



# LAW OFFICES OF C. SAMUEL BLICK

LAND USE LAWYERS - EST. 1984

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Sent Via Electronic Transmission and Hand Delivered

March 7, 2019

City of Del Mar  
Planning Commission  
City Hall, City Council Chambers  
1050 Camino Del Mar  
Del Mar, CA 92014-2698

***Re: Item 1 - CUP 18-002/CDP 18-004... Requests to modify previous Conditional Use Permit and Coastal Development Permit approvals in order to perform proposed landscape, hardscape and grading improvements. - 107 Via de la Valle - Modification of Landscape Plan***

***Applicant: Amigas Investments, LLC***

Dear Members of the Planning Commission:

As you are aware from our earlier correspondence, this firm is authorized to represent the applicants in this matter.

We ask that you consider this letter and the attached exhibits to the City of Del Mar Planning Commission, in support of Item 1 of the Agenda for March 12, 2019.

## **DMMC Section 30 protection of slopes - exceptions anticipated**

The authors of the City of Del Mar Municipal Code sought to protect slopes from "construction, grading or other encroachment..." but understood that certain properties are subject to distinguishable topography configurations and special locations will need relief from a strict application of the slope Ordinance.

For that reason, the City Code provides a procedure wherein the Planning Commission may determine that the application of the slope restrictions may be adjusted on a case by case basis. The standards established by the Code require proof that there are “no feasible design alternatives” and that the encroachment into the slope is “minimized.”

**Slope encroachment minimized and no feasible design alternatives exist**

- *Limited useable backyard space*

The applicant’s lot is the subject of unusual topography, size and location. The lot is located in a part of the City where the front yard and side yard setbacks are unusually small, which limits the usable space by the property owner.

It is certainly reasonable for a residential property owner to have a backyard which lends itself to outdoor dining and Bar B Que kitchen entertaining. Without a modest encroachment into the slope, the backyard becomes essentially unusable and reasonable use of the backyard is denied.

- *No side yard or front yard available for use*

Every homeowner has the right to enjoy an outside living and recreation area. This property has a tiny front yard, a few unusable feet of side yard and a small backyard that can barely support a Bar B Que and dining table.

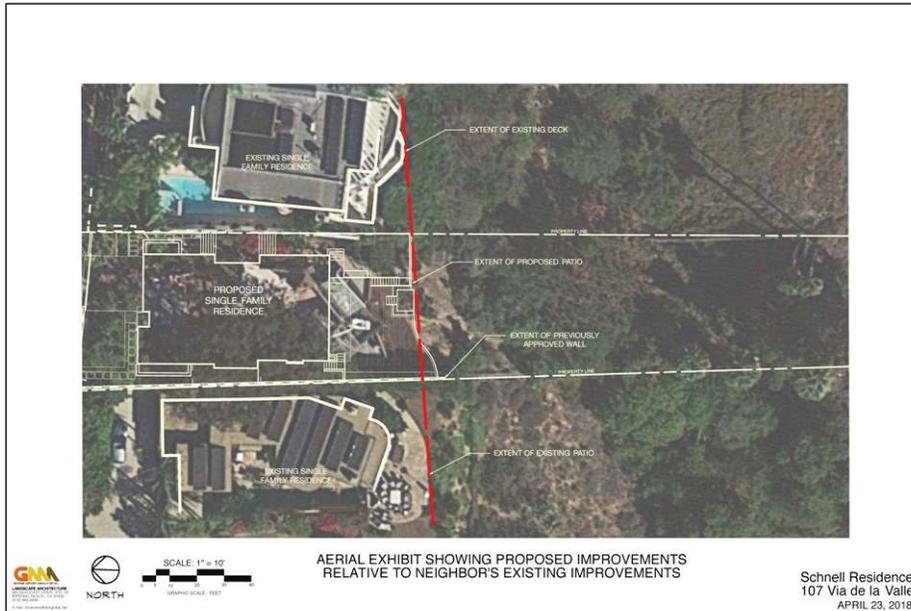
Since the side yard and front yard cannot be expanded, the only reasonable way to enjoy the benefit of any outside living is to allow the back yard patio to extend a few feet beyond the existing limits.

- *Adjacent neighbors encroach into the slope area*

It is important to consider the following aerial photograph exhibit.

This exhibit illustrates the proposed backyard uses of the applicants and the actual land uses of their adjacent neighbors. All of the contiguous neighboring properties reach out into the canyon / slope area far beyond the small patio area proposed in this CUP amendment.

[See below Attached Aerial Photo indicating with **Red Line** the **Applicant's proposed improvements** relative to **neighbors' existing improvements**]



- *Backyard patio invisible to neighbors and public*

The extension requested is not visible from other properties or the public and is far less than other neighbors enjoy. In fact, the patio and outdoor living area is hidden by hedges and distance and would not be noticeable by anyone near or behind the property.

### **Former railroad ties on applicant's property encroached deep into the slope**

The prior property owner utilized a large portion of the steep slope and even constructed a patio and stairway of old railroad ties. The applicant has removed, mitigated and revegetated this significant intrusion into the canyon and should be rewarded for these restoration efforts. Instead, the conditions of the CUP severely limit the family's use of the backyard so that it is small and barely useable.

### **Prior Owner / Developer of house plans agreed to unreasonable conditions**

The applicant purchased the lot with completed house plans, including an approved CUP, believing the plans and CUP could be amended. This has proven to be true in that, although changes have been subject to DRB review, they have been necessary and were eventually DRB approved.

C. Samuel Blick  
Attorney at Law

This particular change request is the direct result of the prior owner's carelessness in agreeing to unworkable conditions in a race to have a marketable lot and plans. The reasonable use of the backyard was never considered by the prior owner and the City's consideration of the slope protection did not benefit from any proof that the backyard land was barely usable.

**Summary:**

The City of Del Mar Municipal Code section 30.52.060 A-1 seeks to restrict encroachment into protected slope areas but specifically anticipates exceptional circumstances and properties. This property qualifies as an anticipated exception to the strict application of the slope restrictions.

The encroachment by the backyard patio is minimized to the greatest extent feasible in size, visibility and impact. Since there is no front yard or side yard space available for feasible use, the modest expansion of the backyard is justified as proposed under the City Code.

For these reasons, we urge the Planning Commission accept the Staff Report recommendation and adopt Resolution No. PC-2019-XX, granting this amendment to the existing CUP 18-002/CDP 18-004.

Sincerely,

/s/ C. Samuel Blick

C. Samuel Blick  
Attorney at Law

cc: Clients

MORRISON | FOERSTER

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HONG KONG, LONDON, LOS ANGELES,  
NEW YORK, NORTHERN VIRGINIA,  
PALO ALTO, SACRAMENTO, SAN DIEGO,  
SAN FRANCISCO, SHANGHAI, SINGAPORE,  
TOKYO, WASHINGTON, D.C.

March 11, 2019

Writer's Direct Contact  
+1 (858) 720.5162  
MZebrowski@mofocom

City of Del Mar Planning Department  
Del Mar Town Hall  
1050 Camino Del Mar Blvd.  
Del Mar, CA 92014

**RECEIVED**

**MAR 11 2019**

City of Del Mar  
Administrative Services Dept.

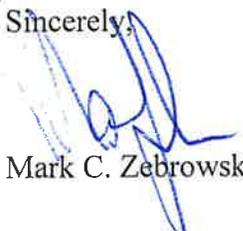
Re: Mar. 12, 2019 Public Hearing  
**Comment on Item 1: APN 298-421-12**  
Location: 107 Via de la Valle

Dear Commissioners:

My firm represents Doug and Maryrose Mulvey, the owners of the property adjacent to 107 Via de la Valle, the site that is the subject of Item 1 on the March 12, 2019, hearing agenda—a request to modify a Conditional Use Permit and a Coastal Development Permit to make certain improvements within the 20-foot setback from the top of a steep bluff slope.

The Mulveys own a 4-foot landscape easement onto the property at 107 Via de la Valle. (See Easement Agreement filed with the San Diego County Recorder's Office, April 13, 2017, Document # 2017-0165770, attached to this letter as **Exhibit A**.) The Mulveys have no objection to Application No. 298-421-12, as long as the proposed work and improvements do not encroach, violate, or impair their landscape easement in any way.

Sincerely,

  
Mark C. Zebrowski

# **EXHIBIT A**

DOC# 2017-0165770



Apr 13, 2017 09:08 AM

OFFICIAL RECORDS  
Ernest J. Dronenburg, Jr.,  
SAN DIEGO COUNTY RECORDER  
FEES: \$48.00  
PCOR: N/A

PAGES: 12

Recording requested by:  
Jon Corn

When recorded mail to:  
Jon Corn  
The Jon Corn Law Firm  
160 Chesterfield Drive, Suite 201  
Encinitas, CA 92007

12P

### EASEMENT AGREEMENT

Grantor declares: Documentary Transfer Tax is \$ 0 computed on full value of interest conveyed, exclusive of liens and encumbrances remaining on that interest at time of sale.

#### Preamble and Recitals

This Agreement is entered into on January 26, 2017, by and between Amigas Investments, Inc., a Wyoming limited liability company (referred to herein as "Grantor") and Douglas J. Mulvey and Maryrose Hawkins, Co-Trustees, Douglas J. Mulvey and Maryrose Hawkins 2006 Family Trust, U/D/T Dated July 14, 2006, (referred to herein as "Grantee")

- A. Grantor is owner of the legal parcel situated in the City of Del Mar, San Diego County, California (hereafter referred to as "Servient Tenement"), located at 107 Via de la Valle, Del Mar, CA (APN 298-421-12-00) and more particularly described in Exhibit 1.
- B. Grantees are the owners of the legal parcel situated in the City of ~~Del Mar~~, San Diego County, California (hereafter referred to as "Dominant Tenement"), as follows: 105 Via de la Valle, Del Mar, CA (APN 298-421-11-00), as more particularly described in Exhibit 2.
- C. Grantor agrees to grant and Grantees agree to accept certain easement rights in the Servient Tenement.

#### Grant of Easement

1. For valuable consideration, receipt of which is hereby acknowledged, Grantor grants to Grantees the easement (the "Easement") as described in Exhibits 3(a) and 3(b), subject to the terms of this Agreement.

#### Character of Easement

2. The Easement is appurtenant to the Dominant Tenement.

#### Description of Easement

3. The Easement is an exclusive easement for landscaping purposes only.

**Term**

4. The Easement shall be perpetual and shall run with the title to the Dominant Tenement.

**Maintenance of Landscaping within Easement**

5. Grantees have the right and duty to maintain the landscaping and associated improvements to be installed by Grantor, in conformance with the Landscape Plan attached hereto as Exhibit 4, within the Easement area as reasonably needed to ensure that the landscaping provides a privacy screen between the Dominant and Servient Tenements, while also allowing natural light to enter into the Dominant Tenement as needed in the Grantee's sole discretion. With reasonable advance notice, Grantees may enter the Servient Tenement as reasonably necessary to maintain the landscaping. Should any plants die, or if the plants installed pursuant to the Landscape Plan do not provide an adequate privacy screen, the Grantees may replace said plants with similar vegetation within a reasonable time.

**Entire Agreement**

6. This Agreement constitutes the entire agreement between Grantor and Grantee relating to the Easement.

**Binding Effect**

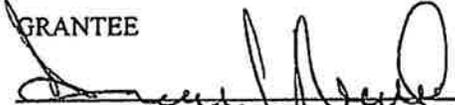
7. This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of Grantor and Grantees.

Executed on March 22, 2017.

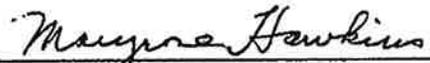
GRANTOR

  
Edward Castro, ~~Managing Member~~ **MANAGER**  
Amigas Investments, Inc.

GRANTEE

  
Douglas J. Mulvey, Co-Trustee, Douglas J. Mulvey  
and Maryrose Hawkins 2006 Family Trust, U/D/T  
Dated July 14, 2006

GRANTEE

  
Maryrose Hawkins, Co-Trustee, Douglas J. Mulvey  
and Maryrose Hawkins 2006 Family Trust, U/D/T  
Dated July 14, 2006

**EXHIBIT 1**

**Legal Description of Servient Tenement**

107 Via de la Valle, Del Mar, CA (APN 298-421-12-00)

**THAT PORTION OF THE NORTH-HALF OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 14 SOUTH, RANGE 4 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF DEL MAR, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO UNITED STATES GOVERNMENT SURVEY APPROVED JANUARY 18, 1876, DESCRIBED AS FOLLOWS:**

**BEGINNING AT THE POINT OF INTERSECTION OF THE EASTERLY LINE OF THE ATCHISON, TOPEKA & SANTA FE RAILROAD RIGHT OF WAY WITH THE NORTH LINE OF SAID NORTH-HALF OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 2; THENCE ALONG SAID NORTH LINE, NORTH 89°43'35" EAST 180 FEET TO THE TRUE POINT OF BEGINNING OF THE PROPERTY HEREIN DESCRIBED; THENCE RETRACING ALONG SAID NORTH LINE, SOUTH 89°43'35" WEST 60 FEET; THENCE SOUTH 7°22'40" EAST, 328.75 TO THAT POINT IN THE SOUTH LINE OF SAID NORTH-HALF OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2, WHICH IS DISTANT ALONG SAID LINE, NORTH 89°46'20" EAST 96.07 FEET FROM SAID EASTERLY LINE OF SAID RIGHT OF WAY FOR SAID ATCHISON, TOPEKA & SANTA FE RAILROAD; THENCE ALONG SAID SOUTH LINE, NORTH 89°46'20" EAST 48.03 FEET TO A LINE BEARING SOUTH 5°17'55" EAST FROM THE TRUE POINT OF BEGINNING; THENCE NORTH 5°17'55" WEST 327.53 FEET TO THE TRUE POINT OF BEGINNING.**

**EXHIBIT 2**

**Legal Description of Dominant Tenement**

105 Via de la Valle, Del Mar, CA (APN 298-421-11-00)

**Parcel A:**

Parcel 2 of Parcel Map No. 16947, in the City of Del Mar, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, September 10, 1992.

Reserving therefrom an easement and right of way for road and utility purposes over, under, along and across that portion thereof, lying within the area delineated and designated on said Parcel Map as Proposed 20 foot wide joint access easement in favor of Parcel 1.

**Parcel B:**

An easement and right of way for road and utility purposes over, under, along and across that portion of Parcel 1 of said Parcel Map No. 16947, lying within the area delineated and designated thereon as Proposed 20 foot wide joint access easement.

**EXCEPTING THEREFROM** that portion lying within Parcel A above.

**Exhibit 3(a)**  
**Easement Legal Description**

EXHIBIT 3(a)

LEGAL DESCRIPTION - LANDSCAPE EASEMENT

THAT PORTION OF THE NORTH-HALF OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 14 SOUTH, RANGE 4 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF DEL MAR, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO UNITED STATES GOVERNMENT SURVEY APPROVED JANUARY 18, 1876, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY CORNER OF THAT PARCEL OF LAND DESCRIBED IN DEED TO OPERATION DEL MAR RACETRACK, LLC, RECORDED JULY 31, 2014 AS DOCUMENT NO. 2014-0327364 OF OFFICIAL RECORDS OF SAID SAN DIEGO COUNTY; THENCE ALONG THE WEST LINE OF SAID LAND, SOUTH 07°22'40" EAST 40.51 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE ALONG SAID WESTERLY PROPERTY LINE SOUTH 07°22'40" EAST 138.02 FEET; THENCE LEAVING SAID WESTERLY PROPERTY LINE NORTH 59°27'45" EAST 4.35 FEET; THENCE 4.00 FEET PARALLEL TO SAID WESTERLY PROPERTY LINE OF SAID LAND NORTH 07°22'40" WEST 135.86 FEET; THENCE SOUTH 88°58'09" WEST 4.02 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINS 548 SQUARE FEET, MORE OR LESS.

Prepared By:

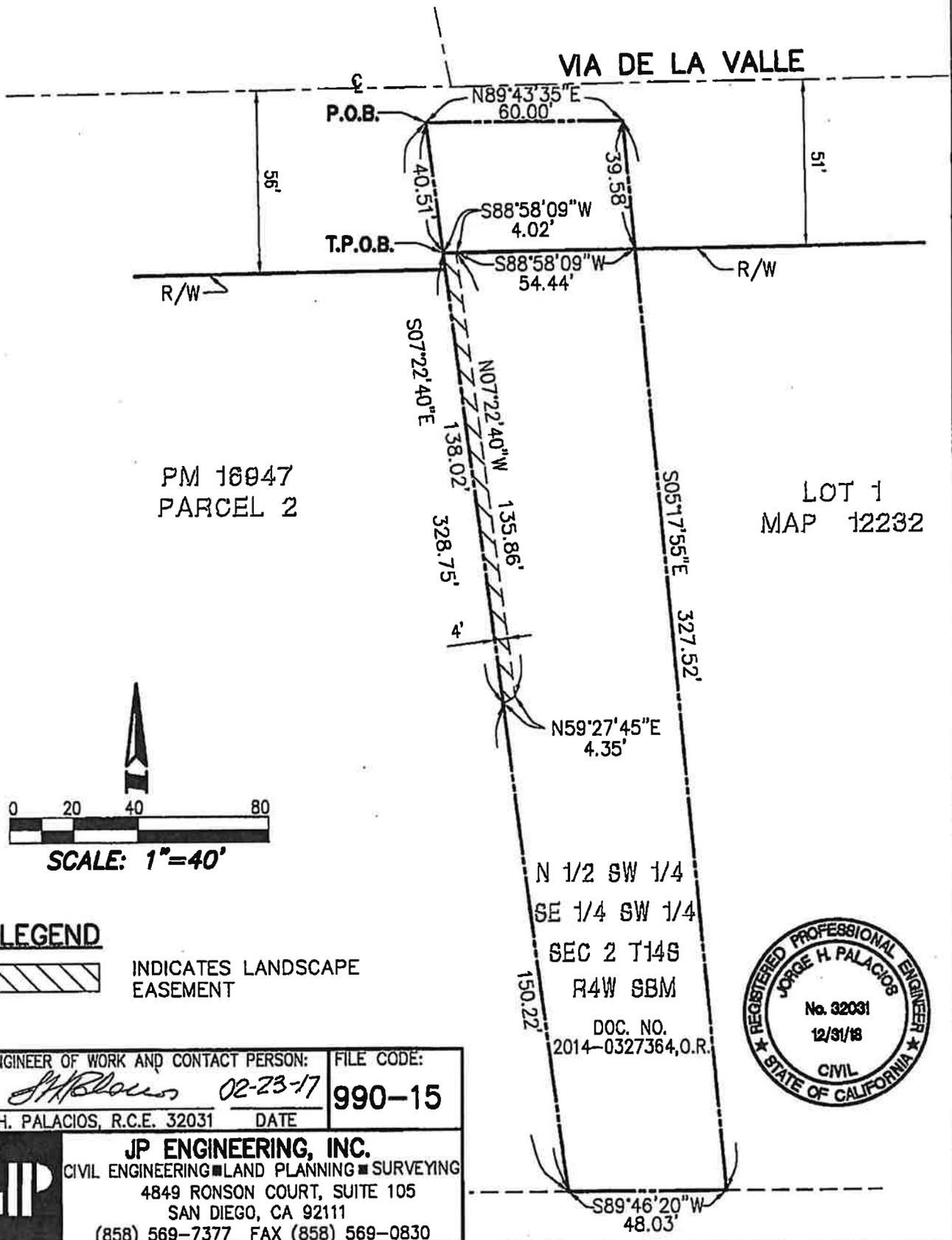


JORGE H. PALACIOS, R.C.E. 32031



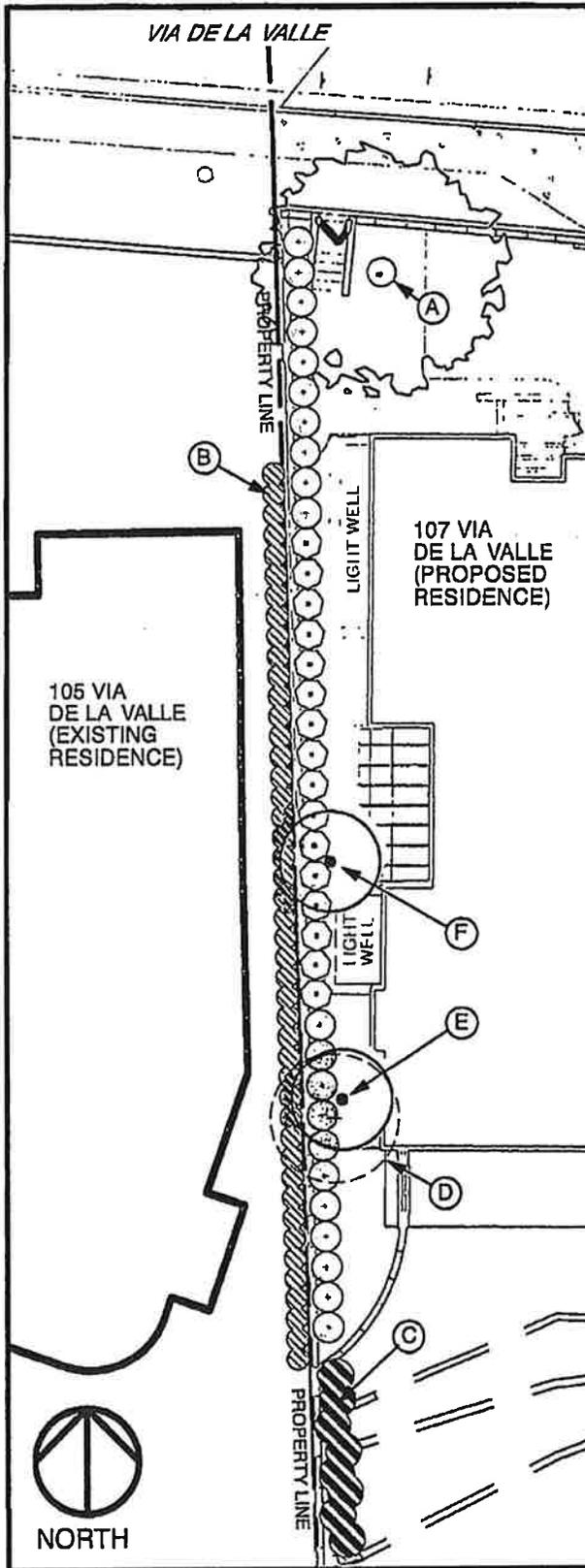
**Exhibit 3(b)**  
**Easement Plat**

# EXHIBIT 3(b) – LANDSCAPE EASEMENT



**Exhibit 4**  
**Landscape Plan**

EXHIBIT 4



LEGEND

SYMBOL	SPECIES/COMMON NAME	MIN. SIZE	QUANTITY
	PITTOSPORUM 'SILVER SHEEN'	15 GAL 5' HIGH	21
	TECOMARIA CAPENSIS CAPE HONEY SUCKLE	15 GAL 4' HIGH	16
	PODOCARPUS GRACILIOR FERN PINE STANDARD/SINGLE TRUNK	48" BOX 12' TALL/ 7' WIDE	2

PLAN NOTES

- (A) EXISTING ALEPPO PINE TO BE PROTECTED IN PLACE PER DRB REQUIREMENTS.
- (B) EXISTING PODOCARPUS HEDGE ON 105 VIA DE LA VALLE PROPERTY TO BE PROTECTED IN PLACE.
- (C) THIS SECTION OF EXISTING TECOMARIA HEDGE TO BE PRESERVED IN PLACE PER DRB REQUIREMENTS.
- (D) EXISTING CEDAR TREE TO BE REMOVED.
- (E) REPLACEMENT TREE FOR EXISTING CEDAR TREE TO BE REMOVED. DRB RESOLUTION REQUIRES THAT REPLACEMENT BE 48" BOX SIZE. FINAL PLACEMENT OF THIS TREE TO BE DETERMINED IN FIELD IN ORDER TO PROVIDE OPTIMUM SCREENING FOR 2ND STORY WINDOW AT 105 VIA DE LA VALLE.
- (F) REPLACEMENT TREE FOR PINE TREE IN CENTER OF LOT THAT HAS BEEN REMOVED. DRB RESOLUTION REQUIRES THAT REPLACEMENT BE 48" BOX SIZE. FINAL PLACEMENT OF THIS TREE TO BE DETERMINED IN FIELD IN ORDER TO PROVIDE OPTIMUM SCREENING FOR STAIRWELL WINDOW AT 105 VIA DE LA VALLE.

GENERAL NOTES

1. PLANTER AREA FOR NEW SHRUBS SHALL BE A MINIMUM OF 18" WIDE X 24" DEPTH SOIL.
2. ALL PROPOSED PLANTING TO BE PERMANENTLY IRRIGATED AND MAINTAINED IN GOOD HEALTH
3. DUE TO LIMITED SPACE, PODOCARPUS TREES WILL NEED TO BE PRUNED ON A REGULAR BASIS (MINIMUM ANNUALLY) TO PREVENT BRANCHES GROWING INTO WALLS, TRELLISES ETC.
4. PITTOSPORUM AND TECOMARIA SHRUBS SHALL BE PRUNED ON A REGULAR BASIS IN ORDER TO ACHIEVE APPROPRIATE HEIGHT AND DENSITY, PROVIDING DESIRED SCREENING WHILE ALSO PERMITTING OPTIMUM LIGHT AND AIR CIRCULATION TO SIDEYARD.

TITLE: PROPERTY LINE SCREENING

PROJECT: 107 VIA DE LA VALLE, DEL MAR, CA

DATE: JANUARY 5, 2017

SCALE: 1"=16'

PREPARED BY:



GEORGE MERCER  
RLA 4055

LANDSCAPE ARCHITECTURE  
4730 PALM AVENUE, STE 213  
LA MESA, CA 91941  
(619) 483-7878

GMA # 17-001

Notary Acknowledgement

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

ACKNOWLEDGMENT

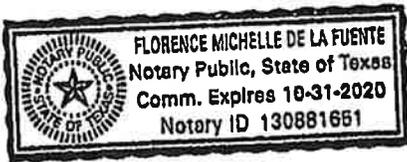
STATE OF TEXAS )  
 )  
COUNTY OF DALLAS )

On March 22, 2017, before me, Florence Michelle De La Fuente, a Notary Public, personally appeared Edward Castro, 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 Texas that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Florence Michelle DeLaFuente  
Signature of Notary Public



CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of the document

State of California }

County of San Diego

On 4-12-17 before me, Kristine A. Merel, Notary Public, personally appeared **Douglas J. Mulvey**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/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.

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

WITNESS my hand and official seal.

Kristine A. Merel  
Notary Public Signature



Notary Public Seal

CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of the document

State of California }

County of San Diego

On 4-12-17 before me, Kristine A. Merel, Notary Public, personally appeared **Maryrose Hawkins**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/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.

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

WITNESS my hand and official seal.

Kristine A. Merel  
Notary Public Signature



Notary Public Seal



This is a true certified copy of the record  
if it bears the seal, imprinted in purple ink

ERNEST J. DRONENBURG, JR.  
Assessor/Recorder/Clerk  
San Diego County, California

  
Deputy

AUG 22 2017