

C 89-16

7. UNFINISHED BUSINESS

D. Property Conveyance to the City - 340 Acres from Laing Forster Ranch

Report from the Public Works/Economic Development Director concerning the conveyance of 340 acres of land (known as East Ridge) to the City from Laing Forster Ranch.

Public Works/Economic Development Director Lund reviewed the contents of the Administrative Report; stated the City Attorney has approved the Quit Claim document, but noted that the Grant Deed document contains blanks that need to be filled in; presented a modified version of the Agreement Containing Covenants, Conditions, and Restrictions Affecting Real Property that includes non-substantive changes made earlier today; urged that Council approve the documents subject to the City Attorney's final review and approval.

Tom Padberg, San Clemente, stated that in 1989 the City enacted the RCFPP (Regional Circulation, Financing and Phasing Program) which imposed fees on developers to fund the construction of roadways; stated that the City subsequently modified the RCFPP in response to the downturn in the economy and that there is currently no plan to levy fees on developers for the construction of transportation improvements; stated that in 1995 Council determined that the obligation for the completion of roadway improvements runs with property and hence questioned whether City acceptance of the subject 340 acres results in the City assuming the obligation to pay \$70 million to extend Avenida La Pata to the Ortega Highway.

Public Works/Economic Development Director Lund responded that City acceptance of title on the subject land will not obligate the City to build Avenida La Pata or Avenida Vista Hermosa.

City Manager Parness explained that the City's development agreements obligate developers to fund roadway improvements prior to creating traffic that would exceed the capacity of the current road system; stated the original development plans for the East Ridge property included a major commercial development as well as 400-500 houses, noting that in contrast the current proposal will result in 310 acres of the subject 340 acres being retained as open space; explained, therefore, that the land density will be reduced, traffic generation will be reduced, and the justification for extending Avenida La Pata no longer exists.

Community Development Director Holloway pointed out that the Laing Development Agreement obligates Laing to pay \$16 million for the Camino Vera Cruz connection; explained also that the Talega Development Agreement obligates that developer to pay \$15 million for the Avenida La Pata and Avenida Vista Hermosa connection; stated that although the City modified the RCFPP, the City did not waive the requirement for developers to build roads to provide traffic capacity for their development.

**MOTION BY COUNCILMEMBER DIEHL, SECOND BY MAYOR PRO TEM EGGLESTON, CARRIED 5-0, to:**

1. Approve, and authorize the Mayor to execute, the Quit Claim Assignment of Sewer Capacity and authorize the City Clerk to submit the document to the Orange County Recorder's office for recordation.
2. Approve, and authorize the Mayor to execute, the Grant Deed (version presented at the meeting), subject to final review and approval by the City Attorney, and authorize the City Clerk to submit the document to the Orange County Recorder's office for recordation.
3. Approve, and authorize the Mayor to execute, the Agreement Containing Covenants, Conditions, and Restrictions Affecting Real Property, by and among the City of San Clemente, Laing Forster Ranch LLC and Laing Forster Ranch II LLC, (version presented this evening), subject to final review and approval of the City Attorney.  
Contract C89-16



**AGENDA REPORT**  
**SAN CLEMENTE CITY COUNCIL MEETING**  
 Meeting Date: February 16, 2000

Agenda Item 7-D  
 Approvals: \_\_\_\_\_  
 City Manager MP  
 Dept. Head [Signature]  
 Attorney \_\_\_\_\_  
 Accounting \_\_\_\_\_  
 Other \_\_\_\_\_

**Department:** Public Works  
**Prepared By:** David N. Lund, Public Works & Economic Development Director

[Signature]

**Subject:** **PROPERTY CONVEYANCE (340 ACRES) FROM LAING FORSTER RANCH, LLC, TO THE CITY OF SAN CLEMENTE**

**Summary:** At its regular meeting of March 4, 1998, the City Council took action to give final reading and adoption of Ordinance No. 1201 approving the Laing Forster Ranch Development Agreement. In accordance with Section 10.2 of the Development Agreement, Laing Forster Ranch is required to irrevocably offer to dedicate the subject 340 acres (known as East Ridge) to the City (see Site Map). The original offer of dedication was to have expired on April 4, 1999; however, through a series of extensions provided by Mr. Ken Nishikawa, Vice President of Laing Forster Ranch, the offer is now due to expire on February 29, 2000.

The conveyance of the property to the City was originally delayed pending the final resolution of the developer's 404 Permit from the Army Corps of Engineers. In May 1999, the Corps issued the 404 Permit to Laing Forster Ranch and during the past intervening period, the developer and the City have been involved in negotiations concerning the terms and conditions of the conveyance. It should be noted that Section 10.2 of the Development Agreement provides that the City pay a purchase price to the developer for the subject property that is equivalent to the amount of the outstanding non-delinquent Assessment District 85-1 assessment that is allocable to the 340 acres. The Council will recall that this sewer capacity was transferred to Talega Associates as a condition of their approved development agreement and the City was paid \$1.6 million on March 4, 1999 for this capacity. In accordance with the resolution approving the sale of the bonds for the new Assessment District 98-1, the City was obligated to use these proceeds to redeem a portion of the outstanding principal indebtedness of Assessment District 85-1. The redemption of this indebtedness satisfied the City's purchase price obligation to Laing Forster Ranch.

Most of the acreage being acquired by the City is encumbered for environmental mitigation; however, 30 acres generally located in the area near the proposed intersection of Avenida Vista Hermosa and Avenida La Pata is proposed for City development. Some of this acreage may be developed for a Community Park, Civic Center and, on a joint use basis, may be utilized as the site for the Festival of Arts and Pageant of the Masters.

The City Attorney has prepared for City Council approval a Quit Claim Assignment of Sewer Capacity, a Grant Deed for conveyance of the property to the City and Agreement Containing Covenants, Conditions, and Restrictions Affecting Real Property.

***Recommended  
Action:***

STAFF RECOMMENDS THAT the City Council take the following action:

1. Approve and authorize the Mayor to execute the Quit Claim Assignment of Sewer Capacity and authorize the City Clerk to submit the document to the Orange County Recorder's office for recordation; and
2. Approve and authorize the Mayor to execute the Grant Deed and authorize the City Clerk to submit the document to the Orange County Recorder's office for recordation; and
3. Approve the Agreement Containing Covenants, Conditions, and Restrictions Affecting Real Property and authorize the Mayor to execute same.

***Fiscal Impact:*** No

***Attachments:*** Site Map  
Quit Claim Assignment of Sewer Capacity  
Grant Deed  
Agreement Containing Covenants, Conditions, and Restrictions Affecting Real Property

SITE MAP

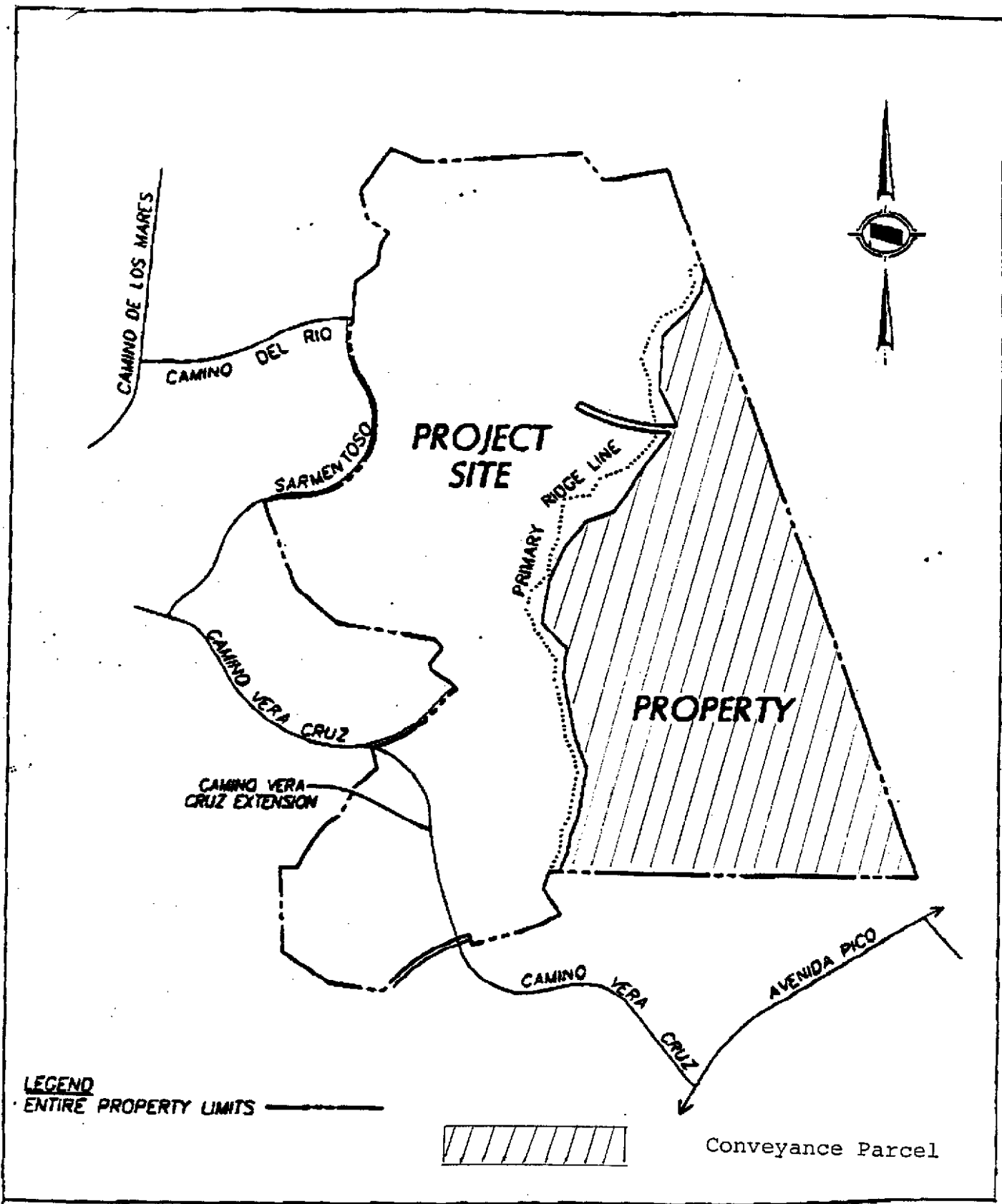


EXHIBIT A  
FORSTER RANCH SITE MAP

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

CITY OF SAN CLEMENTE  
100 Avenida Presidio  
San Clemente, CA 92672  
Attn: City Clerk

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This Agreement Containing Covenants, Conditions, and Restrictions Affecting Real Property is recorded at the request and for the benefit of the City of San Clemente and is exempt from the payment of a recording fee pursuant to Government Code Sections 6103 and 27383.

THE CITY OF SAN CLEMENTE

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Dated: \_\_\_\_\_, 2000

**AGREEMENT CONTAINING COVENANTS,  
CONDITIONS, AND RESTRICTIONS AFFECTING REAL PROPERTY**

This Agreement Containing Covenants, Conditions, and Restrictions Affecting Real Property (the "Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2000, by and among LAING FORSTER RANCH LLC, a Delaware limited liability company ("LFRI"), LAING FORSTER RANCH II LLC, a Delaware limited liability company ("LFR II"), and the CITY OF SAN CLEMENTE, a municipal corporation ("City"). LFRI and LFR II may hereinafter collectively be referred to as "Laing"; and City, LFRI, and LFR II may hereinafter collectively be referred to as the "Parties" and individually as a "Party").

**RECITALS**

A. LFR II is the current owner in fee of that certain real property (the "Undeveloped Forster Ranch Property") located within the City of San Clemente, County of Orange, State of California, which real property is more particularly described on Exhibit "A" and is depicted on Exhibit "B", both of which are attached hereto and incorporated herein. The Undeveloped Forster Ranch Property was previously owned by LFRI.

B. Laing desires to develop the Undeveloped Forster Ranch Property as a master planned residential development (the "Project").

C. On or about March 4, 1998, the City Council of the City of San Clemente ("City Council") adopted its Ordinance No. 1201, approving the Amended and Restated Development Agreement (the "Development Agreement") for Forster Ranch which provides for, among other things, the development of the Undeveloped Forster Ranch Property with the Project. The

Development Agreement was recorded on April 14, 1998, in the Official Records of Orange County, California, as Instrument No. 19980219622.

D. Pursuant to the Development Agreement, on or about May 6, 1998, LFRI executed that certain Irrevocable Offer of Dedication to the City of San Clemente ("Offer of Dedication") in favor of City, which Offer of Dedication was recorded on May 11, 1998, in the Official Records of Orange County, California, as Instrument No. 19980286799, whereby LFRI offered to dedicate to City certain real property located within the City of San Clemente, County of Orange, State of California, which is adjacent to the Undeveloped Forster Ranch Property and which is commonly known as the East Ridge of Forster Ranch (the "East Ridge"), which real property is more particularly described in Exhibit "C" and is depicted on Exhibit "D", both of which are attached hereto and incorporated herein.

E. On or about May 20, 1999, the United States Army Corps of Engineers ("Army Corps") issued that certain Permit No. 98-00224-VAW pursuant to Section 404 of the Clean Water Act (33 U.S.C. 403) (as the same may be amended from time to time, the "404 Permit") in favor of LFRI. The 404 Permit, among other things, imposes certain obligations, conditions, and restrictions upon LFRI in connection with the development of the Project on the Undeveloped Forster Ranch Property, which obligations, conditions, and restrictions encumber the East Ridge.

F. In accordance with the Offer of Dedication and as approved by City, on or about June 16, 1999, pursuant to that certain Conservation Easement Deed ("Conservation Easement") executed by LFRI in favor of the United States of America, acting by and through the Army Corps, which Conservation Easement was recorded on June 29, 1999, in the Official Records of Orange County, California, as Instrument No. 19990483295, Laing granted to the Army Corps a conservation easement in perpetuity over that portion of the East Ridge referred to herein as the "Conservation Easement Area," which for purposes of this Agreement is defined as the entire East Ridge excluding only the portions of the East Ridge that are generally described in Exhibits "A," "B," and "C" to the Conservation Easement and referred to as "Future Development Parcel A," "Future Development Parcel B," "Future Development Parcel C," "Future Development Parcel D," "Future Camino Del Rio," "Future Avenida Vista Hermosa," "Future Avenida La Pata," and the incidental grading areas appurtenant thereto, all as more particularly depicted therein and in Exhibit "E" hereto. Future Development Parcels A, B, C, and D are hereinafter collectively referred to as the "City Future Development Parcels," Future Camino Del Rio, Future Avenida Vista Hermosa, Future Avenida La Pata, and the incidental grading areas appurtenant thereto are hereinafter collectively referred to as the "City Roadway Improvement Areas," and the City Future Development Parcels and the City Roadway Improvement Areas are hereinafter collectively referred to as the "East Ridge Improvement Areas." It is understood and agreed that the precise boundaries of the Conservation Easement Area and the East Ridge Improvement Areas may be adjusted in accordance with Section 3.3 of this Agreement.

G. Pursuant to that certain Grant Deed executed by LFRI, as grantor, in favor of City, as grantee, dated of even date herewith and recorded concurrently herewith (the "Grant Deed"), LFRI has conveyed the East Ridge to City and City accepted said conveyance from Laing.

H. Concurrently herewith, LFRI and City have entered into that certain Quitclaim Assignment of Sewer Capacity (the "Sewer Capacity Quitclaim").

I. City intends to develop the East Ridge Improvement Areas for uses permitted hereunder.

J. The Parties desire to enter into this Agreement in order to memorialize certain covenants, conditions, and restrictions respecting City's development of the East Ridge Improvement Areas and in order to memorialize the Parties' agreement regarding their respective rights and obligations under the 404 Permit and the Conservation Easement with respect to the Conservation Easement Area.

## COVENANTS

In consideration of the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by all Parties, LFRI, LFRIL, and City hereby agree as follows:

### **SECTION 1: TERMINATION OF OFFER OF DEDICATION**

From and after the Effective Date (as defined in Section 6.1 below), the Offer of Dedication shall be superseded by the Grant Deed, the Sewer Capacity Quitclaim, and this Agreement, the Offer of Dedication shall terminate, and the terms and conditions thereof shall be of no further force or effect whatsoever. Upon the request of any Party, the other Party or Parties agree(s) to promptly execute in recordable form an appropriate document or documents prepared by the requesting Party to eliminate the Offer of Dedication as a lien or encumbrance against all or any portion of the East Ridge.

### **SECTION 2: PHYSICAL CONDITION OF EAST RIDGE; NO TRANSFER OF CREDITS OR RIGHTS OF REIMBURSEMENT**

2.1 As-Is. City hereby acknowledges that it has accepted the East Ridge in an "AS IS" physical condition, and that Laing has not made any representation or warranty, real or implied, as to its condition or suitability for any use; provided, however, LFRI does hereby represent and warrant that to the best of its knowledge, which shall be limited to the actual knowledge of Ken Nishikawa without a duty of inquiry of any kind, since the date of LFRI's acquisition of the East Ridge, there are and have been no federal, state, or local enforcement, clean-up, removal, remedial, or other governmental actions threatened, instituted, or completed against the East Ridge with respect to any "Hazardous Substance." As used herein, the term "Hazardous Substance" means any substance, material, or waste which is or becomes designated, classified, or regulated as being "toxic" or "hazardous" or a "pollutant" or which is or becomes similarly designated, classified, or regulated under any law, statute, ordinance, or regulation pertaining to health, industrial hygiene, or the environment, including, without limitation, CERCLA (the Comprehensive Environmental Response, Compensation and Liability Act of 1980) and RCRA (the Resources Conservation and Recovery Act of 1976). City's acceptance of the Grant Deed constitutes City's agreement to release Laing from and against any liability to City or any third party for any defect, patent or latent, in the physical condition of the East



Ridge, excepting only any liability arising out of LFRI's breach of the limited representation and warranty set forth herein.

2.2 No Transfer of Credits or Rights of Reimbursement. City and Laing mutually acknowledge that, other than the sewer capacity to be provided by LFRI to City pursuant to the Sewer Capacity Quitclaim, LFRI has conveyed the East Ridge to City without any other development impact fee credits or rights of reimbursement of such fees, which may be held or owned by Laing or related to the Undeveloped Forster Ranch Property or the East Ridge, all of which rights are expressly hereby reserved by Laing.

### **SECTION 3: COVENANTS AND RESTRICTIONS RESPECTING EAST RIDGE IMPROVEMENT AREAS**

3.1 General. The covenants and restrictions set forth in this Section 3 (collectively, the "East Ridge Improvement Area Covenants") are hereby declared and agreed to be part of a general plan for the purposes of (i) assuring the orderly and harmonious development and operation of improvements on the Undeveloped Forster Ranch Property and the East Ridge Improvement Areas and (ii) assuring the enhancement and protection of the value, desirability, and attractiveness of the Undeveloped Forster Ranch Property and the East Ridge Improvement Areas. The East Ridge Improvement Area Covenants shall be appurtenant to and shall run with the East Ridge Improvement Areas, shall be binding upon any person or entity who acquires any right, title, or interest in or to any portion of the East Ridge Improvement Areas, shall be appurtenant to and shall benefit the fee owner of the "Dominant Tenement" (as that term is defined below), and shall be enforceable only by the fee owner of the Dominant Tenement. In addition to the foregoing, the East Ridge Improvement Area Covenants shall benefit and be enforceable by the last "Master Developer" (as that term is defined below) of the Dominant Tenement without regard to its ownership of land from the date that the Master Developer transfers, assigns, or conveys the last portion of the Undeveloped Forster Ranch Property through the date on which City approves the final inspection or issues the final certificate of occupancy for the residential units to be developed on the last remaining portion of the Dominant Tenement and City releases all surety bonds and/or letters of credit provided to City to secure the completion of any public improvements or facilities required to be constructed or installed by or on behalf of the Master Developer with respect to said property (with the exception of any warranty bonds or letters of credit covering any such public improvements or facilities).

Every person or entity who now or hereafter owns or acquires any right, title, or interest in or to any portion of the East Ridge Improvement Areas is and shall be conclusively deemed to have consented and agreed to every covenant contained herein, whether or not any reference to this instrument is contained in the instrument by which such person acquired an interest in such East Ridge Improvement Areas.

3.2 Dominant Tenement. The East Ridge Improvement Area Covenants set forth in this Section 3 shall run with the land and shall benefit those legal lots within the Undeveloped Forster Ranch Property that satisfy all of the following requirements from time to time (herein, the "Dominant Tenement"): (i) the lots are owned in fee by LFRI or its successor or assignee as the single "Master Developer" of the Undeveloped Forster Ranch Property, (ii) the lots are developable with single-family residential units in accordance with the Development Agreement

and City's General Plan and Forster Ranch Specific Plan, as the same may be lawfully amended from time to time, and (iii) no final inspection or certificate of occupancy for residential structures shall have been issued for said lots. The Dominant Tenement, as it exists on the Effective Date, is described on Exhibit "A" and Exhibit "B". Not by way of limitation of the foregoing, the Dominant Tenement shall not include any of the following:

(i) As long as LFR II continues to be the fee owner of any portion of Undeveloped Forster Ranch Property, any other portion of the Undeveloped Forster Ranch Property that hereafter is transferred, assigned, or otherwise conveyed by LFR II to any third party, including but not limited to any other real estate developer or merchant builder; provided, however, that if LFR II transfers, assigns, or otherwise conveys all or a portion of its right, title, and interest in and to the Undeveloped Forster Ranch Property to a third party that qualifies as the "Master Developer," as that term is defined below, the portion of the Undeveloped Forster Ranch Property owned by said Master Developer (including any successor to the original Master Developer) shall not be excluded from the Dominant Parcel by virtue of the operation of this clause (i);

(ii) Any portion of the Undeveloped Forster Ranch Property that is owned by any homeowners' association or that has been finally subdivided and sold or leased to a member of the public or any other ultimate user as either a completed residence or a custom home site; or

(iii) Any portion of the Undeveloped Forster Ranch Property that is a lettered lot or is designated by City as an open space lot, any common area, slope, or utility or street right-of-way, or any other lot or portion of the Undeveloped Forster Ranch Property that is not intended to be developed with single-family residential dwelling units in accordance with the Development Agreement.

It is intended that there shall be only a single owner of the Dominant Tenement at any point in time (the "Master Developer"). Currently, LFR II is the Master Developer. If LFR II transfers all of its right, title, and interest in the Undeveloped Forster Ranch Property to a third party, that third party automatically shall qualify as the Master Developer (even if the transfer is to a lender or other entity that does not actually intend to develop said property itself), without the necessity of any assignment agreement between LFR II and such third party. If, however, LFR II transfers to a third party its fee interest in less than all of the undeveloped residential lots within the Undeveloped Forster Ranch Property, either (i) LFR II would remain as the "Master Developer" and the Dominant Tenement would include only the residential lots still owned by LFR II after said transfer that otherwise satisfy the definition of the "Dominant Tenement" set forth above or (ii) if LFR II delivers to City a written agreement executed by LFR II and its transferee and in a form reasonably acceptable to the City Attorney whereby LFR II assigns to LFR II's transferee LFR II's status as Master Developer, the transferee would become the Master Developer and the Dominant Tenement would include only the residential lots transferred by LFR II to such transferee that otherwise satisfy the definition of the "Dominant Tenement" set forth above. The status of the Master Developer may be similarly transferred to subsequent fee owners of all or a portion of the Undeveloped Forster Ranch Property, in which case the identification of the Dominant Tenement shall be correspondingly adjusted in the same manner. City shall have no right to approve the Master Developer, excepting only that there shall be no

more than one (1) Master Developer at any point in time. In the event of a transfer of less than all of the undeveloped residential lots within the Undeveloped Forster Ranch Property and in the absence of a satisfactory written agreement assigning the status of Master Developer to the transferee, City shall be entitled to treat the transferor as the Master Developer and the transferor's remaining portion of the Undeveloped Forster Ranch Property as the Dominant Tenement (to the extent said property satisfies the other requirements set forth herein for classification as the Dominant Tenement).

Upon the request of any Party, the other Party or Parties agree(s) to promptly execute in recordable form an appropriate document or documents prepared by the requesting Party to clarify whether or not any particular portion of the Undeveloped Forster Ranch Property is or remains a portion of the Dominant Tenement.

3.3 Servient Tenement. The East Ridge Improvement Area Covenants set forth in this Section 3 shall burden the East Ridge Improvement Areas. In this regard, it is understood that the East Ridge Improvement Areas, the City Future Development Parcels, and the City Roadway Improvement Areas have not been precisely defined by legal description by the Army Corps, the United States Fish and Wildlife Service, the California Department of Fish and Game, and other federal and state agencies with jurisdiction over the biological resources on the East Ridge (collectively, the "Resource Agencies"), that the boundaries between one or more of the East Ridge Improvement Areas and the adjoining Conservation Easement Area may be adjusted or precisely defined by legal description, and that in the event of any conflict between the description of the East Ridge Improvement Areas referred to in Recital F and depicted in Exhibit "E" to this Agreement and the boundaries of the East Ridge Improvement Areas as finally determined by the Resource Agencies, the determination of the Resource Agencies shall control and the description of the East Ridge Improvement Areas and the servient tenement subject to the East Ridge Improvement Area Covenants automatically shall be adjusted accordingly. Laing, at no cost to Laing other than in-house administrative and overhead cost, shall cooperate with City in all proceedings before the Resource Agencies in an effort to not cause the Resource Agencies to decrease the size of the East Ridge Improvement Areas or change the location or configuration of the East Ridge Improvement Areas in such a manner that City's development, maintenance, and use thereof (as limited by Section 3.4 of this Agreement) are materially adversely impacted or impaired; provided, however, that Laing makes no warranty or representation to City regarding the final action that may be taken by any of the Resource Agencies with regard to any such matters. At such time that the Resource Agencies precisely define (if desired by the City and/or required by any Resource Agency) the location of the Conservation Easement Areas (and, hence, the East Ridge Improvement Areas) and upon the request of any Party, the other Party or Parties agree(s) to promptly execute in recordable form an appropriate document or documents prepared by the requesting Party to confirm the precise adjusted locations of the Conservation Easement Area and East Ridge Improvement Areas.

### 3.4 Covenants.

3.4.1 Permitted Uses. City may develop, maintain, and use the East Ridge Improvement Areas, or allow or permit the East Ridge Improvement Areas to be developed, maintained, and used for any of the following purposes (collectively, the "Permitted Uses"): roadways, public utilities, open space uses consistent with parks and open space areas in the

County of Orange, public buildings and facilities (including with limitation buildings and facilities for public administration, public safety (law enforcement and fire), public works, public and non-profit charitable, educational, and eleemosynary buildings and facilities), and cultural arts facilities, including without limitation one or more amphitheaters, enclosed theaters, museums, restaurants, educational facilities, related offices, and ancillary facilities. City shall not develop, maintain, or use the East Ridge Improvement Areas or allow or permit the East Ridge Improvement Areas to be developed, maintained, or used for any other uses, including residential uses, without the prior written consent of the person or entity entitled to enforce the East Ridge Improvement Area covenants in accordance with Sections 3.1 and 3.2 of this Agreement. City shall exercise reasonable diligence in an effort to cause all Permitted Uses within the East Ridge Improvement Areas to be developed and maintained in accordance with City's General Plan, the Forster Ranch Specific Plan, and all other applicable ordinances, rules, and regulations, as the same currently exist or as the same may be lawfully amended from time to time. City shall not develop, maintain, or use the East Ridge Improvement Areas in a manner that will interfere with the reservations set forth in the Grant Deed or the rights herein reserved by LFR II on behalf of the Dominant Tenement.

Upon City's written notice to Laing, to the extent requested by City, Laing shall cooperate with City and take such reasonable actions with respect to City's procurement of any additional approvals from the Resource Agencies as City may deem necessary or desirable in connection with the development, maintenance, or use of the East Ridge Improvement Areas with the Permitted Uses; provided, however, that (i) such cooperation shall be at no cost to Laing other than in-house administrative and overhead cost and (ii) Laing makes no warranty or representation to City regarding the final action that may be taken by any of the Resource Agencies with regard to any such matters.

3.4.2 Maintenance and Repairs. City shall keep and maintain the East Ridge Improvement Areas and all improvements developed or operated thereon in a manner so as to not create a public or private nuisance to the detriment of the Dominant Tenement. City shall be responsible for the abatement and/or removal, in accordance with applicable local, state, and federal laws, of any and all toxic, hazardous, dangerous, or potentially dangerous wastes and contaminants deposited or spilled on the East Ridge Improvement Areas in violation of applicable environmental laws to the extent the deposit or spill arises out of City's use of the East Ridge Improvement Areas and adversely affects the Dominant Tenement.

3.4.3 Transfer of Property. City shall not sell or lease, contract to sell or lease, or in any other way transfer or convey all or any portion of its interest in the East Ridge Improvement Areas to a third party for any purpose inconsistent with the Permitted Uses.

3.5 No Representations by Laing. City hereby acknowledges and agrees that, although it is anticipated that the 404 Permit will allow City to develop, maintain, and use the East Ridge Improvement Areas for any or all of the Permitted Uses, Laing makes absolutely no representation or warranty in this regard. Not by way of limitation of the foregoing, Laing makes no representation or warranty as to whether City will be required to obtain additional permits or modifications to the existing 404 Permit in conjunction with the development of the East Ridge Improvement Areas. If City is so required to obtain additional permits or modifications to the existing 404 Permit in conjunction with the development of the East Ridge

Improvement Areas, City shall comply with any requirements or mitigation measures imposed on such new or modified 404 Permit at no cost to Laing but only to the extent that such requirements and mitigation measures are not already Laing's responsibility pursuant to Sections 4.3.4 and 4.3.5 of this Agreement.

**SECTION 4: COVENANTS AND RESTRICTIONS RESPECTING CONSERVATION EASEMENT AREA**

4.1 General. The covenants and restrictions set forth in this Section 4 (collectively, the "Conservation Easement Area Covenants") are hereby declared and agreed to be part of a general plan for the purposes of (i) assuring the orderly and harmonious development and operation of improvements on the Undeveloped Forster Ranch Property and the East Ridge Improvement Areas, (ii) assuring the enhancement and protection of the value, desirability, and attractiveness of the Undeveloped Forster Ranch Property and the East Ridge Improvement Areas, and (iii) providing for the Parties' respective rights and obligations under the 404 Permit and the Conservation Easement with respect to the Conservation Easement Area.

Every person or entity who now or hereafter owns or acquires any right, title, or interest in or to any portion of the Conservation Easement Area is and shall be conclusively deemed to have consented and agreed to every covenant contained herein, whether or not any reference to this instrument is contained in the instrument by which such person acquired an interest in the Conservation Easement Area.

4.2 Dominant and Servient Tenements; Additional Enforcement Rights. The Conservation Easement Area Covenants set forth in this Section 4 shall be appurtenant to and shall run with the land and shall benefit and burden both the Dominant Tenement described in Section 3.2 of this Agreement and the Conservation Easement Area described in Section 3.3 of this Agreement, as the locations and descriptions of said areas may be adjusted from time to time in accordance with Sections 3.2 and 3.3 of this Agreement. In addition to the foregoing, the Conservation Easement Area Covenants shall benefit and be enforceable by the Master Developer without regard to its ownership of land during the same period of time and to the same extent that the Master Developer is entitled to enforce the East Ridge Improvement Area Covenants, as set forth in the last sentence of the first paragraph of Section 3.1 of this Agreement.

4.3 Covenants.

4.3.1 Prohibited City Actions. City shall not take any affirmative action to develop, maintain, or use any portion of the Conservation Easement Area in a manner inconsistent with the restrictions set forth in the Conservation Easement, the 404 Permit, or the lawful requirements of any of the Resource Agencies, as the same may be amended from time to time.

4.3.2 Additional City Conveyances and Dedications. Upon Laing's written notice to City, to the extent reasonably requested by Laing, City shall cooperate with Laing and take such further actions with respect to conveying, dedicating, or restricting the use of the Conservation Easement Area as may be required by any of the Resource Agencies to permit Laing to fulfill any requirements or conditions imposed by the Resource Agencies relating to mitigation of

environmental impacts arising out of Laing's development of the Undeveloped Forster Ranch Property, including the conveyance or dedication of any portion of the Conservation Easement Area to any governmental or non-profit agency or entity for purposes such as habitat conservation or open space; provided that any such further actions shall be at no cost to City other than in-house administrative and overhead cost.

4.3.3 City Application for New or Amended 404 Permit. The Parties acknowledge that the Army Corps issued the 404 Permit in favor of Laing in connection with the development of the Project on the Undeveloped Forster Ranch Property. However, because City will be developing and maintaining the East Ridge Improvement Areas in accordance with Section 3 of this Agreement, the Parties acknowledge that the Army Corps may require in conjunction with that proposed development that City apply for a new or modified 404 Permit that imposes new or modified obligations on City's ownership, maintenance, and use of the Conservation Easement Area. If this occurs, then City shall comply with any new or modified requirements and mitigation measures imposed by the Army Corps with respect to City's ownership, maintenance, and use of the Conservation Area at no cost to Laing to the extent that such requirements and mitigation measures are not already Laing's responsibility pursuant to Sections 4.3.4 and 4.3.5 of this Agreement; provided, however, notwithstanding any provision set forth herein to the contrary, City shall not be required to assume any affirmative obligations previously imposed upon Laing under the 404 Permit in connection with the development of the Project on the Undeveloped Forster Ranch Property in accordance with Sections 4.3.4 and 4.3.5 of this Agreement.

4.3.4 Laing Compliance with 404 Permit, Conservation Easement, and Requirements of Resource Agencies. Laing shall not take any action or fail to take any action that results in a violation of any term, condition, or provision of the 404 Permit, the Conservation Easement, or any other lawful requirement of any of the Resource Agencies relating to the Conservation Easement Area. In addition, to the extent that any provision of the 404 Permit or the Conservation Easement or any requirement or condition adopted or imposed by any of the Resource Agencies requires any affirmative action to be taken with respect to any portion of the Conservation Easement Area, City shall not be required to assume responsibility for such affirmative action and the responsibility for such affirmative action shall be on Laing, except to the limited extent of City's obligations set forth in Sections 4.3.2 and 4.4.3. Not by way of limitation of the foregoing, City shall not be required to take any affirmative action to create or maintain wetlands or habitat area within the Conservation Easement Area or to monitor or report to any of the Resource Agencies with respect thereto, and Laing shall be solely responsible for compliance with any and all affirmative obligations with respect to such matters.

4.3.5 Right of Entry to Laing. To the extent that Laing determines in its reasonable discretion that it requires access to all or a portion of the Conservation Easement Area in order to perform Laing's affirmative obligations set forth in Section 4.2.4 with respect to said area, City shall permit such entry by Laing subject to the following requirements: (i) except in the event of an emergency, Laing shall provide City with a minimum of three (3) business days notice prior to effectuating such entry (the "Entry Notice"); (ii) each Entry Notice shall describe in detail the purpose of the entry, the precise nature of any physical work to be performed during such entry, the time(s) of such entry, and the identify of the person(s) and firm(s), including any contractor or subcontractor of Laing, exercising such right of entry; (iii) prior to the date of each such entry,

Laing shall cause to be delivered to City satisfactory evidence of Laing's (or its contractor's or subcontractor's) maintenance of a comprehensive general liability insurance policy meeting the requirements of Section 17.1 of the Development Agreement covering acts or omissions of Laing and its contractor(s), subcontractor(s), and agent(s) effectuating such entry; (iv) Laing shall act reasonably and in good faith to minimize interference with City's development and maintenance of the Permitted Uses within the East Ridge Improvement Areas to the extent practicable; (v) Laing shall obtain any required governmental permits or authorizations for work to be performed by Laing or its contractor(s) or subcontractor(s) within the Conservation Easement Area and shall comply with all of the terms of said permits and authorizations and applicable provisions of federal, state, and local law; (vi) Laing shall promptly repair any damage to the Conservation Easement Area and restore the premises as nearly as practicable to the condition existing immediately prior to Laing's entry, except to the extent that physical improvements or alterations are required in order to comply with applicable provisions of the Section 404 Permit, the Conservation Easement, or the requirements of the Resource Agencies; and (vii) Laing shall not allow any stop notice, mechanics' lien, or other similar claim to be filed or recorded against the Conservation Easement Area and shall hold City and the Conservation Easement Area free and harmless from and against any and all such claims.

#### **SECTION 5: TERM**

The East Ridge Improvement Area Covenants set forth in Section 3 and the Conservation Easement Area Covenants set forth in Section 4 automatically shall terminate and be of no further force or effect without further action by Laing or City on the date which is the earliest of the following dates (the "Covenant Termination Date"): (i) the date that is twenty (20) years from the date of the recordation of the Grant Deed in the Official Records of Orange County, California, (ii) the date that the last certificate of occupancy is issued for the last single-family residential lot within the Dominant Tenement (as the same may change from time to time) and all surety bonds and letters of credit which have been posted as securing for the completion of public improvements with respect to the Dominant Tenement are released, or (iii) such earlier date that the owner of the Dominant Tenement or the Master Developer and City, each in its sole and absolute discretion, may record a declaration or other instrument terminating said covenants. Until the Covenant Termination Date, the East Ridge Improvement Area Covenants and the Conservation Easement Area Covenants shall be binding absolutely and unconditionally on the burdened Party or Parties and its or their successors and assigns to the ownership of the applicable servient tenement or tenements.

#### **SECTION 6: CONSTRUCTION OF HIGHWAY IMPROVEMENTS**

Notwithstanding anything to the contrary contained herein or in the Development Agreement or elsewhere, City acknowledges and agrees that Laing, other owners of real property within the Undeveloped Forster Ranch Property, and their successors and assigns shall have no obligation whatsoever, whether financial or otherwise, to build, construct, or otherwise develop the roadways known as Avenida Vista Hermosa and La Pata, either on- or off-site of the Undeveloped Forster Ranch Property.

## **SECTION 7: MISCELLANEOUS**

7.1 **Effective Date.** The Effective Date hereof shall be the date that the Grant Deed and this Agreement are recorded in the Official Records of Orange County, California.

7.2 **Default and Remedies: General.** Because of the unique nature and scope of Laing's development of the Undeveloped Forster Ranch Property and City's development of the East Ridge Improvement Areas and the amount of planning, effort, and time expended by each Party in reliance upon the anticipated uses of said properties, the Parties acknowledge that monetary damages will not provide a complete and adequate remedy for the damage to the non-defaulting Party resulting from a breach of the covenants set forth in Sections 3 and 4 by the defaulting Party. Therefore, if either Party fails to timely perform any of its obligations set forth in Section 3 or 4 of this Agreement, and fails to cure the default within 30 days after the non-defaulting Party delivers written notice to the defaulting Party of the default or, if the default cannot be cured within 30 days, if the defaulting Party fails to commence to cure within 30 days and thereafter diligently pursue such cure to completion, the non-defaulting Party shall have the right (i) to specifically enforce the defaulting Party's performance of the unperformed covenants and (ii) enforce this Agreement by any other remedy provided by law.

7.3 **Waiver.** Neither a waiver by the non-defaulting Party of a breach of any of the covenants set forth in Sections 3 and 4 of this Agreement nor a delay or failure by the non-defaulting Party to enforce any of said covenants shall (i) be construed to be a waiver of any earlier or later breach of the same or any other provision of said covenants or (ii) be implied from any inaction or omission by the non-defaulting Party to take any action on account of such breach or failure. No express waiver shall affect a breach or failure other than as specified in said waiver. The non-defaulting Party's consent to or approval of any act by the defaulting Party requiring the defaulting Party's consent or approval shall not be deemed to waive or render unnecessary the defaulting Party's consent or approval to or of any subsequent similar acts by the defaulting Party. The non-defaulting Party shall not be liable for any damage, loss, or prejudice suffered or claimed by the defaulting Party or any licensee, individual, entity, or any occupant or user of the property owned or occupied by the defaulting Party or any other real property on account of the enforcement of or failure to enforce any of said covenants.

7.4 **No Cross-Defaults.** Notwithstanding any other provision set forth herein to the contrary, a default by City with respect to any of its obligations set forth in Section 3 of this Agreement with respect to Future Development Parcel A, B, C, or D shall not constitute a breach or default by City with respect to any other Future Development Parcel or Parcels as to which a default has not occurred (a "Non-defaulting Future Development Parcel") and in the event of such a default Laing shall not be entitled to any relief or remedy against any successor or assignee of City's right, title, or interest in any Non-Defaulting Future Development Parcel. In addition, and notwithstanding any other provision set forth in this Agreement to the contrary, a default by City with respect to any of its obligations set forth in Section 4 of this Agreement shall not constitute a default with respect to any of the City Future Development Parcels and in the event of such a default Laing shall not be entitled to any remedy or relief against any successor or assignee of City's right, title, or interest in any of the Future Development Parcels.



7.5 Attorneys' Fees and Costs. In any action brought to interpret or enforce this Agreement or arising out of any breach or claimed breach of this Agreement, the prevailing Party shall be entitled to all costs and expenses of suit, including attorneys' fees. This Section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

7.6 Recording and Filing. City and Laing shall cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of Orange.

7.7 Governing Law. This Agreement shall be governed by the internal laws of the State of California.

7.8 Amendments. This Agreement may be amended only by a written instrument executed by the Parties hereto or their successors in title, and duly recorded in the real property records of the County of Orange, California.

7.9 Notices. Any notice, payment, or instrument required or permitted under this Agreement shall be deemed to have been received on the delivery or refusal date shown on the delivery receipt, if: (i) personally delivered by a commercial service which furnishes signed receipts of delivery or (ii) mailed by certified mail, return receipt requested, postage prepaid, addressed to the respective parties as follows:

To Laing:                    Laing Foster Ranch LLC  
                                  915 Calle Amanecer, Suite "C"  
                                  San Clemente, CA 92673-6215  
                                  Attn: Mr. Ken Nishikawa  
                                  Telephone: (949) 369-8170  
                                  Telecopy: (949) 369-8175

With a copy to:            Sheppard, Mullin, Richter & Hampton LLP  
                                  333 South Hope Street, 48th Floor  
                                  Los Angeles, CA 90071-1448  
                                  Attn: Jonathan C. Curtis, Esq.  
                                  Telephone: (213) 617-5565  
                                  Telecopy: (213) 620-1398

To City:                     City of San Clemente  
                                  100 Avenida Presidio  
                                  San Clemente, CA 92672  
                                  Attn: City Clerk  
                                  Telephone: (949) 361-8383  
                                  Telecopy: (949) 361-8283

With a copy to: Rutan & Tucker, LLP  
611 Anton Boulevard, Suite 1400  
Costa Mesa, California 92626  
Attn: Jeffrey Oderman, Esq.  
Telephone: (714) 641-5100  
Telecopy: (714) 546-9035

7.10 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby to the full extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement.

[signatures on next page]

IN WITNESS WHEREOF, City and Laing have executed this Agreement by duly authorized representatives, all on the date first written above.

**“LAING”**

LAING FORSTER RANCH, LLC,  
a Delaware limited liability company

By: WL Homes LLC, a Delaware limited liability  
company, Managing Member

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

LAING FORSTER RANCH, II LLC,  
a Delaware limited liability company

By: WL Homes LLC, a Delaware limited liability  
company, Managing Member

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

**“CITY”**

CITY OF SAN CLEMENTE, a municipal corporation

By: \_\_\_\_\_  
Susan Ritschel, Mayor

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Jeffrey M. Oderman  
City Attorney

STATE OF CALIFORNIA            )  
  ) ss.  
COUNTY OF                        )

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

WITNESS my hand and official seal.

By: \_\_\_\_\_  
Notary Public

[SEAL]

STATE OF CALIFORNIA            )  
  ) ss.  
COUNTY OF                        )

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

WITNESS my hand and official seal.

By: \_\_\_\_\_  
Notary Public  
[SEAL]

STATE OF CALIFORNIA            )  
  ) ss.  
COUNTY OF                        )

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

WITNESS my hand and official seal.

By: \_\_\_\_\_  
Notary Public

[SEAL]

7-D-19

**EXHIBIT "A"**  
**LEGAL DESCRIPTION FOR**  
**OFFER OF DEDICATION**

That portion of Parcel 1 of Lot Line Adjustment No. LL 98-83 in the City of San Clemente, in the County of Orange, State of California, recorded November 2, 1998 as Instrument No.

19980743412 of Official Records of said County, described as follows:

Beginning at the most Easterly corner of said Parcel 1; thence along the boundary of said parcel, the following courses: North 89°24'43" West, 3851.84 feet, North 20°49'49" East, 240.66 feet, North 09°24'03" East, 178.27 feet, North 21°55'09" East, 184.99 feet, North 10°03'01" East, 551.49 feet, North 19°00'36" West, 424.62 feet, North 11°01'49" West, 643.85 feet, North 06°43'58" East, 312.65 feet and, North 44°15'33" West, 394.90 feet to the boundary of Parcel Map No. 98-170 as shown on a map filed in Book 305, Pages 1 through 5, inclusive, of Parcel Maps, in the office of the County Recorder of said County; thence along said boundary, the following courses: North 08°43'39" East, 481.79 feet, North 23°19'40" East, 435.37 feet, North 38°59'56" East, 345.66 feet, North 70°14'29" East, 323.61 feet, North 32°02'00" East, 643.54 feet, North 37°41'47" East, 423.27 feet to a point on a non-tangent curve concave Northerly having a radius of 2030.00 feet, a radial line to said point bears South 00°24'14" East, Westerly 1069.26 feet along said curve through a central angle of 30°10'46", non-tangent from said curve, North 28°19'00" East, 80.02 feet to a point on a non-tangent curve concave Northerly having a radius of 1950.00 feet, a radial line to said point bears South 29°50'07" West, Easterly 1092.71 feet along said curve through a central angle of 32°06'23", non-tangent from said

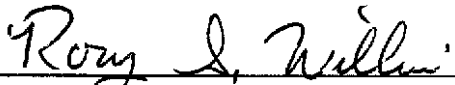
*Revised* January 20, 2000  
February 16, 1998  
Page 1 of 2  
W.O. 2107-1X  
H&A Legal No. 4490  
Prepared By: H. Foss  
Ck'd By: V. Edge:wp

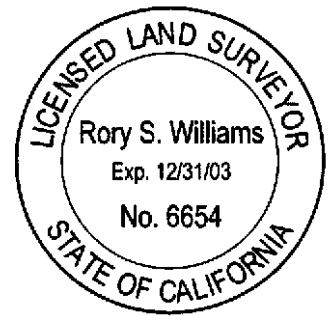
7-D-20

curve, North 37°41'47" East, 17.94 feet, North 25°24'12" West, 442.79 feet, North 03°18'43" East, 580.99 feet, North 43°56'00" East, 427.21 feet, North 31°16'21" East, 232.91 feet and North 05°32'37" East, 212.77 feet to the boundary of said Parcel 1; thence along said boundary, South 19°17'32" East, 7109.61 feet to the Point of Beginning .

Containing 340.438 acres more or less.

As more particularly shown on Exhibit "B" attached hereto and made a part hereof.

  
Rory S. Williams, L.S. No. 6654  
License Expires: December 31, 2003



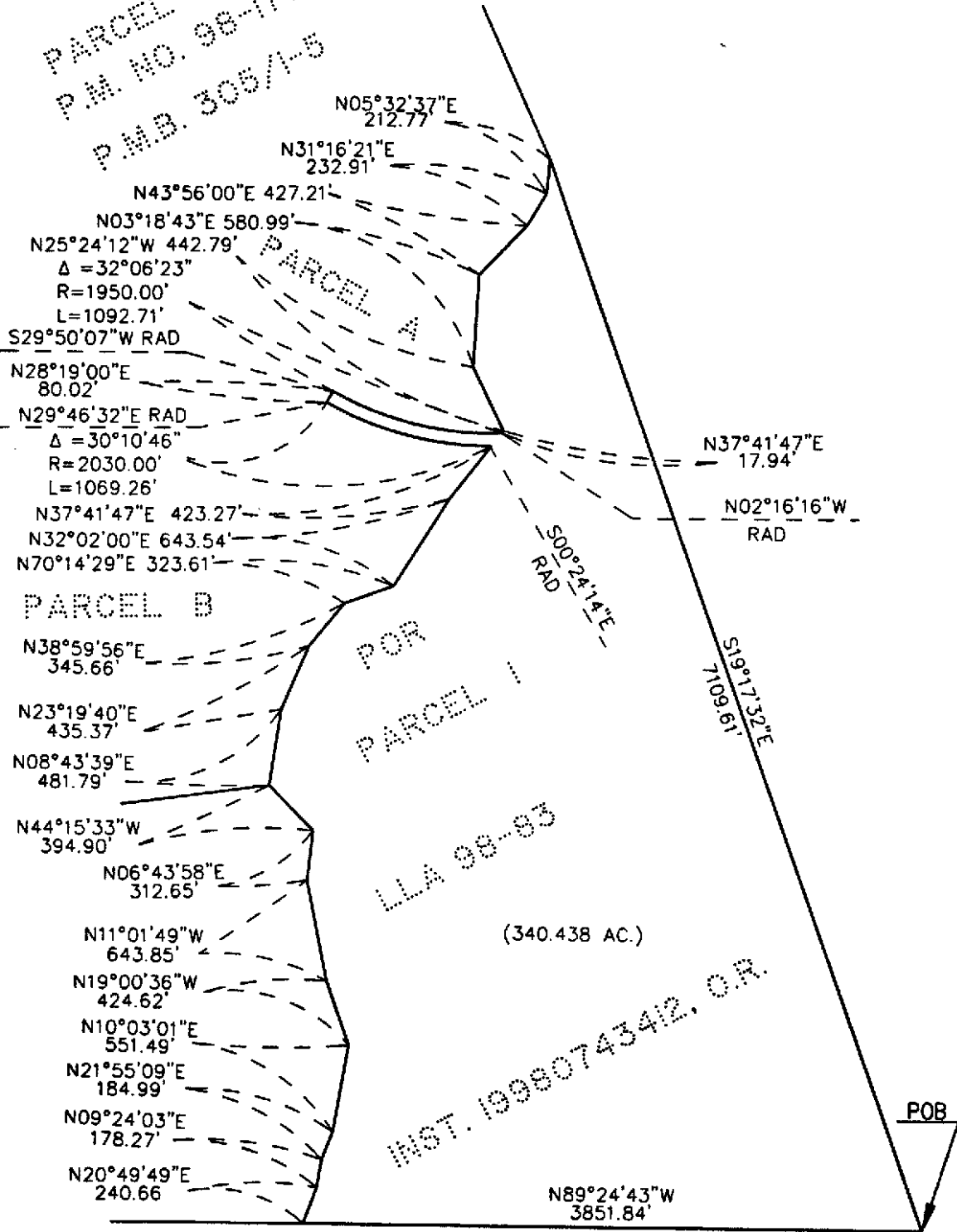
Revised January 20, 2000  
February 16, 1998  
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H&A Legal No. 4490  
Prepared By: H. Foss  
Ck'd By: V. Edge:wp

7-D-2,

# EXHIBIT "B"

Sketch to Accompany Legal Description

PARCEL A  
P.M. NO. 98-170  
P.M.B. 305/1-5



PARCEL B  
POR  
PARCEL C  
LLA 98-93

(340.438 AC.)

INST. 19980743412, O.R.



**HUNSAKER & ASSOCIATES**  
 IRVINE, INC.  
 PLANNING • ENGINEERING • SURVEYING  
 Three Hughes • Irvine, CA 92618 • PH: (949) 583-1010 • FX: (949) 583-0759

**OFFER OF DEDICATION**  
 IN THE CITY OF SAN CLEMENTE, COUNTY OF ORANGE, STATE OF CALIFORNIA

DATE: 2-16-98	REV. DATE: 1-20-00	.DWG By: H. Foss	CK'd By: V. Edge	SCALE: 1"=1000'	W.O. 2107-1X
I:\FORSTER\LD\4490\EXHIBITB.DWG			LOG IN: 278-38-2107-1	H&A LEGAL No. 4490	SHEET 1 OF 1

7-D-22



**EXHIBIT "C"**  
**LEGAL DESCRIPTION FOR**  
**OFFER OF DEDICATION**

That portion of Parcel 1 of Lot Line Adjustment No. LL 98-83 in the City of San Clemente, in the County of Orange, State of California, recorded November 2, 1998 as Instrument No. 19980743412 of Official Records of said County, described as follows:

Beginning at the most Easterly corner of said Parcel 1; thence along the boundary of said parcel, the following courses: North 89°24'43" West, 3851.84 feet, North 20°49'49" East, 240.66 feet, North 09°24'03" East, 178.27 feet, North 21°55'09" East, 184.99 feet, North 10°03'01" East, 551.49 feet, North 19°00'36" West, 424.62 feet, North 11°01'49" West, 643.85 feet, North 06°43'58" East, 312.65 feet and, North 44°15'33" West, 394.90 feet to the boundary of Parcel Map No. 98-170 as shown on a map filed in Book 305, Pages 1 through 5, inclusive, of Parcel Maps, in the office of the County Recorder of said County; thence along said boundary, the following courses: North 08°43'39" East, 481.79 feet, North 23°19'40" East, 435.37 feet, North 38°59'56" East, 345.66 feet, North 70°14'29" East, 323.61 feet, North 32°02'00" East, 643.54 feet, North 37°41'47" East, 423.27 feet to a point on a non-tangent curve concave Northerly having a radius of 2030.00 feet, a radial line to said point bears South 00°24'14" East, Westerly 1069.26 feet along said curve through a central angle of 30°10'46", non-tangent from said curve, North 28°19'00" East, 80.02 feet to a point on a non-tangent curve concave Northerly having a radius of 1950.00 feet, a radial line to said point bears South 29°50'07" West, Easterly 1092.71 feet along said curve through a central angle of 32°06'23", non-tangent from said

*Revised* January 20, 2000  
February 16, 1998  
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Prepared By: H. Foss  
Ck'd By: V. Edge:wp

7-D-23

