



THE CITY OF SAN DIEGO

MEMORANDUM

DATE: August 6, 2015

TO: City of San Diego Planning Commission

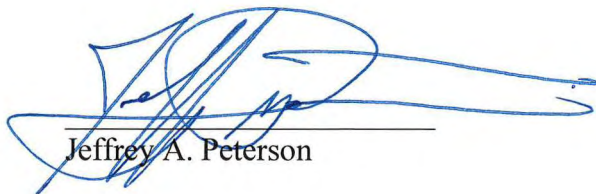
FROM: Jeffrey A. Peterson, Development Project Manager

SUBJECT: SILVER STREET VILLAGE HOMES; PROJECT NO. 393503;
REPORT NO. PC-15-094

The following information is an update to the Report to the Planning Commission regarding the adjacent, City-owned, non-dedicated park parcel located south of the existing tennis courts within the La Jolla Community Park.

On July 28, 2015, the City Council voted and approved the authorization for the Mayor or his designee to execute and deliver a purchase and sale agreement for the adjacent, City-owned, non-dedicated park parcel. Attached are the Executive Summary and Real Estate Purchase and Sale Agreement that were approved by the City Council, agenda Item No. 104, located at: <http://dockets.sandiego.gov/sirepub/pubmtgframe.aspx?meetid=2816&doctype=Agenda>.

Pursuant to this agreement, the City shall reserve from the transfer of its interest in the property a 20 foot wide easement, as shown on Exhibit B (Sheet 38788-2-B) attached to this agreement, for the 63 inch cast in place concrete pipe (CIPCP) public storm drain that traverses the parcel.



Jeffrey A. Peterson

Attachments: 1. Executive Summary and Real Estate Purchase and Sale Agreement

**COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO**

DATE: 6/15/2015

ORIGINATING DEPARTMENT: Real Estate Assets

SUBJECT: Sale of an approximately 0.074 acre portion of City-owned land located on Draper Avenue between Kline and Silver Streets in La Jolla.

COUNCIL DISTRICT(S): 1

CONTACT/PHONE NUMBER: Mary Carlson/619-236-6079, MS-51A

DESCRIPTIVE SUMMARY OF ITEM:

Authorize the sale of a 0.074 acre portion of City-owned property, located on Draper Avenue between Kline and Silver Streets in La Jolla, for \$7,500 and reserve an easement for the benefit of the City for existing storm drain infrastructure on the property.

STAFF RECOMMENDATION:

Approve the Resolution.

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

The City of San Diego ("City") owns 0.59 acres of land in La Jolla. Most of the land has been improved with tennis courts, however, a small 0.074 acre portion of the land is irregular in shape, has limited access, and is not part of the tennis courts ("Property"). This small portion of the land consists of a barren planter and a parking lot. Therefore, there is no wildlife, habitat, or environmental value.

The adjacent property owner, EHOF La Jolla, LLC, a Delaware limited liability company, would like to purchase the Property and improve it with landscaping to complement their new development of 18 townhomes. The City would reserve a storm drain and public utility infrastructure easement from the conveyance of the Property.

Given that the Property is adjacent to property owned by EHOF La Jolla, LLC, and because the Property has no potential for independent development based on its small size, configuration, and limited access, the Property has little potential value to any party other than EHOF La Jolla, LLC.

Council Policy 700-10 Section G2 indicates that an exclusively negotiated sale is justified and may be approved: "when sale to a contiguous owner would correct a site deficiency."

The Property was appraised by an independent MAI appraiser and the fair market value of the Property was determined to be \$7,500.

This item is requesting authorization to sell the property and reserve an easement for public utility infrastructure.

CITY STRATEGIC PLAN GOAL(S)/OBJECTIVE(S):

Goal #3: Create and sustain a resilient and economically prosperous City.

Objective #1: Create dynamic neighborhoods that incorporate mobility, connectivity, and sustainability.

FISCAL CONSIDERATIONS:

All proceeds from the sale of the Property, net of costs related to its sale, will be deposited in the Capital Outlay Fund 400002.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

N/A - EOCF Memo of 11/14/11.

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee):

This action was heard by the SG&LU Committee on July 1, 2015 and forwarded to the full Council with a recommendation to approve.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

N/A.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The key stakeholders would be the City of San Diego and EHOJ La Jolla, LLC, a Delaware limited liability company.

Thompson, Cybele

Originating Department

Villa, Ron

Deputy Chief/Chief Operating Officer

REAL ESTATE PURCHASE AND SALE AGREEMENT

[Draper Ave between Kline and Silver, Portion of APN 350-432-05]

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is made by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and EHOFF La Jolla, LLC, a Delaware limited liability company ("BUYER"), to be effective as of the date of execution by CITY (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

RECITALS

- A. CITY owns that certain real property consisting of approximately 0.59 acres of land located at Draper Avenue between Kline and Silver Streets, La Jolla, California, APN 350-432-05. BUYER wants to purchase an approximate 0.074 acre portion of the property, more particularly described in **Exhibit A: Property Description**, attached hereto (the "Property").
- B. Certain storm drain infrastructure, owned and operated by the CITY, is located underground on the Property. CITY is willing to sell the Property to BUYER, subject to reservation of an easement benefitting CITY and subject to the restrictions in the Grant Deed.
- C. BUYER wants to purchase the Property under the terms and conditions of this Agreement.

IN CONSIDERATION OF the foregoing recitals and for other valuable consideration, the sufficiency of which is acknowledged, the parties agree as follows:

- 1. **Purchase and Sale**. Subject to obtaining Council Authorization, under the terms and conditions of this Agreement, CITY shall sell and convey the Property to BUYER, and BUYER shall purchase the Property from CITY.
- 2. **City Council Action Required**. BUYER acknowledges that the closing of this transaction is expressly conditioned on the San Diego City Council's (the "City Council's") authorization to sell the Property under this Agreement ("Council Authorization"), which may or may not be granted in the City Council's sole discretion. CITY shall not be liable or obligated for any burden or loss, financial or otherwise, incurred by BUYER as a result of the City Council's failure to grant the Council Authorization.
 - 2.1. **BUYER's Waiver**. BUYER expressly waives any claim against CITY and its elected officials, officers, employees, representatives and agents for any burden, expense or loss which BUYER incurs as a result of the City Council's failure to grant the Council Authorization.
- 3. **Purchase Price**. The purchase price of the Property (the "Purchase Price") is Seven Thousand Five Hundred Dollars (\$7,500). BUYER acknowledges that the size of the

Property set forth above is an approximation, and agrees that any difference between the approximation of the Property's size set forth above and the actual square footage of the Property shall have no effect on the Purchase Price.

4. Deposit.

4.1. Deposit. Upon opening of the Escrow, BUYER shall deliver to Escrow Holder Five Thousand Dollars (\$5,000) either in cash, by cashier's check, or other readily available funds ("Deposit"). Except as otherwise provided herein, the Deposit shall become non-refundable at the end of the Due Diligence Period and shall be applied to the Purchase Price at the Closing.

4.2. If at any time during the Due Diligence Period BUYER decides not to purchase the Property, the Deposit shall be returned to BUYER upon BUYER's request to Escrow Holder.

5. Escrow. BUYER shall open an escrow ("Escrow") with Chicago Title Company, Attn: Rob Shaw, ("Escrow Holder"), located at 2365 Northside Drive, Ste. 600, San Diego, CA 92108, within three (3) business days after the date this agreement is fully executed ("Effective Date"). The Escrow shall be deemed open as of the date ("Open Date") BUYER delivers to Escrow Holder both this Agreement, signed by the parties, and the Deposit.

6. Due Diligence Period. BUYER shall have forty-five (45) calendar days after the Open Date (the "Due Diligence Period") to conduct, at BUYER's sole cost and expense, its due diligence to determine, in BUYER's sole discretion, the feasibility of purchasing the Property and to resolve any matters that, if not corrected, would cause BUYER to terminate this Agreement ("BUYER's Contingencies"). BUYER may waive the Due Diligence Period at any time.

6.1. Easement Legal Description. Certain storm drain infrastructure, owned and operated by the CITY, is located underground on the Property. CITY shall reserve from the transfer of its interest in the Property a ten to twenty foot wide easement ("Easement"). During the Due Diligence Period, BUYER shall obtain and provide a legal description and drawing for said Easement, all subject to CITY approval, and at BUYER's sole cost and expense.

6.2 Records Review. Upon reasonable prior notice to CITY, BUYER may review records in the possession and control of CITY's Real Estate Assets Department pertaining to the Property. CITY's Real Estate Assets Department shall make such records available to BUYER within a reasonable amount of time after BUYER's request. BUYER acknowledges that additional Property-related records may be in the possession and control of other CITY departments, including without limitation the Development Services Department. BUYER shall be solely responsible for contacting such other CITY departments to schedule a review of such additional records.

- 6.3 Notification Regarding BUYER's Contingencies. BUYER shall notify CITY in writing of any BUYER's Contingencies it will waive or which will not be satisfied within the Due Diligence Period. BUYER's failure to so notify CITY within the Due Diligence Period shall mean no BUYER's Contingencies exist.
- 6.4 Preliminary Title Report Approval. The parties acknowledge that BUYER has obtained a Preliminary Title Report for the Property, and BUYER hereby approves the report.
- 6.5 Entry. After at least forty-eight (48) hours prior notice to CITY in each instance, BUYER, or BUYER's agent(s), may enter upon the Property for the purpose of conducting visual observations and passive environmental studies, surveys and other non-invasive examinations as BUYER reasonably deems necessary to complete BUYER's due diligence. BUYER shall not conduct any invasive activity on the Property, including without limitation geotechnical activity, such as soils testing, digging or boring, without CITY's prior written approval in each instance, which may or may not be granted, in CITY's sole discretion. After any activity on the Property by or for BUYER, either passive or active, BUYER shall, at BUYER's sole cost and expense, restore the Property to its condition prior to such activity, and repair any damage thereto and remediate any contamination thereon or therein caused by such activity, and all to CITY's satisfaction.
7. If No Closing. If Escrow does not close and title to the Property does not transfer pursuant to this Agreement by reason of BUYER's election to terminate this Agreement or BUYER's default, BUYER shall deliver to CITY at no charge copies of all surveys, reports, engineering studies, assessments, maps, master plans, feasibility studies and other similar items prepared by or for BUYER and pertaining to the Property or any part thereof without representation or warranty by BUYER as to the contents thereof and no right of CITY or any other party to rely upon the same; provided, however, BUYER shall not be obligated to deliver to CITY any information established to be proprietary or confidential. The rights and obligations of BUYER and CITY pursuant to this section shall survive the termination of this Agreement.
8. Council Authorization. CITY shall seek Council Authorization as soon as reasonably practicable after the Due Diligence Period, when no BUYER's Contingencies exist, based on CITY scheduling and processing considerations in CITY's sole discretion. Best efforts shall be made to schedule the City Council hearing regarding the authorization prior to or concurrent with the City Council's hearing of the Silver Street Village Home entitlements, City PTS No. 393503.
- 8.1. If No Council Authorization. If the City Council does not grant the Council Authorization, this Agreement shall terminate and the Deposit shall be returned to BUYER upon BUYER's request to Escrow Holder.

9. Close of Escrow. Unless otherwise agreed to by the parties, the closing of Escrow ("Closing") shall be held at Escrow Holder's offices within ten (10) business days after the effective date of a City Council resolution granting the Council Authorization.
- 9.1. Balance of Purchase Price. Prior to the Closing, BUYER shall deposit with Escrow Holder the balance of the Purchase Price (*i.e.*, the Purchase Price minus the Deposit).
- 9.2. Parties to Sign Documents. Prior to the Closing, the parties shall execute and deliver all instruments and documents reasonably required by the other party and the Escrow Holder to effect the Closing.
- 9.3. Taxes. All ad valorem taxes and special taxes or assessments levied or assessed against the Property for the year of the Closing, if any, shall be prorated at the Closing, effective as of the Closing Date. If the Closing occurs before the tax rate or the assessed valuation is fixed for the then-current year, the prorating of ad valorem taxes shall use the tax rate and the assessed valuation for the preceding tax year. The prorating of ad valorem taxes shall be subject to later adjustment once the actual tax statements for the year of Closing have been received, which agreement to re-prorate taxes shall survive the Closing. However, CITY shall not be responsible for any increase in ad valorem taxes resulting from improvements made to the Property by BUYER after the Closing Date.
10. Conveyance. At the Closing, CITY shall convey the Property to BUYER by a grant deed substantially in the form attached hereto as **Exhibit B: Grant Deed**, subject to all encumbrances of record and further excepting and reserving therefrom the Easement for the benefit of CITY, and its successors and assigns, subject to all terms and restrictions in the Grant Deed, and further subject to all acts done or suffered by BUYER, or claims made by, through or under BUYER.
11. Subdivision Map Act and Parcel Compliance. BUYER, at BUYER's sole cost and expense, shall obtain all authorizations and approvals for the Property as required by applicable law, including the Subdivision Map Act (Cal. Govt. Code section 66410 et seq.), and including Certificates of Compliance required under the same. BUYER shall be solely responsible for all processing and engineering activities and costs required to obtain all requisite authorizations and approvals for future development or use, including conveyance, of the Property.
- 11.1. Governmental Approvals. BUYER acknowledges that CITY has not made, nor now makes, any determination regarding any aspect, sufficiency, or legality of the Property under applicable law and the Subdivision Map Act, or of any aspect of either thereof. Furthermore, CITY does not represent, warrant, or guarantee any future approval or granting of the requisite authorizations and approvals for the Property, or of any aspect of either thereof, by the City Council or by any official of the CITY, nor shall anything in this Agreement be interpreted as representing, warranting, or guaranteeing any such future approval(s).

- 11.2. BUYER's Waiver. BUYER expressly waives any claim against CITY and its elected officials, officers, employees, representatives and agents for any burden or loss, financial or otherwise, which BUYER incurs as a result of failure or inability to obtain requisite authorizations and approvals for the Property.

12. Escrow Costs.

- 12.1. CITY shall pay: (a) all San Diego County documentary transfer taxes; (b) the fee for a standard-coverage California Land Title Association ("CLTA") Title Insurance Policy; (c) all charges for CITY's document drafting and recording. All such payments shall be taken as deductions from the Purchase Price upon Closing.
- 12.2. BUYER shall pay: (a) Preliminary Title Report fees; (b) the cost of any and all other title insurance policies, coverage, or endorsements in excess of a standard-coverage CLTA Title Insurance Policy; (c) all charges for BUYER's document drafting and recording; and (d) the Escrow Holder's fee.
- 12.3. Other than as to those costs and fees stated above, Escrow Holder shall prorate fees and costs between the parties at the Closing.
13. Back-Up Offers. CITY may solicit, entertain and accept back-up offers to purchase the Property (subject to the failure to close the transaction contemplated by this Agreement) at all times prior to the Closing.
14. Loss or Damage Prior to Closing. If BUYER is in possession of the Property, loss or damage to the Property prior to the Closing shall be at BUYER's risk and at BUYER's sole cost and expense with no liability to CITY unless such loss or damage is caused by CITY's gross negligence or intentional misconduct. If CITY is in possession of the Property, loss or damage to the Property prior to the Closing shall be at CITY's risk and at CITY's sole expense with no liability to BUYER unless such loss or damage is caused by BUYER's negligence or intentional misconduct.
15. Acceptance of Property "As-Is". BUYER acknowledges it is purchasing the Property "as-is," excepting any claims or liability arising from the established gross negligence, recklessness, or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents. BUYER is not relying on any representation or warranty of any kind, express or implied, oral or written, made by CITY or its elected officials, officers, employees, representatives, and agents with respect to the physical condition of the Property, or with respect to the existence or absence of Hazardous Substances in, on, under, or affecting the Property. CITY has not and does not make any warranty or representation regarding the fitness of the Property for any particular use, or as to its quality or merchantability. CITY shall not be liable or bound in any manner by any warranties, guarantees, promises, statements, representations, or information, either express or implied, pertaining to the Property and made or furnished by any real estate agent,

broker, employee, servant, or other person representing or purporting to represent CITY, except as made in this Agreement.

15.1. "Hazardous Substances". "Hazardous Substances" shall mean any hazardous liquid, solid, or gaseous material or other substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents.

15.2. Indemnity and Hold Harmless. BUYER shall protect, defend, indemnify, and hold CITY and its elected officials, officers, representatives, agents and employees harmless from and against any and all claims asserted or liability established which arise out of or are in any manner directly or indirectly connected with Hazardous Substances or other environmental liabilities resulting from BUYER's use and occupancy of the Property at any and all times prior to the Closing; however, the foregoing shall not apply to BUYER's discovery of any pre-existing Hazardous Materials or other environmental liabilities in connection with BUYER's inspections of the Property. Should any such discovery be made, Buyer shall immediately notify CITY of the discovery and make all such related information and relevant personnel available to CITY. The rights and obligations in this subsection (Indemnity and Hold Harmless) shall survive the termination of this Agreement.

15.3. BUYER's Waiver. Notwithstanding any provision of this Agreement to the contrary, if CITY makes any representation or warranty regarding the Property and BUYER learns that such representation or warranty is or might be untrue prior to the Closing and BUYER elects to purchase the Property anyway, then BUYER shall be deemed to have waived any and all right to bring an action or proceeding against CITY, its agents, employees, or brokers regarding the representation or warranty.

15.4. Property Information. Information regarding the Property and its operation provided to BUYER by CITY shall be deemed only an accommodation to BUYER. CITY will not and shall not be obligated to make any investigation or verification of any information provided to BUYER, regardless of the source of such information. CITY makes no representation, and expressly disclaims any responsibility for the accuracy or completeness of such information.

15.5. Sufficiency of Due Diligence Period. BUYER agrees that the BUYER's Due Diligence Period will provide BUYER adequate opportunity to complete all physical, economic and other examinations of the Property and its operation as BUYER requires.

16. Release. With the exception of any claims arising from CITY's fraud or intentional misrepresentation, effective from and after the Closing, BUYER, for itself, its successors, assignees, representatives, employees, officers, and agents, releases and forever discharges CITY, its elected officials, officers, representatives, agents, employees, successors in interest and assigns, of and from any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, losses of service, expenses

and compensation of any nature whatsoever, whether based on tort, contract, violation of statutory duties, or other theory of recovery, and whether for compensation or punitive damages, injunctive relief or mandamus, or other equitable remedies which BUYER now has, or which may later accrue or be acquired, on account of, or in any way growing out of, or which are the subject of this Agreement, the Property, or the condition of the Property, including without limitation any and all known or unknown claims resulting from the alleged acts or omissions of CITY, its elected officials, officers, representatives, agents or employees.

16.1. Section 1542 Waiver. BUYER acknowledges and agrees that the release of liability provision set forth above is a general release, and with the exception of any claims that may arise from CITY's fraud or intentional misrepresentation, further expressly waives and assumes the risk of any and all claims against CITY arising from this Agreement, the Property, or the condition of the Property, and which exist as of the Closing, but of which BUYER does not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect BUYER's decision to enter into this Agreement and complete the Closing. BUYER expressly waives, as demonstrated by the signature set forth immediately below, the benefits and provisions of Section 1542 of the California Civil Code, and any similar law of any state or territory of the United States or other jurisdiction. Section 1542 of the California Civil Code provides as follows:

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.

Waived by BUYER: EHOF La Jolla, LLC, a Delaware limited liability company

BY:

Name: Oscar Vasquez
Title: Authorized Signatory

17. No Real Estate Commission. BUYER and CITY each represent, warrant, and acknowledge that no real estate commission, finder's fee, or broker's fee has been or will be incurred or paid by either party in connection with the purchase and sale of the Property under this Agreement. The rights and obligations of BUYER and CITY pursuant to this section shall survive the Closing or termination of this Agreement.

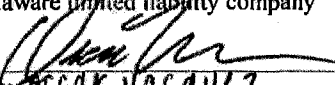
18. Mandatory Disclosure of Business Interests. Pursuant to San Diego City Charter section 225, BUYER shall make a full and complete disclosure of the name and identity of each person directly or indirectly involved in the transaction contemplated by this Agreement and the precise nature of their interest.

19. Default and Remedies.

- 19.1. CITY Default. If CITY is in default of this Agreement prior to the Closing, BUYER may, at its sole option and as its exclusive remedy for such default either:
- (a) terminate this Agreement by written notice to CITY and the Escrow Holder; or
 - (b) if the default resulted from a failure to transfer possession and title to the Property to BUYER at the Closing, seek and enforce specific performance of this Agreement.
- BUYER may seek and enforce any remedy available at law or in equity: (a) if CITY defaults on its obligations under this Agreement after the Closing; and (b) for any claim related to this Agreement arising from the established sole negligence or intentional misconduct of CITY or its elected officials, officers, employees, representatives and agents.
- 19.2. BUYER Default. If BUYER is in default of this Agreement by failing to purchase the Property, CITY may terminate this Agreement by written notice to BUYER and the Escrow Holder, and retain the Deposit.

THE PARTIES HERETO HAVE CONSIDERED THE AMOUNT OF DAMAGES WHICH CITY IS LIKELY TO INCUR IN THE EVENT OF A DEFAULT BY BUYER BY FAILING TO PURCHASE THE PROPERTY, AND THE PARTIES HERETO HAVE AGREED THAT THE DEPOSIT IS A REASONABLE APPROXIMATION AND LIQUIDATION OF CITY'S POTENTIAL DAMAGES THEREFOR, CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT. THE RECEIPT AND RETENTION OF SUCH AMOUNT BY CITY IS INTENDED TO CONSTITUTE THE LIQUIDATED DAMAGES TO CITY PURSUANT TO THE CALIFORNIA CIVIL CODE, AND SHALL NOT BE DEEMED TO CONSTITUTE A FORFEITURE OR PENALTY WITHIN THE MEANING OF THE CALIFORNIA CIVIL CODE, OR ANY SIMILAR PROVISION. SAID AMOUNT OF LIQUIDATED DAMAGES SHALL BE IN LIEU OF ANY OTHER REMEDIES, DAMAGES OR SUMS DUE OR PAYABLE TO CITY IN THE EVENT OF A DEFAULT BY BUYER BY FAILING TO PURCHASE THE PROPERTY. BY SIGNING IMMEDIATELY BELOW, EACH PARTY SPECIFICALLY AGREES TO THE FOREGOING PROVISION FOR LIQUIDATED DAMAGES.

EHOF LA JOLLA, LLC,
a Delaware limited liability company

BY: 
Name: OSCAR VASQUEZ
Title: Authorized Signatory

THE CITY OF SAN DIEGO,
a California municipal corporation

BY: _____
Cybele Thompson
Director, Real Estate Assets

- 19.3. Limited Liability. Excepting any claims or liability arising from the established gross negligence, recklessness or intentional misconduct of CITY and its elected officials, officers, employees, representatives and agents, CITY's liability for damages

resulting from or under this Agreement shall be limited to either the Property or to the Purchase Price received by CITY, without any recourse to any other CITY assets.

20. Time of Essence. Time is of the essence to the performance of each and every obligation under this Agreement.
21. Interpretation. This Agreement shall be governed by the laws of the State of California. The section headings are for convenience only and shall not interpret, define or limit the scope or content of this Agreement. If any party is made up of more than one person or entity, then all are identified in the singular in this Agreement. If any right of approval or consent by a party is provided for in this Agreement, the party shall exercise the right promptly and reasonably, unless this Agreement expressly gives such party the right to use its sole discretion. The term "business day" shall mean Monday through Friday, excluding holidays recognized by the State of California and the City of San Diego.
22. CITY's Consent, Approval. CITY's consent or approval under this Agreement shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless required by law or otherwise expressly provided. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless required by law or otherwise expressly provided.
23. Amendments. The terms and provisions of this Agreement may only be modified or amended pursuant to a written instrument signed by all parties hereto.
24. Successors and Assigns. This Agreement shall inure to and bind the successors and assigns of the parties.
25. Assignment. This Agreement may not be assigned in whole or in part by BUYER without CITY's prior written consent.
26. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed as follows:

CITY: THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700, MS 51A
San Diego, CA 92101


BUYER: EHOFF La Jolla, LLC, a Delaware Limited Liability Company
Attention: William A. Berwin
Silver Street Partners, LLC
7861 Herschel Ave
La Jolla, CA 92037

27. Partial Invalidity. If any term, covenant, condition, or provision of this Agreement is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
28. Waiver. The Property is publicly owned and held in trust for the benefit of CITY's citizens. CITY's failure to insist upon the strict performance of any of BUYER's obligations under this Agreement, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Agreement, at law, or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY's failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.
29. No Affiliation. Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, or other affiliation between CITY and BUYER, or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of BUYER or any other party or entity.
30. Survival. Any obligation which accrues under this Agreement prior to the Closing or its termination shall survive the Closing or such termination.
31. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Agreement. Any modification, alteration or amendment of this Agreement shall be in writing and signed by all the parties hereto. Each party represents and warrants that this Agreement is binding upon such party in accordance with its terms.
32. Authority to Contract. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws or other written rules of conduct or governing agreement. Each party which is not a natural person represents and warrants that it is a valid, qualified corporation, limited liability company, partnership or other unincorporated association in good standing in its home state and that it is qualified to do business in California.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

Date: 6/22/15

EHOFF La Jolla, LLC, a Delaware limited liability company

BY: 
Name: OSCAR VASQUEZ
Title: Authorized Signatory

Date: _____

THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____
Cybele Thompson
Director, Real Estate Assets

Approved as to form:

JAN I. GOLDSMITH, San Diego City Attorney

BY: _____
Name: _____
Title: _____
Date: _____

Exhibit A: Property Description
Exhibit B: Grant Deed

Exhibit A: Property Description

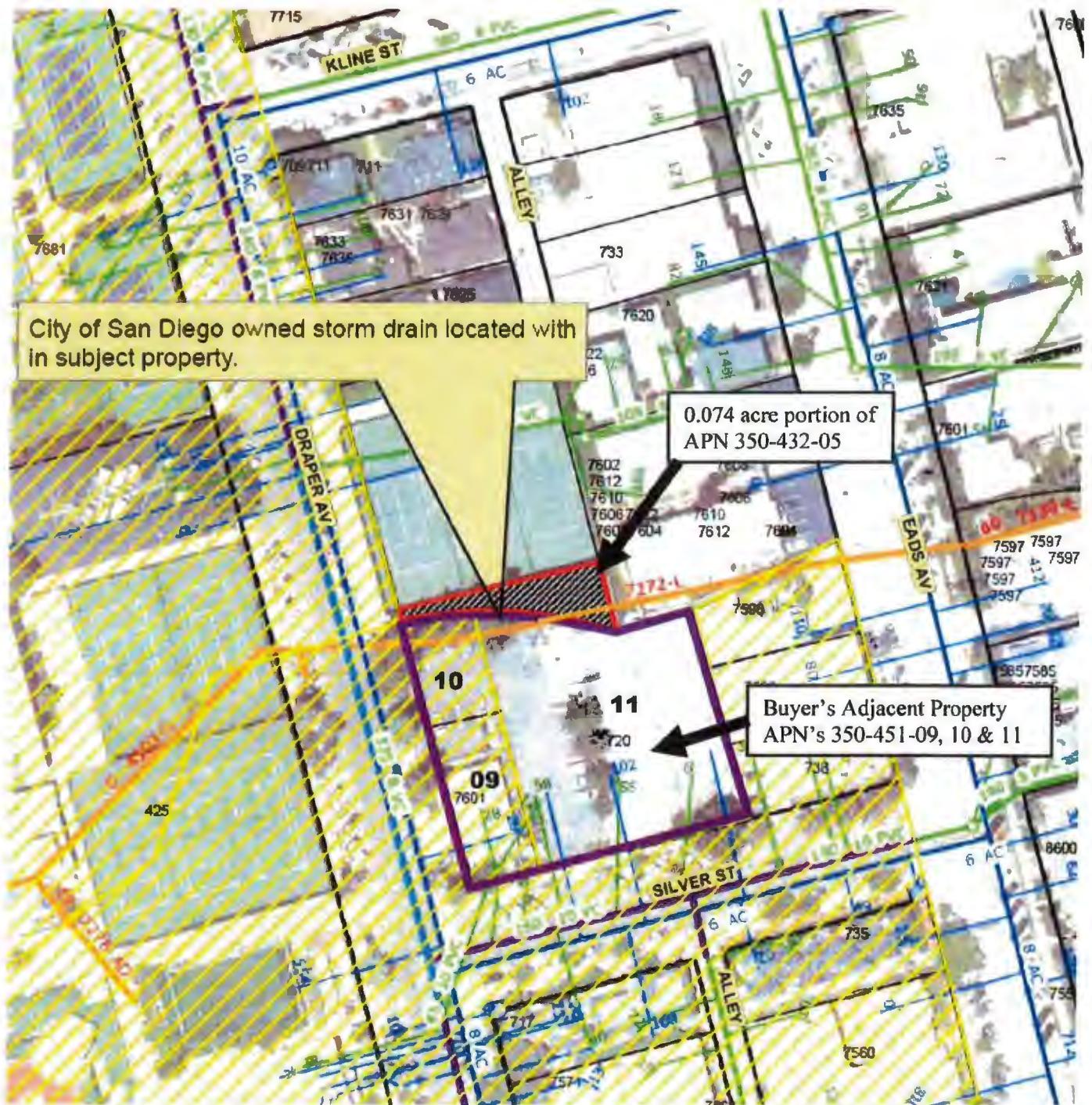


Exhibit B: Grant Deed

Recording Requested by
The City of San Diego

When Recorded Mail to:

EHOF La Jolla, LLC
Silver Street Partners, LLC
7861 Herschel Ave
La Jolla, CA 92037

APN _____

SPACE ABOVE FOR RECORDER'S USE ONLY

The undersigned grantor hereby declares the documentary
transfer tax is: \$ _____ and is computed on the full value
of the interest or property conveyed

GRANT DEED

FOR VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged,

**THE CITY OF SAN DIEGO,
A CALIFORNIA MUNICIPAL CORPORATION ("GRANTOR"),**

**HEREBY GRANTS TO EHOFF La Jolla, LLC
a Delaware limited liability company ("GRANTEE"),**

ALL THAT REAL PROPERTY (the "Property") in fee title, together with all rights and appurtenances thereto and subject to all encumbrances of record, consisting of 3,234 square feet of unimproved land more particularly described in the attached **Exhibit A: Legal Description and drawing**, and subject to the following.

GRANTOR reserves from the GRANTEE'S fee acquisition, for GRANTOR'S benefit, a permanent easement for storm drain and public utility infrastructure (collectively, the "Facilities"), said easement to be _____ feet in width, over, on, and in a portion of the Property (the "Easement"), together with the right to construct, install, operate, maintain, repair, restore and/or replace said Facilities, and the right of ingress and egress over the Property for such purposes together with pedestrian and motorized vehicle access by the most practicable route available at the time and from time to time to and from the nearest public right of way. Said Easement is described and depicted on the attached **Exhibit A**, attached hereto and made a part hereof.

Unless agreed to in advance in writing by GRANTOR, the following uses by GRANTEE, or its successors and assigns, within the Easement are prohibited: Parking, construction of buildings, masonry walls, masonry fences, and other structures, the planting or growing of trees; the changing of the surface grade; and the installation of pipelines and underground utilities. If City conducts repairs and/or replacement of the storm drain, existing trees within the Easement will be removed and not replaced.

GRANTEE shall not construct or permit to be constructed any improvements or other encroachment upon said Easement which will cause or threaten damage to or the safety of any of the Facilities placed within the Easement, without prior consent of GRANTOR.

The provisions of this Grant Deed shall inure to the benefit of and bind the respective successors and assigns of the parties and entities stated herein.

IN WITNESS WHEREOF, this Grant Deed is executed to be effective upon its recordation in the Official Records of San Diego County, California.

San Diego City Council Authorizing Resolution No. _____
Date of Final Passage: _____

GRANTOR:

THE CITY OF SAN DIEGO, a California municipal corporation

Approved as to form:

JAN I. GOLDSMITH, City Attorney

BY: _____

Cybele Thompson
Director, Real Estate Assets

BY: _____
Name: _____
Title: _____
Date: _____

Date: _____

GRANTEE ACCEPTANCE:

EHOJ La Jolla, LLC, a Delaware limited liability company

BY: _____

Name: Oscar Vasquez
Title: Authorized Signatory
Date: 6/22/15

Attachments: Exhibit A: Legal Description and Drawing

Exhibit A: Legal Description and Drawing
EXHIBIT 'A'
LEGAL DESCRIPTION
LAND SALE AND EASEMENT RESERVATION

A.P.N. 350-432-05

BEING A PORTION OF LOT 11 OF BLOCK 20 AND A PORTION OF THE RAVINA STREET CLOSURE VACATED JULY 29, 1929 BY RESOLUTION NO. 50978 OF THE COMMON COUNCIL OF CITY OF SAN DIEGO BOTH IN LA JOLLA PARK ACCORDING TO MAP THEREOF NO. 352, FILED IN THE OFFICE OF THE COUNTY RECORDER ON MARCH 22, 1887, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHERLY TERMINUS OF THAT COURSE AND DISTANCE DESIGNATED AS "NORTH 14°44'24" WEST 3.55 FEET" ACCORDING TO PARCEL MAP NO. 3935, BEING THE BEGINNING OF A 90 FOOT RADIUS CURVE CONCAVE NORTHERLY, A RADIAL FROM SAID POINT BEARS NORTH 00°58'10" WEST; THENCE ALONG THE ARC OF SAID CURVE AND THE NORTHERLY BOUNDARY OF SAID PARCEL MAP 3935 WESTERLY 25.94 FEET THROUGH A CENTRAL ANGLE OF 16°30'54" TO THE BEGINNING OF A 240 FOOT RADIUS REVERSE CURVE CONCAVE SOUTHERLY; THENCE WESTERLY ALONG THE ARC OF SAID CURVE AND BOUNDARY 132.12 FEET THROUGH A CENTRAL ANGLE OF 31°32'27" TO A POINT ON THE EASTERLY RIGHT-OF-WAY OF DRAPER AVENUE AS DEDICATED PER MAP 352; THENCE ALONG THE SAID RIGHT-OF-WAY NORTH 14°45'29" WEST 7.14 FEET; THENCE LEAVING SAID RIGHT-OF-WAY NORTH 75°25'17" EAST 150.26 FEET TO A POINT ON THE WESTERLY BOUNDARY OF LA JOLLA VILLA, ACCORDING TO MAP THEREOF NO. 5750; THENCE ALONG SAID BOUNDARY SOUTH 14°44'24" EAST 45.56 FEET TO A POINT ON THE NORTHERLY BOUNDARY OF SAID PARCEL MAP 3935; THENCE ALONG THE BOUNDARY THEREOF SOUTH 14°44'24" EAST 3.55 FEET TO THE POINT OF BEGINNING.

(CONTAINS 3,234 SQUARE FEET, MORE OR LESS);


RESERVING THEREFROM AN EASEMENT FOR DRAINAGE PURPOSES MORE PARTICULARLY DESCRIBED AS FOLLOWS

BEGINNING AT THE SOUTHERLY TERMINUS OF THAT COURSE AND DISTANCE DESIGNATED AS "NORTH 14°44'24" WEST 3.55 FEET" ACCORDING TO PARCEL MAP NO. 3935, BEING THE BEGINNING OF A 90 FOOT RADIUS CURVE CONCAVE NORTHERLY, A RADIAL FROM SAID POINT BEARS NORTH 00°58'10" WEST; THENCE ALONG THE ARC OF SAID CURVE AND THE NORTHERLY BOUNDARY OF SAID PARCEL MAP 3935, RECORDED JULY 17, 1975 AS FILE NO. 75-186334 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, WESTERLY 25.94 FEET THROUGH A CENTRAL ANGLE OF 16°30'54" TO THE BEGINNING OF A 240 FOOT RADIUS REVERSE CURVE CONCAVE SOUTHERLY; THENCE ALONG THE ARC OF SAID CURVE AND BOUNDARY 11.20 FEET THROUGH A

PAGE 1 OF 2

CENTRAL ANGLE OF 02°40'25" TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG THE ARC OF SAID CURVE 73.32 FEET THROUGH A CENTRAL ANGLE OF 17°30'17"; THENCE NORTH 78°13'38" EAST 103.02 FEET TO A POINT ON THE WESTERLY BOUNDARY OF LA JOLLA VILLA, ACCORDING TO MAP THEREOF NO. 5750 RECORDED JUNE 29, 1966 AS FILE NO. 106910, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY; THENCE ALONG SAID BOUNDARY SOUTH 14°44'24" EAST 20.03 FEET; THENCE SOUTH 78°13'38" WEST 33.81 FEET TO THE TRUE POINT OF BEGINNING

(CONTAINS 1,232 SQUARE FEET, MORE OR LESS).

 6/3/2015
RUDY P. PACHECO
LS 5717 EXP. 9-30-15



PAGE 2 OF 2

BASIS OF BEARING:

THE BASIS OF BEARINGS FOR THIS MAP IS THE MOST WESTERLY 7.00' OFFSET LINE OF BLOCK 11 AND 20 OF LA JOLLA PARK MAP NO. 352. I.E. N14°45'28"E

LEGAL DESCRIPTION

PORTION OF LOT 11 OF BLOCK 20 AND A PORTION OF RAMONA STREET CLOSURE BOTH IN LA JOLLA PARK ACCORDING TO MAP THEREOF NO. 352, FILED IN THE OFFICE OF THE COUNTY RECORDER ON MARCH 22, 1987, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA

ASSESSORS PARCEL NO.

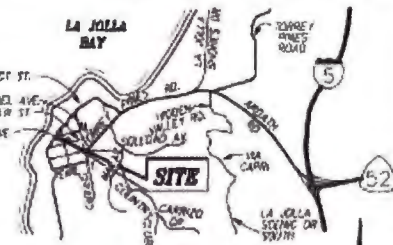
350-412-05

REFERENCE DWG. NO.

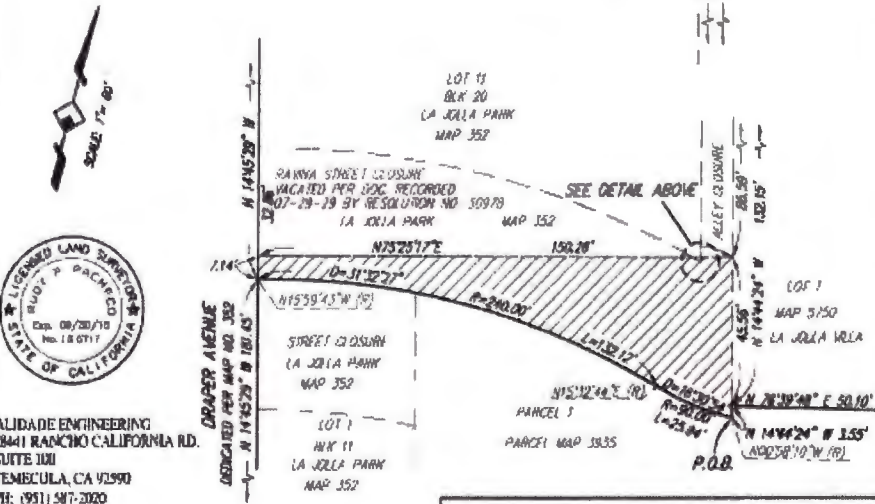
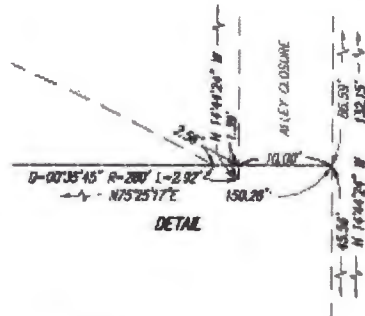
MAP 352, MAP 5750 AND PM 3935

LEGEND:

- PROPERTY LINE
INDICATES LAND SALE AREA
AREA = 3,234 S.F.
P.O.B. INDICATES POINT OF BEGINNING



VICINITY MAP



ALJADE ENGINEERING
18441 RANCHO CALIFORNIA RD.
SUITE 100
FEMECULA, CA 92990
PH: (951) 517-2020

MARY P. PACHECO, L.S. 5717
MY LICENSE EXPIRES 9/30/2025

LAND SALE AND DRAINAGE EASEMENT RESERVATION

PORTION OF LOT 11 OF BLOCK 20 AND STREET CLOSURE OF RAMONA STREET
OF LA JOLLA PARK MAP NO. 352

DESCRIPTION	BY	APPROVED	DATE	FILMED	CITY OF SAN DIEGO, CALIFORNIA	PTS. NO. _____
ORIGINAL	A.E.				SHEET 1 OF 2 SHEET	C.D. NO. _____
					FOR CITY ENGINEER	DATE
						1887-6248
						GCS 83 COORDINATES
						247-1884
						GCS 27 COORDINATES
						38788-1-B

BASIS OF BEARING:

THE BASIS OF BEARINGS FOR THIS MAP IS THE MOST WESTERLY 7.00' OFFSET LINE OF BLOCK 11 AND 20 OF LA JOLLA PARK MAP NO. 352, I.E. N14°45'29"E

LEGAL DESCRIPTION

PORTION OF RAYMOND STREET CLOSURE IN LA JOLLA PARK ACCORDING TO MAP THEREOF NO. 352, FILED IN THE OFFICE OF THE COUNTY RECORDER ON MARCH 22, 1997, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA

ASSESSORS PARCEL NO.

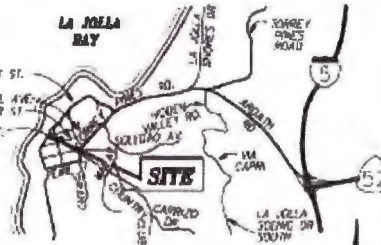
350-438-05

REFERENCE DWG. NO.

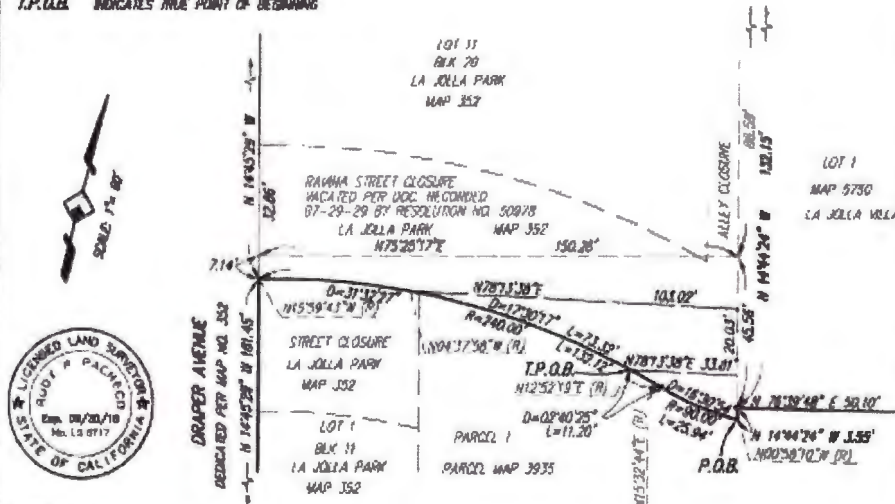
MAP 352, MAP 3750 AND PM 3935

LEGEND:

- PROPERTY LINE
- INDICATES DRAINAGE EASEMENT RESERVATION AREA- 1,232 S.F.
- P.O.B. INDICATES POINT OF BEGINNING
- T.P.O.B. INDICATES TRUE POINT OF BEGINNING



VICINITY MAP



ALIDADE ENGINEERING
28441 RANCHO CALIFORNIA RD.
SUITE 100
TEMESCUILLA, CA 92590
PH: (951) 587-3300

RUDY P. PACHECO, L.S. 5717
MY LICENSE EXPIRES 8/30/2003

LAND SALE AND DRAINAGE EASEMENT RESERVATION

PORTION OF STREET CLOSURE OF RAYMOND STREET
OF LA JOLLA PARK MAP NO. 352

DESCRIPTION	BY	APPROVED	DATE	FILMED	CITY OF SAN DIEGO, CALIFORNIA	PTS. NO. _____
ORIGINAL	A.E.				SHEET 2 OF 2 SHEET	L.O. NO. _____
					FOR CITY ENGINEER	DATE
						1887-6246
						GCS 83 COORDINATES
						247-1684
						GCS 27 COORDINATES
						38788-2-B

COMMITTEE ACTION SHEET

COUNCIL DOCKET OF _____

☐ Supplemental ☐ Adoption ☐ Consent ☐ Unanimous Consent

R -

O -

Sale of an Approximately .074 Acre Portion of City-Owned Land Located on Draper Avenue between Kline and Silver Streets in La Jolla 92037

☒ Reviewed ☐ Initiated By SG&LU On 7/1/15 Item No. 1

RECOMMENDATION TO:

Motion by Councilmember Alvarez to recommend Council adopt the resolution to authorize the sale of city-owned property located on Draper Avenue. Second by Councilmember Sherman.

VOTED YEA: Zapf, Gloria, Sherman, Alvarez

VOTED NAY:

NOT PRESENT:

CITY CLERK: Please reference the following reports on the City Council Docket:

REPORT TO THE CITY COUNCIL NO.

INDEPENDENT BUDGET ANALYST NO.

COUNCIL COMMITTEE CONSULTANT ANALYSIS NO.

OTHER:

COUNCIL COMMITTEE CONSULTANT _____

