 days from the date that the Council provides notice of its intention to incur bonded indebtedness for the first series of bonds, as follows:

(1) The Committee will be comprised of five residents of the City.

(2) Membership should be balanced and should include individuals with business experience, senior citizens, and knowledgeable professionals in the fields of construction, finance, law, and accounting. No City official, City employee, or City contractor will be allowed to serve on the Committee.

(3) Except as otherwise provided for herein, Committee members will serve a term of two years subject to Article 1 of Chapter 2 of Title 2 of the San Juan Capistrano Municipal Code (Sections 2-2.101 to 2-2.109).

(4) The Committee will not have decision-making authority, but **will review recommendations to the Council for expenditure of bond proceeds**, and will report on whether such expenditures conform to the purposes stated above.

(5) The Committee will review the audits and reports of expenditures of bond proceeds, and will inform the public concerning the same.

#### **IMPARTIAL ANALYSIS BY CITY ATTORNEY: CITY OF SAN JUAN CAPISTRANO**

##### MEASURE Y

Measure Y, a City of San Juan Capistrano ("City") bond measure, seeks voter approval to authorize the City to cause general obligation bonds to be sold in an aggregate principal amount not exceeding \$30,000,000 at interest rates within the statutory limit. The stated purpose of the bonds is to raise money to finance land acquisition and improvements for open space **in the City** as described in the ballot measure, which include the preservation of natural areas, creeks, historic lands, hillsides, trails, recreation, wildlife, and air and water quality, including amenities such as bike paths, walking and running trails, equestrian facilities, parks, and sports fields. As required by Government Code section 53410, proceeds from the sale of bonds authorized by Measure Y may be used only for these purposes and an annual report shall issue concerning the funds collected and the status of projects and expenditures pursuant to Government Code section 53411.

General obligation bonds pledge a city's property taxing power as security for payment of principal and interest to bond holders. Article XIII A of the California Constitution (Proposition 13) limits the maximum amount of any ad valorem tax on real property to 1% of the full cash value of the property. Article XIII A allows voters to increase the property tax rate above 1% in connection with bonded indebtedness if (a) two-thirds of the electors voting on the proposition approve the issuance of the bonds, and (b) the bonds are to be issued to finance the acquisition or improvement of real property. The bonds would be repaid by ad valorem taxes to be levied upon property within the City.

Approval of this measure will authorize the City to levy an ad valorem tax on the assessed value of real property within the City by an amount needed to pay the principal and interest on the bonds in each year that the bonds are outstanding. The Tax Rate Statement for Measure Y in this Voter Pamphlet reflects the City's best estimates, based upon currently available data and projections, of the property tax rates required to service the bonds. The estimated tax rate required to be levied to fund the bonds in the first fiscal year (2009-2010) after the sale of the first series of bonds is \$ 35.04 per \$100,000 of assessed valuation; the highest tax rate is estimated to be the same in 2011-2012, and the estimated tax rate in the first fiscal year after the sale of the last series of bonds is estimated to be the same. Voters should note that the estimated tax rates are based on the assessed value of taxable property in the City as shown on the County's official tax rolls, not on the property's market value.

Measure Y requires two-thirds voter approval. If two-thirds of those voting on this measure vote for approval, the City will be authorized to issue the bonds. If two-thirds do not vote for approval, the measure will fail and the City will not be authorized to issue the bonds.

s/ Omar Sandoval, City Attorney

*(underline, bold, & emphasis added) L.D.*

Lennie DeCaro  
Nov. 23, 2009

Stradling, Yocca, Carlson & Rauth  
(949) 725-4169  
Mr. Kurt Yeager, Bond Counsel  
Mr. Brad Neal, Disclosure Counsel  
Fieldman, Rolapp, & Assoc.  
(949) 660-7300  
Mr. Jim Fabian, financial advisor  
RE: Challenge to validity of the bonds & Opinion requested

Dear Sirs,

In July 2009 I addressed the city in questioning the validity of the issuance of the bonds as it relates to the purchase of the Rancho Mission Viejo "Riding Park", APN # 125-172-07 & 125-172-17. I objected to this acquisition, as it is not "in" the City of San Juan Capistrano. In September I received a response to my challenge from Mr. Sandoval, wherein he replied: "...*the purchase will comply with all legal requirements. We are working with Bond Counsel to make sure it does.*"

I believe in an effort to cure this fatal flaw, the City determined the solution was to annex said property into the city concurrently with the closing of escrow. However, nothing in the bond language gives the authority for issuing the bonds *prior* to this time, based on an event that is yet to happen.

I acknowledge you are only able to provide opinions based on information given to you, so I am directly submitting this letter and ask for your opinion as to my challenge on the validity of the bonds. As bond lawyers have a duty to conduct independent investigations of the facts before rendering tax-exempt bond opinions, I believe that bond counsel must look again at the facts to determine the city's ability to issue 30 million dollars in bonds based on property that is not "in" San Juan Capistrano and would be initiated prior to performance of an act, (annexation), that is not guaranteed. There are no exceptions anywhere in Measure Y's label, full text or even impartial analysis that suggests otherwise.

I believe these bonds can not be considered valid as there is no assurance that the property will be annexed and the ballot initiative doesn't provide any exception stating the property "will be in" the city upon some future action. It is clear that in the full text of Measure Y, it states: "*The specific purpose of the bonds is to acquire and/or improve land IN the City of San Juan Capistrano...*". In other words, bonds cannot be put up for sale until *after* the property is annexed.

In an effort to promote open space and encourage passage of Measure Y, the City utilized numerous avenues to educate the public and encourage its

passage that included a map depicting the targeted potential open space properties. The target properties were all within the city limits. Therefore the legality of bonds is at issue, based on a purchase that is outside city limits and clearly not in adherence to the language of Measure Y or what the city marketed to its residents.

In addition, the bond proceeds are prohibited from being used for the Riding Park acquisition as the bond language specifically states: "To acquire and improve land to protect and preserve open space, ...from potential residential and commercial development..." However, the purchase contract (p.21 of 169) specifically allows for "one commercial equestrian facility". An "equestrian facility" is not the same as a commercial equestrian facility. In fact the city differentiates and defines commercial stable (Section 9-3.515. Equestrian standards) as: "any place where horses or other equine are kept, housed, boarded, lodged, fed, hired, trained, sold, rented, or bred for monetary compensation."

Section 9-3.515 continues, under the heading "Commercial Stables": "...(G.) Building Area. A maximum of thirty (30) percent of the usable acres may be devoted to buildings, covered areas, feed storage structures, impervious surface parking areas, barns, caretaker residence, covered paddocks (roofed areas only), offices and other covered structures..." . Therefore, the purchase agreement that allows for one commercial equestrian facility will also facilitate the property being used for both commercial and residential purposes, as ((R) ... "allows for employee housing").

In other words, a commercial stable allows residential and commercial development uses that are related to the Commercial Stable. The "Riding Park" contract provisions would preclude it from consideration as an open space acquisition as it is in contradiction to the verbiage and intent of Measure Y that aims to protect from residential and commercial development.

In addition to the fact that there is no guarantee that annexation will take place, there is also a General Plan amendment and Pre-zoning that must be passed prior to the property annexation. The hearing is Dec 1, 2009, however, a CEQA lawsuit can be initiated within 35 days after filing of a Notice of Exemption (NOE). The city is relying on a NOE, determining that even a most basic initial study wasn't required. At minimum, an initial study is required on property that contains hazardous waste (over 11,000 cu. yds.), requires grading, installation of trails (more grading), has archaeological significance, requires a general plan amendment, sits in a floodplain and will require development on it.

There are further provisions in Measure Y that would make the Riding Park acquisition inconsistent. The full text of Measure Y states: " ...This measure will help preserve and enhance our natural areas, creeks, historic lands, hillsides, trails, recreation, wildlife, and air and water quality, and reduce future traffic congestion..."

The underlined above language in the full text states that Measure Y will help preserve and enhance air and water quality. There has been no initial study of any kind to suggest that this property will have any positive effect on air and water quality. In fact an argument to the contrary can be made. There is currently contaminated soil on the Riding Park property that can remain in that condition for up to one year following the close of escrow (p. 25 of 169 PSA). During the one-year post escrow closing, it is conceivable that with heavy rains that the pollutants (DDT etc.) could runoff into the San Juan Creek. The environmental study conducted by environmental consultant EEI also suggested there exists the possibility of asbestos and lead in the existing older buildings, however, there are no disclosed plans for demolition or retention of buildings currently on site. Contamination could affect water quality and asbestos and contaminated soil removal could affect air quality. There are no studies that show any "enhancing" effects to air and water as a result of this purchase.

One might argue that a reduction in traffic, (another requirement of Measure Y), would help air quality. However, there will be no reduction in traffic with this purchase. The previous entitlements for the property included residential & commercial development. This would have resulted in increased traffic, however, the entitlements are simply moved across the street, resulting in the same traffic. There is absolutely NO reduction in future traffic, or enhancement of air and water quality as is required through the passage of Measure Y.

There is no cap on the City's potential remediation if contamination is found in other areas. One smaller area of contamination was identified in the EEI study (maintenance areas), but is not mentioned in the purchase contract. The contract also asks for no certification that contaminated soil removal will be done properly. City, aware of possible lead and asbestos in older buildings, signed the contract acknowledgment that the property may or may not contain asbestos and city agreed that they may or may not be required to remediate any asbestos condition (page 17 of 169). These issues are pertinent to current property valuation and possible future city liabilities.

A full review of the appraisal, the purchase agreement, and the EEI environmental Phase I study is required to make the determination as to the conformance of the Riding Park purchase to the language of Measure Y. I believe they are in contradiction and therefore the bonds would be invalid. There are numerous restrictions that further this point, even a clause that allows for the property to revert to the prior owner under specific conditions.

The appraisal did not contain knowledge of the contaminated soil or of all of the restrictions in the purchase agreement. Absence of this information has a substantial material affect on the valuation of the property. Additionally, the property is in a floodplain and the appraisal used assumptions that the development would import soil to raise the elevation for the building pads. This purchase agreement does not include raising the property out of the floodplain.

Fiscal analysis of this purchase has not been adequately addressed. If the city takes on this property, it is likely the city will be further indebted for the grants and liabilities that will become attached to this property. For example, what if clean up is not done properly or we must sue to have it properly completed? How much will it cost to purchase and import the 11,600 cu. yds. of soil required to replant the contaminated lemon grove? 600K was the estimate given by the city for the proposed (required) trail system, yet the city has not informed the residents as to the real cost of this property.

I am providing a best guess estimate for the cost for grading/import of soil for of the contaminated "Lemon Grove". This is based on my best estimate by using figures obtained from the city on dollar estimates for the trail system (grading @\$0.50 psf & fill/compaction @ \$10.00psf).

3.7 acres =	161,172 square feet
Grading=	161,172 x \$0.50= \$80,586.
Fill Import/Compaction	161,172 x @10.00= \$1,611,720
	Total= \$1,692,306.00

The above amount doesn't include any contingencies, design, storm water pollution controls, irrigation, maintenance, surveying, excavation of other contaminated areas on the property, additional grading required outside of the 5' deep excavated pit or additional soil that may be required for compaction. Based on just the trail and the lemon grove, the city will be required to pay at least 2.3 million dollars for this property.

There is nothing to suggest that the park will be profitable under ownership of the city as it was the existing leases that provided income. The problems are numerous and there has been no publicly available financial analysis, pro-forma, design plan, disclosure of existing leases or which structures, if any, are to remain.

Of great importance is the fact that the appraisal did not take into consideration the lease restrictions, the contamination and the required improvements for this purchase. If the appraisal was given the appropriate information, it is most likely the appraisal valuation would be considerably less. If bonds are based on an appraisal that doesn't contain information pertinent to valuation, can bond counsel rely on its valuation? Does bond counsel typically rely on documents wherein the consultants have been allowed a waiver for conflict of interest?

I respectfully ask that the bond, underwriter and disclosure counsel obtain any of the referenced information from our city and issue a determination as to whether the bonds are valid based on the full text, label, and analysis of Measure Y. Please accept this as notice of possible negligence under any "indemnification language".

Regards,

Lennie DeCaro

Dear Mr. Mayor, City Council, Open Space Committee and Bond Oversight Committee,

I am one of the seventy (70%) percent of the voters of San Juan Capistrano who voted to have my City leaders purchase Open Space property with the Measure Y bond funds. The citizens of San Juan Capistrano have always indicated a strong preference for protecting the open space that makes San Juan Capistrano shine among U.S. cities.

The voters passed two bond measures; one in the 1990's and another in 2008 to tax themselves to insure that our City would acquire and preserve Open Space property for the future and benefit of all the citizens to enjoy.

I have followed the progress of the Open Space Committee and the City Council over the last three years in acquiring property for Open Space and have found them to be very thorough and accurate in their work. The Planning Commission held a public hearing on the purchase of the property and recommended that the City Council purchase the property. The City Council held a public hearing and all five council members voted to acquire the property. The RMV property purchase is another fine example of the City's excellent work on my behalf.

The Orange County Local Agency Formation Commission, a 3<sup>rd</sup> independent party of government, held a public hearing, and after examining all the facts voted unanimously and annexed the RMV property into the City on December the 9<sup>th</sup>.

Please move forward and complete the purchase of the Rancho Mission Viejo Riding Park at San Juan Capistrano.

Speaking on behalf of my family, the purchase of this open space and natural area will provide the City with a premiere venue for activities and go a long way towards protecting and improving the quality of life in San Juan Capistrano for future generations.

Sincerely,



Gretchen Verbeerst

## Cindy Russell

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**From:** Butler, Diane L [Diane.L.Butler@questdiagnostics.com]  
**Sent:** Monday, December 21, 2009 9:11 AM  
**To:** Londres Uso; Laura Freese; Tom Hribar; Joe Tait; Cindy Russell  
**Subject:** San Juan Capistrano Open Space

I am one of the seventy (70%) percent of the voters of San Juan Capistrano who voted to have my City leaders purchase Open Space property with the Measure Y bond funds. The citizens of San Juan Capistrano have always indicated a strong preference for protecting the open space that makes San Juan Capistrano shine among U.S. cities.

The voters passed two bond measures; one in the 1990's and another in 2008 to tax themselves to insure that our City would acquire and preserve Open Space property for the future and benefit of all the citizens to enjoy.

City Council Members ~

I am one of the seventy (70%) percent of the voters of San Juan Capistrano who voted to have my City leaders purchase Open Space property with the Measure Y bond funds. The citizens of San Juan Capistrano have always indicated a strong preference for protecting the open space that makes San Juan Capistrano shine among U.S. cities.

The voters passed two bond measures; one in the 1990's and another in 2008 to tax themselves to insure that our City would acquire and preserve Open Space property for the future and benefit of all the citizens to enjoy

I have followed the progress of the Open Space Committee and the City Council over the last three years in acquiring property for Open Space and have found them to be very thorough and accurate in their work. The Planning Commission held a public hearing on the purchase of the property and recommended that the City Council purchase the property. The City Council held a public hearing and all five council members voted to acquire the property. The RMV property purchase is another fine example of the City's excellent work on my behalf.

The Orange County Local Agency Formation Commission, a 3<sup>rd</sup> independent party of government, held a public hearing, and after examining all the facts voted unanimously and annexed the RMV property into the City on December the 9<sup>th</sup>.

Please move forward and complete the purchase of the Rancho Mission Viejo Riding Park at San Juan Capistrano.

Speaking on behalf of my family, the purchase of this open space and natural area will provide the City with a premiere venue for activities and go a long way towards protecting and improving the quality of life in San Juan Capistrano for future generations.

Sincerely,

Diane Lyn Butler

The SJCEC

**Diane L. Butler**

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The contents of this message, together with any attachments, are intended only for the use of the person(s) to which they are addressed and may contain confidential and/or privileged information. Further, any medical information herein is confidential and protected by law. It is unlawful for unauthorized persons to use, review, copy, disclose, or disseminate confidential medical information. If you are not the intended recipient, immediately advise the sender and delete this message and any attachments. Any distribution, or copying of this message, or any attachment, is prohibited.

## Cindy Russell

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**From:** Melodie Knuchell [mknuchell@losalamitos.com]  
**Sent:** Thursday, December 17, 2009 9:44 AM  
**To:** Londres Uso; Laura Freese; Tom Hribar; Mark Nielsen; Joe Tait; Cindy Russell  
**Subject:** Open Space Support  
**Attachments:** image001.jpg

Subject: Bond Oversight Committee compliance review of the RMV Open Space Purchase

To: [luso@sanjuancapistrano.org](mailto:luso@sanjuancapistrano.org) [lfreese@sanjuancapistrano.org](mailto:lfreese@sanjuancapistrano.org) [thribar@sanjuancapistrano.org](mailto:thribar@sanjuancapistrano.org) [mnielsen@sanjuancapistrano.org](mailto:mnielsen@sanjuancapistrano.org)  
[jtait@sanjuancapistrano.org](mailto:jtait@sanjuancapistrano.org)  
[crussell@sanjuancapistrano.org](mailto:crussell@sanjuancapistrano.org)

Dear Mr. Mayor, City Council, Open Space Committee and Bond Oversight Committee,

I am one who supports the seventy (70%) percent of the voters of San Juan Capistrano who voted to have my City leaders purchase Open Space property with the Measure Y bond funds. The citizens of San Juan Capistrano have always indicated a strong preference for protecting the open space that makes San Juan Capistrano shine among U.S. cities.

The voters passed two bond measures; one in the 1990's and another in 2008 to tax themselves to insure that our City would acquire and preserve Open Space property for the future and benefit of all the citizens to enjoy.

I have followed the progress of the Open Space Committee and the City Council over the last three years in acquiring property for Open Space and have found them to be very thorough and accurate in their work. The Planning Commission held a public hearing on the purchase of the property and recommended that the City Council purchase the property. The City Council held a public hearing and all five council members voted to acquire the property. The RMV property purchase is another fine example of the City's excellent work on my behalf.

The Orange County Local Agency Formation Commission, a 3<sup>rd</sup> independent party of government, held a public hearing, and after examining all the facts voted unanimously and annexed the RMV property into the City on December the 9<sup>th</sup>.

Please move forward and complete the purchase of the Rancho Mission Viejo Riding Park at San Juan Capistrano.

Speaking on behalf of my family, the purchase of this open space and natural area will provide the City with a premiere venue for activities and go a long way towards protecting and improving the quality of life in San Juan Capistrano for future generations.

Sincerely,



Melodie Knuchell  
714-299-0199

**Cindy Russell**

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**From:** Julie Ryan Johnson [sjcec@cox.net]  
**Sent:** Wednesday, December 16, 2009 10:36 PM  
**To:** Londres Uso; Laura Freese; Tom Hribar; Mark Nielsen; Joe Tait; Cindy Russell; Sam Allevato  
**Subject:** Protecting Open Space

Dear Mr. Mayor, City Council, Open Space Committee and Bond Oversight Committee,

I am one of the seventy (70%) percent of the voters of San Juan Capistrano who voted to have my City leaders purchase Open Space property with the Measure Y bond funds. The citizens of San Juan Capistrano have always indicated a strong preference for protecting the open space that makes San Juan Capistrano shine among U.S. cities.

The voters passed two bond measures; one in the 1990's and another in 2008 to tax themselves to insure that our City would acquire and preserve Open Space property for the future and benefit of all the citizens to enjoy.

I have followed the progress of the Open Space Committee and the City Council over the last three years in acquiring property for Open Space and have found them to be very thorough and accurate in their work. The Planning Commission held a public hearing on the purchase of the property and recommended that the City Council purchase the property. The City Council held a public hearing and all five council members voted to acquire the property. The RMV property purchase is another fine example of the City's excellent work on my behalf.

The Orange County Local Agency Formation Commission, a 3<sup>rd</sup> independent party of government, held a public hearing, and after examining all the facts voted unanimously and annexed the RMV property into the City on December the 9<sup>th</sup>.

Please move forward and complete the purchase of the Rancho Mission Viejo Riding Park at San Juan Capistrano.

Speaking on behalf of my family, the purchase of this open space and natural area will provide the City with a premiere venue for activities and go a long way towards protecting and improving the quality of life in San Juan Capistrano for future generations.

Sincerely,

Gary and Julie Johnson

**Cindy Russell**

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**From:** Gretchen Verbeerst [gverbeerst@variantleasing.com]  
**Sent:** Monday, December 14, 2009 11:26 AM  
**To:** Londres Uso; Laura Freese; Tom Hribar; Mark Nielsen; Joe Tait; Cindy Russell  
**Subject:** Bond Oversight Committee compliance review of the RMV Open Space Purchase  
**Attachments:** scan.pdf

Dear Mr. Mayer, City Council, Open Space Committee and bond Oversight Committee,  
Please find attached a signed letter regarding the purchase of Rancho Mission Viejo property.

Thank you for your hard work,

Gretchen Verbeerst

## Cindy Russell

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**From:** Louis Tomaselli [louis.tomaselli@gmail.com]  
**Sent:** Monday, December 14, 2009 8:02 AM  
**To:** Londres Uso; Laura Freese; Sam Allevato; Tom Hribar; Mark Nielsen; Joe Tait; Cindy Russell  
**Cc:** 'Patti Tomaselli'; bgates@cox.net  
**Subject:** Bond Oversight Committee compliance review of the RMV Open Space Purchase

Dear Mayor, City Council, Open Space Committee and Bond Oversight Committee,

My name is Louis Tomaselli and my wife Patti and I live in the Hunt Club and moved to San Juan Capistrano from Newport Beach 3 years ago principally for the open space, equestrian focused landscape and life style. I am also a Board Member for the J.F Shea Therapeutic Riding Center and our two daughters ride 2 days per week at Rancho Sierra Vista Stables both located in the City San Juan Capistrano.

We are part of the seventy (70%) of the voters of San Juan Capistrano who voted to have our City leaders purchase Open Space property with the Measure Y bond funds. The citizens of San Juan Capistrano have always indicated a strong preference for protecting the Open Space that makes San Juan Capistrano shine among U.S. cities.

The voters passed two bond measures; one in 1990's and another in 2008 to tax themselves to insure that our City would acquire and preserve Open Space property for the future and benefit of all the citizens to enjoy.

We have followed the progress of the Open Space Committee and the City Council over the last three years in acquiring property for Open Space and have found them to be very thorough and accurate in their work. The Planning Commission held a public hearing on the purchase of the RMV property and recommended that the City Council purchase the property. The City Council held a public hearing and all five council members voted to acquire the property. The RMV property purchase is another fine example of the City's excellent work on our behalf.

The Orange County Local Agency Formation Commission, a 3<sup>rd</sup> independent party of government, held a public hearing after examining all the facts and voted unanimously and annexed the RMV property into the City on December 9, 2009.

Please move forward and complete the purchase of the Rancho Mission Viejo Riding Park at San Juan Capistrano.

Speaking on behalf of our family, the purchase of this open space and natural area will provide the City with a premiere venue for activities and go a long way towards protecting and improving the quality of life in San Juan Capistrano for future generations.

Sincerely,

Louis J. Tomaselli  
30562 Hunt Club Drive  
San Juan Capistrano CA 92675

## Cindy Russell

---

**From:** Linda Renne [lrenne@jvc.edu]  
**Sent:** Monday, December 14, 2009 7:43 AM  
**To:** Londres Uso; Laura Freese; Tom Hribar; Mark Nielsen; Joe Tait; Cindy Russell  
**Subject:** Purchase of the Rancho Mission Viejo Riding Park in San Juan Capistrano

Dear Mr. Mayor, City Council, Open Space Committee and Bond Oversight Committee,

I am one of the seventy (70%) percent of the voters of San Juan Capistrano who voted to have my City leaders purchase Open Space property with the Measure Y bond funds. The citizens of San Juan Capistrano have always indicated a strong preference for protecting the open space that makes San Juan Capistrano shine among U.S. cities.

The voters passed two bond measures; one in the 1990's and another in 2008 to tax themselves to insure that our City would acquire and preserve Open Space property for the future and benefit of all the citizens to enjoy.

I have followed the progress of the Open Space Committee and the City Council over the last three years in acquiring property for Open Space and have found them to be very thorough and accurate in their work. The Planning Commission held a public hearing on the purchase of the property and recommended that the City Council purchase the property. The City Council held a public hearing and all five council members voted to acquire the property. The RMV property purchase is another fine example of the City's excellent work on my behalf.

The Orange County Local Agency Formation Commission, a 3<sup>rd</sup> independent party of government, held a public hearing, and after examining all the facts voted unanimously and annexed the RMV property into the City on December the 9<sup>th</sup>.

Please move forward and complete the purchase of the Rancho Mission Viejo Riding Park at San Juan Capistrano.

Speaking on behalf of my family, the purchase of this open space and natural area will provide the City with a premiere venue for activities and go a long way towards protecting and improving the quality of life in San Juan Capistrano for future generations.

Sincerely,

*Linda Renne*

San Juan Capistrano resident  
92675-1958

## Cindy Russell

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**From:** Vic Cooper [vhcoop@cox.net]  
**Sent:** Saturday, December 12, 2009 12:49 PM  
**To:** Londres Uso  
**Cc:** Laura Freese; Sam Allevalo; Tom Hribar; Mark Nielsen; Joe Tait; Cindy Russell  
**Subject:** Bond Oversight Committee

Dear Mayor, City Council, Open Space Committee and Bond Oversight Committee,

I am one of the seventy (70%) of the voters of San Juan Capistrano who voted to have my City leaders purchase Open Space property with the Measure Y bond funds. The citizens of San Juan Capistrano have always indicated a strong preference for protecting the Open Space that makes San Juan Capistrano shine among U.S. cities.

The voters passed two bond measures; one in 1990's and another in 2008 to tax themselves to insure that our City would acquire and preserve Open Space property for the future and benefit of all the citizens to enjoy.

I have followed the progress of the Open Space Committee and the City Council over the last three years in acquiring property for Open Space and have found them to be very thorough and accurate in their work. The Planning Commission held a public hearing on the purchase of the RMV property and recommended that the City Council purchase the property. The City Council held a public hearing and all five council members voted to acquire the property. The RMV property purchase is another fine example of the City's excellent work on my behalf.

The Orange County Local Agency Formation Commission, a 3<sup>rd</sup> independent party of government, held a public hearing after examining all the facts and voted unanimously and annexed the RMV property into the City on December 9, 2009.

Please move forward and complete the purchase of the Rancho Mission Viejo Riding Park at San Juan Capistrano.

Speaking on behalf of my family, the purchase of this open space and natural area will provide the City with a premiere venue for activities and go a long way towards protecting and improving the quality of life in San Juan Capistrano for future generations.

Sincerely,

Vic Cooper

San Juan resident for 37 years.

**Cindy Russell**

---

**From:** Debi Brum [debibrum@cox.net]  
**Sent:** Monday, December 21, 2009 7:40 PM  
**To:** Londres Uso; Laura Freese; Tom Hribar; Mark Nielsen; Joe Tait; Cindy Russell

Dear Mr. Mayor, City Council, Open Space Committee and Bond Oversight Committee,

I am one of the seventy (70%) percent of the voters of San Juan Capistrano who voted to have my City leaders purchase Open Space property with the Measure Y bond funds. The citizens of San Juan Capistrano have always indicated a strong preference for protecting the open space that makes San Juan Capistrano shine among U.S. cities.

The voters passed two bond measures; one in the 1990's and another in 2008 to tax themselves to insure that our City would acquire and preserve Open Space property for the future and benefit of all the citizens to enjoy.

I have followed the progress of the Open Space Committee and the City Council over the last three years in acquiring property for Open Space and have found them to be very thorough and accurate in their work. The Planning Commission held a public hearing on the purchase of the property and recommended that the City Council purchase the property. The City Council held a public hearing and all five council members voted to acquire the property. The RMV property purchase is another fine example of the City's excellent work on my behalf.

The Orange County Local Agency Formation Commission, a 3<sup>rd</sup> independent party of government, held a public hearing, and after examining all the facts voted unanimously and annexed the RMV property into the City on December the 9<sup>th</sup>.

Please move forward and complete the purchase of the Rancho Mission Viejo Riding Park at San Juan Capistrano.

Speaking on behalf of my family, the purchase of this open space and natural area will provide the City with a premiere venue for activities and go a long way towards protecting and improving the quality of life in San Juan Capistrano for future generations.

Sincerely,

Roger and Debi Brum  
27171 Highland Drive  
San Juan Capistrano, CA 92675

Subject: Bond Oversight Committee compliance review of the RMV Open Space Purchase

To: [luso@sanjuancapistrano.org](mailto:luso@sanjuancapistrano.org)  
[lfreese@sanjuancapistrano.org](mailto:lfreese@sanjuancapistrano.org)  
[thribar@sanjuancapistrano.org](mailto:thribar@sanjuancapistrano.org)  
[mnielsen@sanjuancapistrano.org](mailto:mnielsen@sanjuancapistrano.org)  
[jtait@sanjuancapistrano.org](mailto:jtait@sanjuancapistrano.org)  
[crussell@sanjuancapistrano.org](mailto:crussell@sanjuancapistrano.org) ✓

Dear Mr. Mayor, City Council, Open Space Committee and Bond Oversight Committee,

I am one of the seventy (70%) percent of the voters of San Juan Capistrano who voted to have my City leaders purchase Open Space property with the Measure Y bond funds. The citizens of San Juan Capistrano have always indicated a strong preference for protecting the open space that makes San Juan Capistrano shine among U.S. cities.

The voters passed two bond measures; one in the 1990's and another in 2008 to tax themselves to insure that our City would acquire and preserve Open Space property for the future and benefit of all the citizens to enjoy.

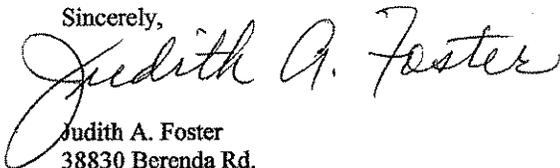
I have followed the progress of the Open Space Committee and the City Council over the last three years in acquiring property for Open Space and have found them to be very thorough and accurate in their work. The Planning Commission held a public hearing on the purchase of the property and recommended that the City Council purchase the property. The City Council held a public hearing and all five council members voted to acquire the property. The RMV property purchase is another fine example of the City's excellent work on my behalf.

The Orange County Local Agency Formation Commission, a 3<sup>rd</sup> independent party of government, held a public hearing, and after examining all the facts voted unanimously and annexed the RMV property into the City on December the 9<sup>th</sup>.

Please move forward and complete the purchase of the Rancho Mission Viejo Riding Park at San Juan Capistrano.

Speaking on behalf of my family, the purchase of this open space and natural area will provide the City with a premiere venue for activities and go a long way towards protecting and improving the quality of life in San Juan Capistrano for future generations.

Sincerely,



Judith A. Foster  
38830 Berenda Rd.  
Temecula, CA 92591  
(951) 308-2357  
(former resident of SJC, horse boarder at Ortega Equestrian  
Center and enthusiastic supporter of horse trails and open space

Subject: Bond Oversight Committee compliance review of the RMV Open Space  
To: [luso@sanjuancapistrano.org](mailto:luso@sanjuancapistrano.org) [lfreese@sanjuancapistrano.org](mailto:lfreese@sanjuancapistrano.org)  
[mnielsen@sanjuancapistrano.org](mailto:mnielsen@sanjuancapistrano.org) [jtait@sanjuancapistrano.org](mailto:jtait@sanjuancapistrano.org)  
[crussell@sanjuancapistrano.org](mailto:crussell@sanjuancapistrano.org)

Dear Mr. Mayor, City Council, Open Space Committee and Bond Oversight

I am one of the seventy (70%) percent of the voters of San Juan Capistrano who have always indicated a strong preference for protecting the open space that shine among U.S. cities.

The voters passed two bond measures; one in the 1990's and another in 2000 that our City would acquire and preserve Open Space property for the future to enjoy.

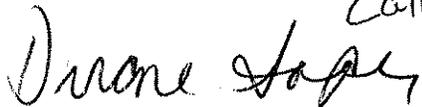
I have followed the progress of the Open Space Committee and the City Council in acquiring property for Open Space and have found them to be very thorough. The Planning Commission held a public hearing on the purchase of the property. The City Council held a public hearing and voted to acquire the property. The RMV property purchase is another fine example of work on my behalf.

The Orange County Local Agency Formation Commission, a 3<sup>rd</sup> independent public hearing, and after examining all the facts voted unanimously and announced their decision on December the 9<sup>th</sup>.

Please move forward and complete the purchase of the Rancho Mission Viejo in San Juan Capistrano.

Speaking on behalf of my family, the purchase of this open space and natural area with a premiere venue for activities and go a long way towards protecting and preserving it in San Juan Capistrano for future generations.

Sincerely,

  
Ashlee Averill  
Calle Arroyo  


Subject: Bond Oversight Committee compliance review of the RMV Open S  
To: [luso@sanjuancapistrano.org](mailto:luso@sanjuancapistrano.org) [lfreese@sanjuancapistrano.org](mailto:lfreese@sanjuancapistrano.org)  
[mnielsen@sanjuancapistrano.org](mailto:mnielsen@sanjuancapistrano.org) [jtait@sanjuancapistrano.org](mailto:jtait@sanjuancapistrano.org)  
[crussell@sanjuancapistrano.org](mailto:crussell@sanjuancapistrano.org)

Dear Mr. Mayor, City Council, Open Space Committee and Bond Oversight

I am one of the seventy (70%) percent of the voters of San Juan Capistrano who purchase Open Space property with the Measure Y bond funds. The voters have always indicated a strong preference for protecting the open space that makes our city shine among U.S. cities.

The voters passed two bond measures; one in the 1990's and another in 2000 that our City would acquire and preserve Open Space property for the future to enjoy.

I have followed the progress of the Open Space Committee and the City Council in acquiring property for Open Space and have found them to be very thorough. The Planning Commission held a public hearing on the purchase of the property. The City Council purchase the property. The City Council held a public hearing and voted to acquire the property. The RMV property purchase is another fine example of work on my behalf.

The Orange County Local Agency Formation Commission, a 3<sup>rd</sup> independent public hearing, and after examining all the facts voted unanimously and annexed the City on December the 9<sup>th</sup>.

Please move forward and complete the purchase of the Rancho Mission Viejo in San Juan Capistrano.

Speaking on behalf of my family, the purchase of this open space and natural area with a premiere venue for activities and go a long way towards protecting and preserving it in San Juan Capistrano for future generations.

Sincerely,

  
Dana Donegan  
Paseo Espada

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*Domith Demel*  
Juliana Farms Rd.

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Sincerely,

*Gardner Williamson*  
*San Juan Creek Road*

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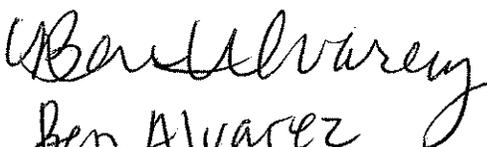
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Sincerely,

  
Ben Alvarez  
Calle Aspero

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GIGI NIENSLER  
SJC

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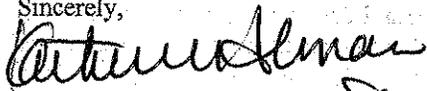
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Arturo Almar  
27912 Camino Santo Domingo