

Recording requested by:  
CHICAGO TITLE COMPANY

DOC# 2022-0258112



Jun 22, 2022 11:44 AM

OFFICIAL RECORDS

Ernest J. Dronenburg, Jr.,

SAN DIEGO COUNTY RECORDER

FEES: \$226.00 (SB2 Atkins: \$150.00)

PCOR: N/A

PAGES: 17

~~RECORDING REQUESTED BY~~ )

AND WHEN RECORDED MAIL TO: )

Matthew A. Peterson, Esq. )

Peterson & Price, APC )

402 W. Broadway, Suite 1815 )

San Diego, CA 92101 )

)

73720017619-RCM )

Grantor Andrea Zainab Omidy Rao

APN 299-181-09-00

Grantee Naveen Gandham Rao

APN 299-181-10-00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DTT \$0

**VIEW EASEMENT AGREEMENT, COVENANT IMPOSING**

**RESTRICTIONS ON REAL PROPERTY, AND EXCLUSIVE USE EASEMENT**

This View Easement Agreement and Covenant Imposing Restrictions on Real Property and Exclusive Use Easement (“**Agreement**”) is made by and between Andrea Zainab Omidy Rao, an married woman as her sole and separate property (“**Grantor**”), and Naveen Gandham Rao, a married man as his sole and separate property (“**Grantee**”) with reference to the following recitals:

A. Grantor is the owner of certain real property commonly known as 1925-1927 Balboa Avenue, Del Mar, CA 92014 (“**Servient Tenement**”), and legally described in attached **Exhibit “A”** (“**Grantor Servient Tenement Legal Description**”). The Servient Tenement is improved with two residences.

B. Grantee is the owner of certain real property commonly known as 422 Culebra Street, Del Mar, CA 92014 (“**Dominant Tenement**”) and legally described in attached **Exhibit “B”** (“**Grantee Dominant Tenement Legal Description**”). The Dominant Tenement is improved with a single family home.

C. Grantor and Grantee (the “**Parties**”) enter into this Agreement pursuant to Section 1468 of the California Civil Code for the benefit of the Dominant Tenement to restrict the Servient Tenement to preserve Dominant Tenement’s day and nighttime views, privacy, light and air, quality

of life and to grant to the Dominant Tenement an Exclusive Use Easement on a portion of the Servient Tenement as set forth below. Grantor and Grantee intend and agree that the Agreement is a covenant running with all these properties and will be binding upon each of them and upon each successor owner of the Servient Tenement and of the Dominant Tenement.

NOW, THEREFORE, in consideration of the covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

**1. Grant of View Easement.**

**Restricted Area View Easement.** Grantor hereby grants to Grantee an easement through, over, on, above, and across the area as legally described within the attached **Exhibit “C” Legal Depiction of View Easement – Restricted Area Legal** and as depicted within the attached **Exhibit “D” Plat of View Easement – Restricted Area** (hereinafter collectively referred to as “**Restricted Area**”) for the purpose of preserving Grantee’s views, privacy, quality of life and light and air for the benefit of Grantee, its heirs, successors in interest, assigns and transferees, of the Dominant Tenement.

(i) Grantor on behalf of itself, its heirs, successors in interest, assigns and transferees agree to be bound by all of the following restrictive covenants:

(a) Within the **Restricted Area** as legally described within the attached **Exhibit “C” View Easement-Restricted Area** and as depicted on **Exhibit “D” Plat of View Easement-Restricted Area**, Grantor shall not, within Servient Tenement, maintain, permit, allow, erect, construct, build new, remodel, or modify the building and/or structural envelope of any structure on the site, or plant, maintain, or allow to grow any vegetation or trees, or landscaping of any kind on or adjacent to the Servient Tenement, nor otherwise install any new buildings,

structures, improvements, whether temporary or permanent, communication or satellite antennas, solar panels, or poles of any kind (including flag poles), walls or fencing, landscaping or other visual obstructions of any kind, which will extend into or above the Restricted Area.

**2. Grant of Exclusive Use Easement.**

**Exclusive Use Area Easement.** Grantor hereby grants to Grantee an exclusive use and enjoyment easement for the occupation of, and the use, access, ingress, and egress through, over, on, above and across, and for such other related and accessory uses within the attached **Exhibit “E” (“Exclusive Use Area”)** and as depicted within the attached **“Exhibit “F” (“Plat of Exclusive Use Area”)**, on all of the terms and conditions set forth herein. Grantee shall have the right, but not the obligation, to install and maintain fencing, bio retention basins, landscaping and irrigation. Grantee shall pay all costs of the design, permitting, installation, construction, utilities and ongoing maintenance of Grantee’s improvements.

**3. Repair/Maintenance.** During the term of this Agreement, Grantee shall maintain the Exclusive Use Area and all improvements thereon in good repair, and in such a way as to avoid damage or destruction or otherwise cause nuisance to Grantor’s property, in accordance with all applicable laws, rules, regulations, covenants, conditions, and restrictions.

**4. Not a Public Dedication.** Nothing herein shall be construed to give the public or any governmental agency any rights in the Exclusive Use Area or shall it be deemed to be a gift or dedication of any portion of the Parcels to the general public or for the benefit of the general public for any public purposes whatsoever, it being the intention of the Parties that this Agreement shall be strictly limited to and only for the purposes herein expressed.

**5. Character of Easement.** The Easements granted in this Agreement is appurtenant to the Parcels and to each division thereof, whether by parcel map, subdivision map, or otherwise, and

shall constitute covenants running with the land binding upon all heirs, successors, transferees, and assigns of the parties hereto.

6. **Taxes.** Each owner shall be solely responsible for payment of all real estate taxes on its own Parcel.

7. **Notices.** All notices, requests, demands and other communications hereunder shall be given in writing and shall be by: (a) established express delivery service which maintains delivery records; (b) hand-delivery; or (c) certified or registered mail, postage prepaid return receipt requested, to the Parties at the following addresses:

|             |  |
|-------------|--|
| To Grantee: | Naveen Gandham Rao<br>422 Culebra Street<br>Del Mar, CA 92014  |
| With cc to: | Matthew A. Peterson, Esq.<br>Peterson & Price, APC<br>402 West Broadway, Suite 1815<br>San Diego, CA 92010<br><a href="mailto:map@petersonprice.com">map@petersonprice.com</a> |
| To Grantor: | Andrea Zainab Omidy Rao<br>1925 Balboa Ave<br>Del Mar, CA 92014  |

Notices are effective upon delivery, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide a reasonable means for accomplishing deliveries. The foregoing addresses may be changed by written notice given pursuant to provisions of this Section.

8. **Dispute Resolution.** Any disputes arising out of or related to this Agreement shall be resolved by first submitting the matter to mediation. If mediation is unsuccessful, or is not completed, for any reason, within forty-five (45) days of written request by one Owner to the other, then, unless otherwise agreed in writing, such matter shall be resolved through the Superior Court for the State of California, in the County of San Diego and in no other place. The parties shall initially share the costs for mediation equally, but in the event of a lawsuit, arbitration, or other proceeding, reasonable

attorney's fees and costs for the mediation shall be awarded to the prevailing party. Unless the parties otherwise agree, the mediation shall be conducted by the American Arbitration Association, in accordance with its applicable rules and procedures then in effect.

**9. Injunctive Relief.** The Parties agree that any violation of this Agreement by either of them would result in irreparable harm to the other and, therefore, either Owner shall be entitled to injunctive relief to prevent or stop any violation or breach of this Agreement from occurring, or continuing to occur, without the necessity of showing irreparable harm or posting a bond.

**10. Attorney's Fees and Costs.** In any legal action or proceeding arising out of or related to this Agreement, the prevailing party shall be entitled to recover from the other its reasonable attorney's fees and all costs incurred, including surveyors, engineers, appraisers, expert witnesses, consultants, mediation, arbitration and court costs, including those incurred during dispute resolution pursuant to Paragraph 8 and also on appeal.

**11. Covenants Run With the Land.** This Agreement, and the easements and covenants described herein, shall run with the Parcels. In connection with the foregoing, upon any sale or transfer of a Parcel, the prior Owner thereof shall be released and discharged from the performance and satisfaction of any and all covenants, agreements, obligations, duties and responsibilities under this Agreement, to the extent the same arise or accrue subsequent to the date of such sale or transfer.

**12. Definition of Owner.** As used in this Agreement, the term "Owner" shall mean and refer to the record owner(s) of fee title to the Parcels, whether held by one or more persons or entities, including without limitation the Parties. A contract purchaser under a recorded installment land sales contract shall be included as an "Owner" but those merely having an interest in property as security for the performance of an obligation shall not be "Owners".

**13. Multiple Ownership.** In the event that fee ownership of any Parcel is vested in more than one party ("Co-Owners"), then all co-owners of such Parcel shall be jointly considered as a single Owner, and the acts of any such co-owner with respect to the performance of the provisions of this Agreement shall be binding upon all other parties then owning any fee interest in such co-owner's Parcel.

**14. Definition of Parcel.** As used in this Agreement, the term “Parcel” shall mean and refer to all parcels then-existing at the execution of this Agreement, including any parcel adjustment thereto by future valid lot line adjustment, parcel map, lot consolidations, mergers, and/or subdivisions.

**15. Entire Agreement.** This Agreement represents the entire integrated agreement between the parties with respect to the subject matter set forth above, and supersedes all previous oral and written agreements, communications, representations or commitments. Any prior agreements, promises, negotiations, or representations regarding the Grantee and the Grantor not expressly set forth in this Agreement are of no force and effect. Any amendment to this Agreement shall be of no force and effect unless it is in writing; signed by Grantor and Grantee or their successors, and duly recorded in the office of the County Recorder of San Diego County.

**16. Term.** The easements, covenants, restrictions, rights and obligations of this Agreement shall constitute a covenant and shall run with the Grantor Servient and Grantee Dominant Tenements, and shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, trustees, successors and assigns of Grantor and Grantee. It is the purpose of the signators hereto that this Instrument be recorded and that the obligations hereby created shall be and constitute a covenant running with the land and any subsequent purchaser of all, or any portion thereof, by acceptance of delivery of a deed and/or conveyance regardless of form, shall be deemed to have consented to and become bound by this Agreement, including without limitation, the right of any person entitled to enforce the terms of this Agreement to institute legal action, such remedy to be cumulative and in addition to other remedies provided in this Agreement and to all other remedies at law or in equity.

**17. Right to Cure.** If Grantor defaults in the full, faithful and punctual performance of any obligation required hereunder and if at the end of thirty (30) days after written notice from either Grantee stating with particularity the nature and the extent of such Grantor default and the Grantor has not cured such default and is not making a diligent effort to cure such default, then Grantee shall, in addition to all other remedies it has pursuant to this Agreement at law or in equity, have the right to perform such obligation on behalf of the Grantor and be reimbursed by the Grantor for the costs

thereof, together with interest thereon (from the date of the Grantee's payment) at the lesser of twelve percent (12%) per annum or the maximum rate allowed by law. Any such claim for reimbursement, together with interest as aforesaid, shall be a secured right and the parties hereto agree that a lien therefore may attach to the Parcel and improvements thereon owned by Grantor. All references to Grantor shall include any subsequent owner(s) of the Servient Tenement and all references to Grantee shall include any subsequent owner(s) of the Dominant Tenement.

**18. Interpretation.** This Agreement shall not be interpreted against either Party as the drafter, but shall be continued as a whole and in accordance with its plain meaning. Word used in the singular numbers shall use, include the plural, and vice-versa, and any gender shall be deemed to include each other gender. The captions and headings of this Agreement are convenience of reference only and shall not be deemed to define or limit the provisions.

**19. Drafting Ambiguities.** Grantor and Grantee and their legal counsel have reviewed and revised this Agreement. The rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this instrument, or any amendments or exhibits to it. This Agreement shall not be deemed prepared or drafted by one party or the other, or its attorneys, and will be construed accordingly.

**20. Lender Protection.** Any breach by Grantor or Grantee of the covenants contained herein shall not invalidate any Deed of Trust recorded against the Grantor or Grantee, and no lender or other third party who acquires title to the Grantee or Grantor by foreclosure or deed in lieu thereof shall be liable for any damages on account of any previous breach of this Agreement. However, any foreclosure under such a deed of trust shall not extinguish or invalidate the Easements or the Covenants established by this Agreement.

**21. Property Access to Grantee's Surveyors.** Grantor hereby agrees to provide Grantee's licensed land surveyors and/or engineers access to the Servient Tenement, before, during and after construction of any proposed remodel, new residence, and/or the construction of any proposed improvements within Grantor's property (including any structure, landscaping, and/or fencing) for the purpose of verifying compliance with this Agreement.

**22. Incorporation of Exhibits.** All Exhibits mentioned or referred to in this Agreement are hereby incorporated herein by this reference.

**23. Applicable Law.** This Agreement shall be deemed to be executed, delivered, and intended to be performed by the parties hereto in the County of San Diego, State of California, and shall be construed and governed in accordance with the laws of the State of California.

**24. No Waiver.** No provision of this agreement may be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by all Owners. No such waiver by Owner of any breach of, or compliance with, any condition or provision of this Agreement by the other shall be considered a waiver of any other condition or provision, or of the same condition or provision, at another time. No failure or refusal by an Owner to perform or enforce any covenant herein shall ever ripen into any prescriptive right of either Owner, or waiver of either Owner's right to enforce this Agreement.

**25. Severability.** The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision hereof, which will remain in full force and effect.

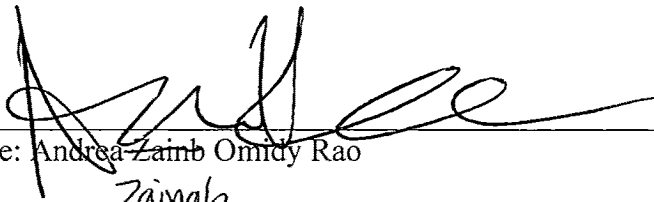
**26. Further Assurances.** Each party agrees to and shall take and perform in good faith any and all further steps and actions, and execute and acknowledge any and all further documents, as may be reasonably necessary and/or expedient in order to effectuate the intent and purpose of this Agreement.

**27. Authority.** The individuals signing this Agreement hereby represent and warrant that they have full power and authority to execute this Agreement, and that their signatures bind the respective Owners of Grantor and Grantee's Parcels.



Executed on <sup>June</sup> April 2, 2022.

**GRANTOR SERVIENT TENEMENT**

By:   
Name: Andrea Zainab Omidy Rao  
Zainab  
AP

**GRANTEE DOMINANT TENEMENT**

By:   
Name: Naveen Gandham Rao

**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 that document.

STATE OF CALIFORNIA         }  
   } ss  
 COUNTY OF SAN DIEGO         }

On June 2<sup>nd</sup>, 2022, before me, Anthony Edward Bergamini,  
 a Notary Public, personally appeared

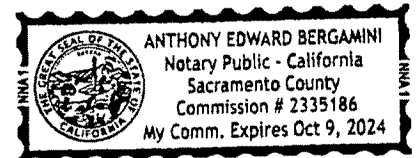
Andrea Zainab Amidy Rao, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the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

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

WITNESS my hand and official seal.

Signature Anthony Edward Bergamini

(Seal)



**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 that document.

STATE OF CALIFORNIA            }  
  } ss  
COUNTY OF SAN DIEGO        }

On June 2<sup>nd</sup>, 2022, before me, Anthony Edward Bergamini,  
a Notary Public, personally appeared

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

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

WITNESS my hand and official seal.

Signature Anthony Edward Bergamini

(Seal)

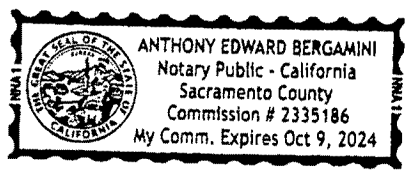
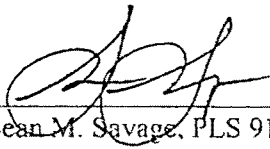
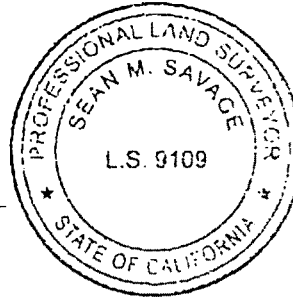


EXHIBIT 'A'  
Grantor Servient Tenement Legal Description

Parcel 'A' of City of Del Mar Certificate of Compliance COC19-001, in the City of Del Mar, County of San Diego, State of California, recorded May 29, 2019 as Document No. 2019-0204764 of Official Records of said San Diego County.

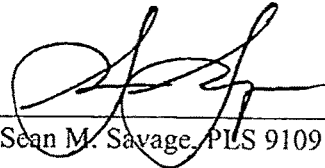
  
Sean M. Savage, PLS 9109

4/11/2022  
Date



**EXHIBIT 'B'**  
**Grantee Dominant Tenement Legal Description**

Parcel 'B' of City of Del Mar Certificate of Compliance COC19-002, in the City of Del Mar. County of San Diego, State of California, recorded May 29, 2019 as Document No. 2019-0204765 of Official Records of said San Diego County.

  
Sean M. Savage, PLS 9109

*4/11/2022*  
Date

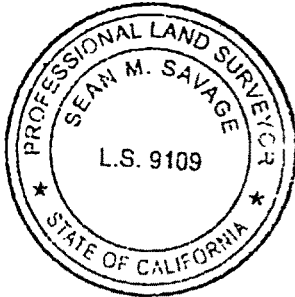


EXHIBIT 'C'  
Legal Description of View Easement – Restricted Area

A portion of Parcel 'A' of City of Del Mar Certificate of Compliance COC19-001, in the City of Del Mar, County of San Diego, State of California, recorded May 29, 2019 as Document No. 2019-0204764 of Official Records of said San Diego County, more particularly described as follows:

**Commencing** at the Easterly most corner of Parcel 'B' of COC19-002; thence

North 29°05'00" West 173.00 feet along the Easterly line of said Parcel 'B' to the Northerly most corner of Parcel 'A' of COC19-001; thence


Departing said Easterly line South 64°15'00" West 70.01 feet along the Northerly line of said Parcel 'A' to the **True Point of Beginning**; thence

Continuing along said Northerly line South 64°15'00" West 122.69 feet to the Westerly most corner of said Parcel 'A'; thence

Departing said Northerly line South 85°20'27" East 153.10 feet to a point on the Southerly line of said Parcel 'A', also being the Northerly line of said Parcel 'B'; thence

Departing said Southerly line North 32°37'51" West 78.06 feet to the **True Point of Beginning**.

Containing 4.754 sf (0.11 ac), more or less. As shown on Exhibit "D" attached hereto and made a part hereof.

  
\_\_\_\_\_  
Ryan J. Wakefield, PLS 9117

5-26-2022  
\_\_\_\_\_  
Date



# EXHIBIT "D"



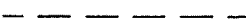


## PLAT OF VIEW EASEMENT - RESTRICTED AREA

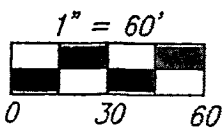
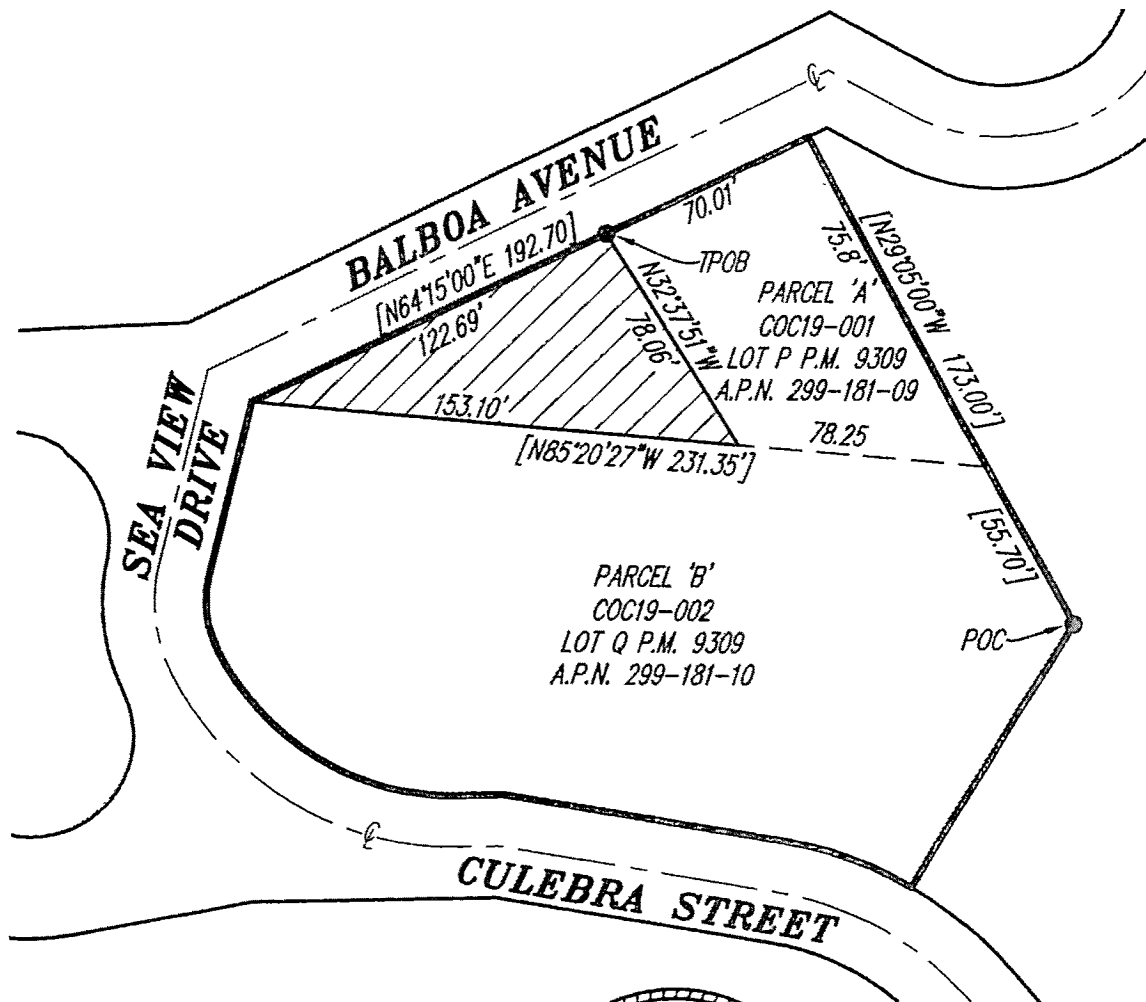
### CONTROL NOTE:

BOUNDARY AND DIMENSIONS SHOWN HEREON ARE REFLECTED PER RECORD PARCEL MAP 9309 AND ARE NOT MEASURED BOUNDS.

ELEVATIONS SHOWN HEREON ARE BASED ON A 2.5" BRASS DISC BEHIND THE NORTHEAST CURB RETURN AT THE INTERSECTION OF CAMINO DEL MAR AND 24TH STREET WITH PUNCH STAMPED "SURF 1990 PLS 485" IN CONCRETE IN MONUMENT WELL. THE ELEVATION OF SAID BRASS DISC IS 7.02 FEET (NGVD29 - MSL) PER THE CITY OF DEL MAR HORIZONTAL AND VERTICAL CONTROL RECORDS.

### LEGEND

-  PROPERTY LINE BOUNDARY
-  RIGHT-OF-WAY LINE
-  LOT LINE
-  CENTERLINE
-  EASEMENT LIMITING LANDSCAPE ELEVATION TO 150.0 MSL  
PARCEL 'A' AREA = 4,754 SF
- [ ] RECORD DATA PER  
PARCEL MAP 9309  
& COC19-002



APN(s): 299-181-09

Date Exhibit Prepared: May 26, 2022

EXHIBIT 'E'  
Legal Description of Exclusive Use Area

A portion of Parcel 'A' of City of Del Mar Certificate of Compliance COC19-001, in the City of Del Mar, County of San Diego, State of California, recorded May 29, 2019 as Document No. 2019-0204765 of Official Records of said San Diego County, more particularly described as follows:

**Commencing** at the Easterly most corner of Parcel 'B' of COC19-002; thence

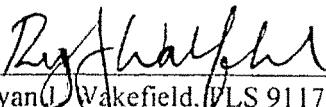
North 29°05'00" West 55.70 feet along the Easterly line of said Parcel 'B' to the Easterly most corner of Parcel 'A' of COC19-001, said point also being the **True Point of Beginning**; thence

Continuing along said Easterly line of said Parcel 'A' North 29°05'00" West 41.50 feet; thence

Departing Said Easterly line South 69°20'32" West 80.70 feet to a point on the Southerly line of said Parcel 'A', also being the Northerly line of said Parcel 'B'; thence

Continuing along said Southerly line South 85°20'27" East 96.00 feet to the **True Point of Beginning**.

Containing 1,656 sf (0.038 ac), more or less. As shown on Exhibit "F" attached hereto and made a part hereof.

  
\_\_\_\_\_  
Ryan J. Wakefield, PLS 9117

5-26-2022  
\_\_\_\_\_  
Date





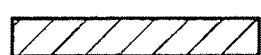



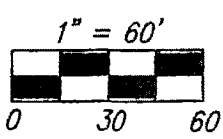
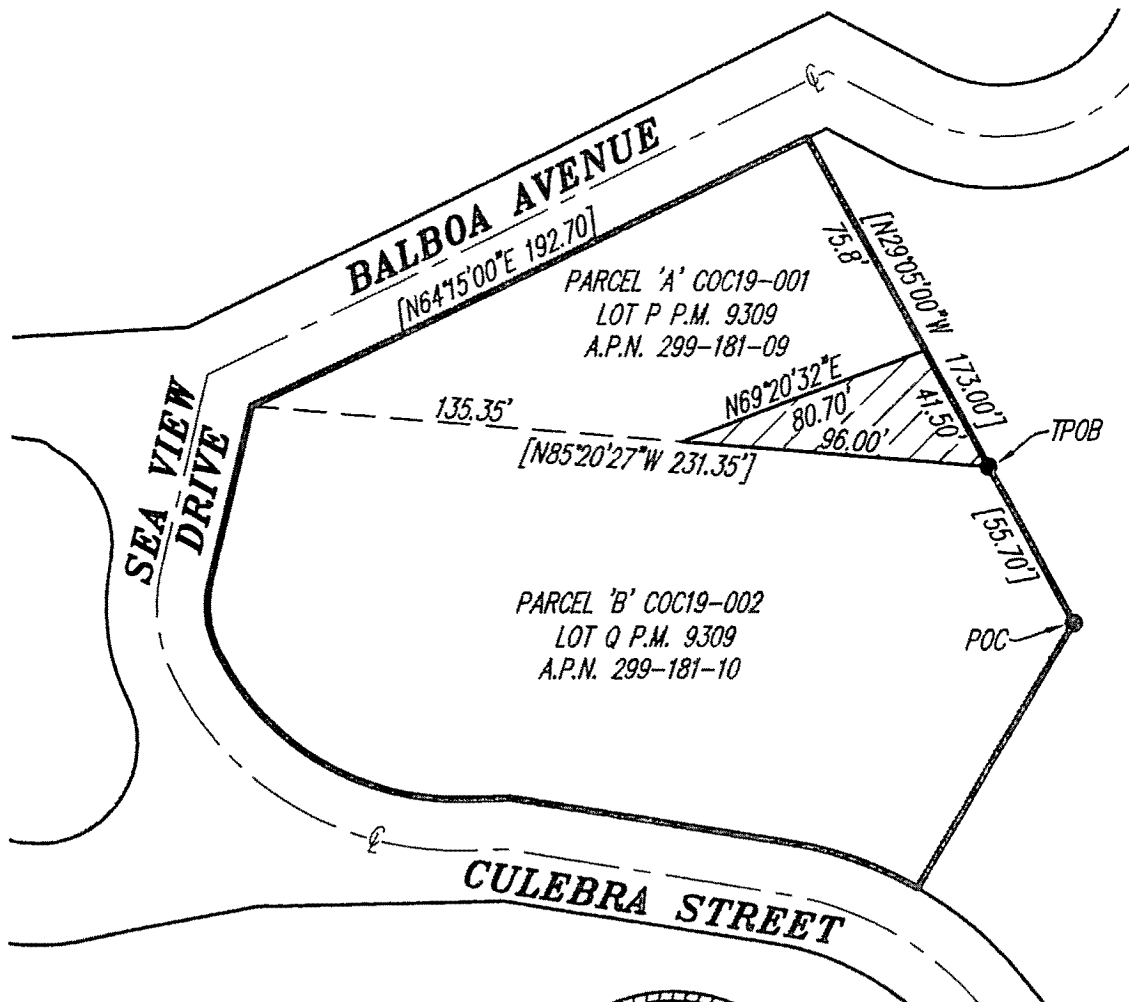


# EXHIBIT "F"

## PLAT OF EXCLUSIVE USE EASEMENT AREA

### LEGEND

-  PROPERTY LINE BOUNDARY
-  RIGHT-OF-WAY LINE
-  LOT LINE
-  CENTERLINE
-  EXCLUSIVE USE EASEMENT  
PARCEL 'A' AREA = 1,656 SF
-  [ ] RECORD DATA PER  
PARCEL MAP 9309  
& COC19-001



APN(s): 299-181-09  
 Date Exhibit Prepared: May 26, 2022

**ENGINEERING CONSULTANTS**  
 4340 VIEWRIDGE AVE. SUITE B  
 SAN DIEGO, CA 92123  
 PH: (858) 634-8620 FAX: (858) 634-8627