



REPORT TO CITY COUNCIL

DATE: AUGUST 12, 2015

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER 

BY: RAMIRO ADEVA, PUBLIC WORKS DIRECTOR/CITY ENGINEER 

SUBJECT: REQUEST TO APPROVE EASEMENT AGREEMENT BETWEEN THE CITY OF AGOURA HILLS, ARCHSTONE OAK CREEK I LLC, AND ARCHSTONE OAK CREEK II LLC RELATED TO THE MEDEA CREEK RESTORATION PROJECT

On March 25, 2015, the City Council approved Resolution No. 15-1780, which established the final project area limits for the Medea Creek Restoration Project. The proposed project includes naturalizing a portion of Medea Creek for aesthetic and biological habitat purposes, and improving pedestrian connections in the area. The naturalization consists of removing approximately 425 linear feet of concrete channel and construction of a natural channel stabilized with native vegetation, boulders, and log structures. The project will provide pedestrian connectivity from Kanan Road through an open space parcel to the west of Medea Creek to Chumash Park east of Medea Creek via a footbridge.

Recognizing the benefits the project brings to the community, the owners of the open space parcel, Archstone Oak Creek I LLC and Archstone Oak Creek II LLC (collectively, "AvalonBay"), have agreed to grant an easement to the City in order to construct the trail and landscaping improvements. As part of the proposed easement agreement (attached), the City would be required to pay a one-time fee to Avalon Bay, in the amount of one hundred dollars (\$100), and maintain the improvements within the approximate 30,932-square-foot easement. The associated maintenance costs would be incorporated into the regular park and tree maintenance programs.

The proposed easement agreement has been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

City Staff recommends the City Council approve the easement agreement, authorize the City Manager to sign, and direct the City Council to record the document with Los Angeles County.

Recording requested by:

City of Agoura Hills
30001 Ladyface Circle
Agoura Hills, CA 91301

When recorded, return to:

City of Agoura Hills
30001 Ladyface Circle
Agoura Hills, CA 91301
Attention: City Clerk

APN: 2048-007-004

Space above this line for Recorder's use only

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Agreement") is made as of the ____ day of July, 2015 (the "Effective Date"), between Archstone Oak Creek I LLC, a Delaware limited liability company and Archstone Oak Creek II LLC, a Delaware limited liability company (collectively, "AvalonBay"), and the City of Agoura Hills, CA, a municipal corporation formed and operating under the laws of the State of California ("City"). AvalonBay and the City are referred to collectively as "the Parties".

RECITALS

- R-1. AvalonBay is the owner in fee simple of certain real property as more particularly described in Exhibit A attached hereto and made a part hereof by reference (the "AvalonBay Property").
- R-2. The Los Angeles County Flood Control District ("County") is the owner in fee simple of a trapezoidal-shaped approximately one-acre parcel of real property located in the City, as more particularly described in Exhibit B attached hereto and made a part of this Agreement by reference (the "Medea Creek Property"). The City and the County contemplate executing an agreement whereby the County conveys the fee simple interest in the Medea Creek Property to the City for the construction of the improvements identified below.
- R-3. The City intends to redevelop the Medea Creek Property in order to (i) naturalize a portion of Medea Creek for aesthetic and habitat purposes; and (ii) improve pedestrian movement in the area by the construction and use of natural trails (the "Medea Creek Project Improvements" or the "Improvements").
- R-4. The City has requested from AvalonBay, and AvalonBay desires to grant to the City an approximate 30,932 square foot easement on, over, above, under, through and across a portion of the AvalonBay Property as described in Exhibit C attached hereto and made a part of this Agreement by reference (the "Medea Creek Project Easement Area"), for the

construction, maintenance, repair and replacement of the Medea Creek Project Improvements.

- R-5. AvalonBay desires to grant to the City an easement related to the construction, installation, and maintenance of the Medea Creek Project Improvements.

A G R E E M E N T

NOW THEREFORE, in consideration of the payment of the sum of One Hundred Dollars (\$100.00) by the City to AvalonBay and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Incorporation of Recitals. The Recitals set forth above are incorporated into and are a part of this Agreement for all purposes.

2. Grant of Easement.

a. AvalonBay hereby grants and conveys to the City, for the benefit of the Medea Creek Property, as an easement appurtenant to the Medea Creek Property, an exclusive perpetual easement ("Medea Creek Project Easement") on, over, above, under, through, and across the Medea Creek Project Easement Area, for the construction, installation, improvement, use, repair, replacement, and maintenance of the Medea Creek Project Improvements within or on the Medea Creek Property, on the terms and conditions of this Agreement.

b. In connection with the foregoing, all use and access to the Medea Creek Project Easement Area shall be undertaken in a manner so as not to interfere with the use and enjoyment of the AvalonBay Property, including, but not limited to, ingress and egress to the AvalonBay Property.

c. Notwithstanding Section 2b., the City shall provide twenty-one (21) days' written notice to AvalonBay, prior to commencing the demolition of the existing improvements on the Medea Creek Property, and the initial construction and installation of the Medea Creek Project Improvements.

3. Work Standards and Indemnification.

a. The City shall perform (and agrees to cause its contractors, agents, and employees to perform) all of the work and activities within the Medea Creek Project Easement Area and the AvalonBay Property related to or in connection with the Medea Creek Project Improvements in a safe and workmanlike manner, in accordance with the standards of the trade and in full compliance with all applicable governmental laws, rules, and regulations.

b. The City shall indemnify, defend, and hold AvalonBay and its affiliates, officers, directors, employees, shareholders, successors and assigns harmless from and against (i) any damage to the Medea Creek Project Easement Area and the AvalonBay Property, including, but not limited to any and all landscaping (except the natural vegetation that will be removed as part of the Improvements), equipment, and private and public roadways, caused by or associated with the Improvements; (ii) any and all liabilities, losses, expenses, and costs arising from or related

to the injury to persons and damages to property caused by the City or its contractors, agents and employees while constructing the Improvements; and (iii) any and all fines, liabilities, costs, and expense incurred as a result of or arising from a violation of any law, ordinance, rule, or regulation by the City or its contractors, agents and employees related to or arising from the Improvements unless solely caused by the gross negligence or willful misconduct of AvalonBay, its affiliates, officers, directors, employees, shareholders, successors and assigns.

c. Notwithstanding Section 3b. above, the Parties expressly acknowledge that as part of the Medea Creek Project Improvements, the City will be removing natural vegetation from the Medea Creek Project Easement Area and that the City will not need to replace or compensate AvalonBay for the removal of this vegetation.

4. Termination of Easement. In the event construction of the Medea Creek Project Improvements does not commence within five (5) years from the date of this Agreement, then this Agreement and all easements, licenses, rights and agreements contained herein shall expire 30 days after the date upon which a written notice of termination is recorded by AvalonBay (with a copy to the City) noting the date of failure to commence. The City shall execute such additional documents as may be reasonably requested in order to confirm such termination.

5. Insurance. While this Agreement is in effect, the City shall maintain at all times commercial general liability insurance policies ("Liability Insurance") with limits no less than \$2,000,000 per occurrence, single combined limit, naming AvalonBay as an additional insured.

6. Public Easement. The easements and agreements created herein, including the Medea Creek Project Easement, are created for public use.

7. Notices. For purposes of this Agreement, all notices shall be in writing and shall be duly given upon receipt if delivered (i) by email; (ii) by hand, (iii) by recognized overnight delivery service, or (iv) first class mail to AvalonBay's and the City's addresses, as applicable, unless changed by written notice furnished to and received by each party, as follows:

If to AvalonBay: 11111 Santa Monica Blvd.
Suite 850
Los Angeles, CA 90025
Attention: Frank Giambattista, Portfolio Maintenance
Director
Email: frank_giambattista@avalonbay.com

With copy to: AvalonBay Communities, Inc.
671 N. Glebe Road
Suite 800
Arlington, VA 22203
Attn: Brian Lerman, Esq.
Email: brian_lerman@avalonbay.com

If to City: City of Agoura Hills

30001 Ladyface Court
Agoura Hills, CA 91301
Attn: Greg Ramirez, City Manager
Email: gramirez@agoura-hills.ca.us

With copy to: Candice K. Lee
City Attorney
Richards, Watson & Gershon
355 S. Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101
Email: clee@rwglaw.com

All written notices and communications which are required or permitted hereunder shall be deemed to have been given, delivered, or made, as the case may be, (i) on the date of transmission if delivered by email; (ii) when delivered by personal delivery; (iii) one (1) business day after having been deposited with a nationally-recognized overnight courier service; or (iv) three (3) business days after having been deposited in the United States mail if mailed by first class mail.

8. Covenants to Run With the Land. The easement contained herein, shall be deemed a real covenant running with the land described in Exhibit A hereto, and shall be binding upon and inure to the benefit of the City. Any mortgages or deeds of trust encumbering any portion of the AvalonBay Property shall at all times be subordinate to the terms of this Agreement and any party foreclosing any such mortgage or deed of trust, or acquiring title to the AvalonBay Property by deed in lieu of foreclosure or trustee's sale, shall acquire title to the AvalonBay Property subject to all of the terms and provisions of this Agreement.

9. Enforcement. No delay or omission of any party in the exercise of any right occurring upon any default of any other party of its obligations hereunder shall impair such right or be construed to be a waiver thereof, unless expressly waived in writing by such party. A waiver by any party of a breach of, or a default in, any of the terms and conditions of this Agreement by any other Party shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provisions of this Agreement. Exercise by a party, or the beginning of the exercise by a party, of any one or more of the rights or remedies provided for in this Agreement, now or hereafter existing at law or in equity, shall not be considered as an election of remedies so as to preclude the simultaneous or subsequent exercise by such party of any other right for such breach. In the event of any legal proceedings involving the Parties relating to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reimbursement of its reasonable expenses, including legal fees, from the non-prevailing party.

10. Severability. If any provision of this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof and any other application thereof shall not in any way be affected or impaired, and such remaining provisions shall continue in full force and effect.

11. Final Agreement. This Agreement contains the entire agreement between the Parties relating to the transactions contemplated hereby, and all prior or contemporaneous agreements, understanding, representations and statements, oral or written, are merged herein.

12. Governing Law. This Agreement shall be construed, interpreted and enforced in accordance with the internal laws of the State of California. Any dispute that arises under or that relates to this Agreement shall be resolved in a municipal, superior or federal court with geographic jurisdiction over the City of Agoura Hills.

13. Counterparts. This Agreement may be executed in counterparts, and when executed by both Parties shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have duly executed and delivered this Agreement as of the day and year first above written.

[SIGNATURES BEGIN ON THE NEXT PAGE]

GRANTORS:

ARCHSTONE OAK CREEK I LLC,
a Delaware limited liability company

By: AVB Legacy DownREIT, LLC
a Delaware limited liability company,
its Sole Member

By: AvalonBay Communities, Inc.,
a Maryland corporation,
its Manager

By: Randall Caraway
Name: Caraway
Title: V.P.

Attest:

Frank Giambattista
Name: Frank Giambattista
Title: PM

GRANTEE:
**CITY OF AGOURA HILLS, a municipal
corporation**

By: _____
Greg Ramirez, City Manager

ATTEST:

Kimberly Rodrigues, MMC, City Clerk

List of Exhibits

Exhibit A – Legal Description of Avalon Bay Property

Exhibit B - Legal Description of Medea Creek Property

Exhibit C - Legal Description of the Medea Creek Project Easement Area

Exhibit A

Legal Description of AvalonBay Property

Exhibit A

Legal Description of AvalonBay Property

Parcel 1:

Lots 1, 2, A, B, C and D of TRACT NO. 53752, in the City of Agoura Hills, in the County of Los Angeles, State of California, as per Map recorded in Book 1282 Pages 51 to 57 inclusive of Maps, in the office of the County Recorder of said County.

Excepting therefrom that portion of said Lot C lying southwesterly of the following described line:

Beginning at a point on the southerly line of Lot 7 of said Tract No. 53752, distant south 87 degrees 44 minutes 42 seconds east 3.76 feet from the westerly terminous of the line shown as having a bearing and distance of north 87 degrees 44 minutes 42 seconds west 87.74 feet on said Tract No. 53752; thence leaving said southerly line, north 2 degrees 20 minutes 44 seconds east 221.97 feet; thence north 20 degrees 40 minutes 48 seconds east 64.63 feet; thence north 69 degrees 23 minutes 41 seconds west 30.62 feet to the northeasterly line of said Lot 7 and the true point of beginning, said point being distant south 67 degrees 56 minutes 05 seconds east 80.04 feet from the northerly corner of said Lot 7; thence south 69 degrees 23 minutes 41 seconds east 97.51 feet to the northeasterly corner of said Lot 7.

Also except that portion of said Lot C lying southerly of the following described line:

Beginning at a point on the southerly line of said Lot C, Distant north 84 degrees 34 minutes 30 seconds east 147.34 feet from the westerly terminous of the line shown as having a bearing and distance of north 84 degrees 34 minutes 30 seconds east 151.88 feet on said Tract No . 53752; thence leaving said southerly line, north 38 degrees 47 minutes 39 seconds east 76.34 feet; thence south 87 degrees 43 minutes 09 seconds east 123.55 feet to a point on the easterly line of said Lot C.

Affecting Lots 2 and C:

Except from that portion of said land lying within Parcels 42 and 43 of Record of Survey as per Map filed in Book 15 Pages 8 & 9 of Record of Surveys, an undivided 1/2 interest in all mineral, coal, oil, petroleum and kindred substances and natural gas in and under said land, as reserved by Robert E. Streigel and Cora E. Striegel in the Deed recorded June 5, 1952 as Instrument No. 875 in Book 39085 Page 130, Official Records.

Parcel 2:

Variable width private driveway easements for the benefit of Lots 1 and 2 owners, with reciprocal ingress and egress easement for vehicular and pedestrian access rights over the driveways as provided on the Map of Tract filed in Book 1282 Pages 51 to 57 inclusive of Maps, in the Office of the County Recorder of said County.

APN: 2048-011-045 (Portion of Lot 1 of Parcel 1)
2048-11-46 (Portion of Lot 1 of Parcel 1)
2048-11-47 (Portion of Lot 1 of Parcel 1)
2048-11-48 (Lot 2 of Parcel 1)
2048-011-056 (Portion of Lot B of Parcel 1)
2048-011-057 (Portion of Lot B of Parcel 1)
2048-011-058 (Portion of Lot B of Parcel 1)
2048-011-065 (Lot C of Parcel 1)
2048-007-004(Lot A of Parcel 1)
2048-007-005(Lot D of Parcel 1)



0 125' 250'
SCALE: 1"=250'

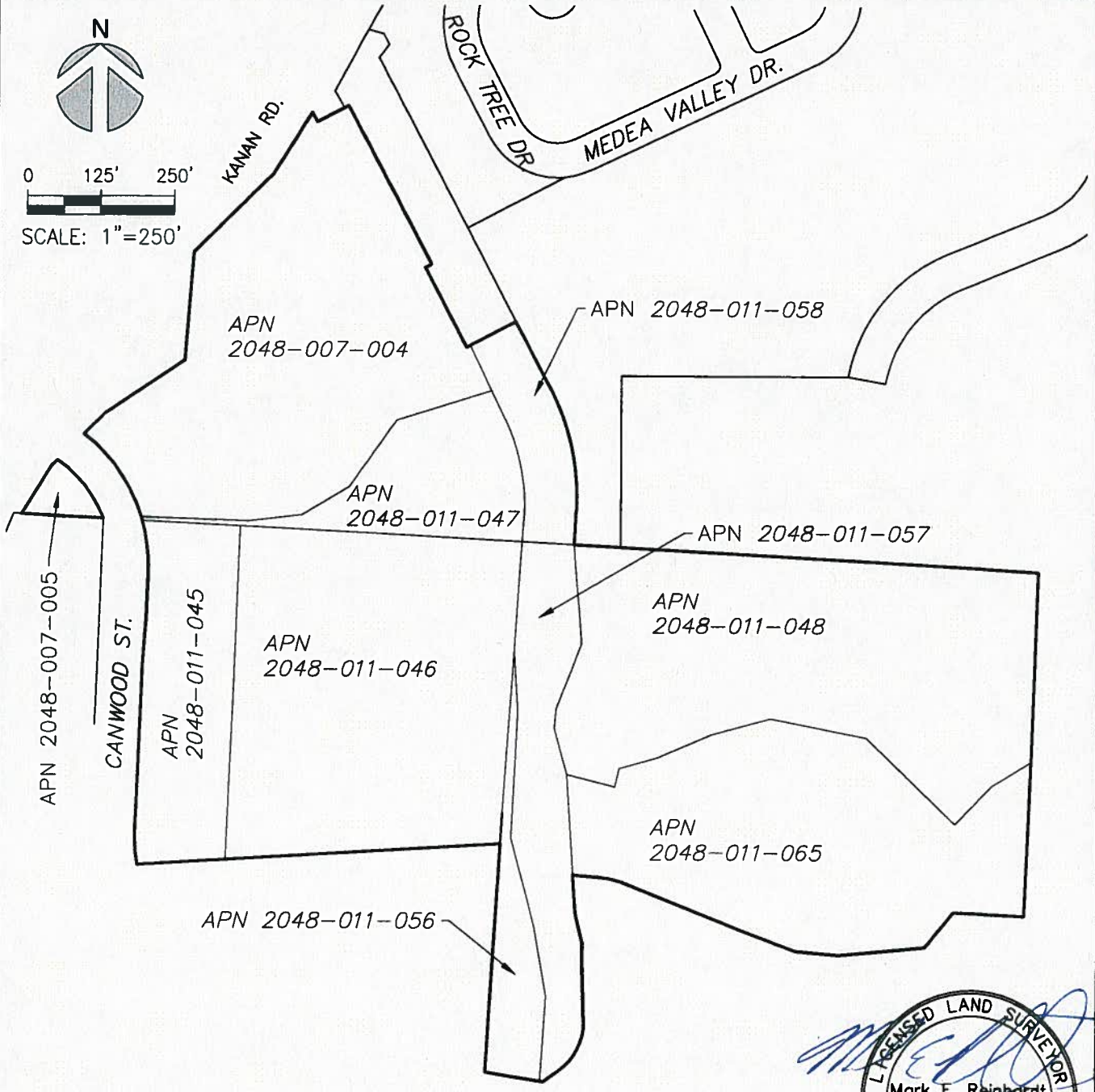


Exhibit A Sketch Avalon Bay Property

MNS
ENGINEERS INC
201 N. Calle Cesar Chavez, Ste. 300
Santa Barbara, CA 93103
805.692.6921 Phone

ENGINEERING
PLANNING
SURVEYING
CONSTRUCTION MANAGEMENT

Exhibit B

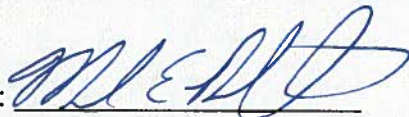
Legal Description of Medea Creek Property

Exhibit B
(Legal Description)
"Medea Creek Property"

A portion of land in the City of Agoura Hills, County of Los Angeles, State of California,
described as follows:

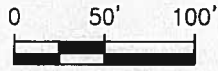
Lot 92 of Tract No. 30907 as shown on the map filed June 24, 1970 in Book 799, Pages 27
through 33 of Map Records in the office of the County Recorder of said County.

This real property description was prepared by me, or under my direction, in conformance with
the Professional Land Surveyor's Act.

Signature: 
Mark E. Reinhardt, PLS

Date: 6-12-2015





SCALE: 1"=100'

KANAN RD.

ROCK TREE DR.

MEDEA VALLEY DR.

Lot 92 of Tract No. 30907
Book 799, Page 32
46,609 S.F. / 1.07 Acres



MNS
ENGINEERS INC

201 N. Calle Cesar Chavez, Ste 300
Santa Barbara, CA 93103
805.692.6921 Phone

ENGINEERING
PLANNING
SURVEYING
CONSTRUCTION MANAGEMENT

CIAGH.131157 * QUEST EXHIBITS.dwg * 6/12/2015 * RCS * E-FILE

Exhibit B Sketch
Medea Creek Property

Exhibit C

Legal Description of Medea Creek Project Easement Area

Exhibit C
(Legal Description)
"Medea Creek Project Easement Area"

A portion of land in the City of Agoura Hills, County of Los Angeles, State of California, described as follows:

That portion of Lot A of Tract No. 53752 as shown on the map filed September 29, 2003 in Book 1282, Pages 51 through 57 of Assessment Maps in the office of the County Recorder of said County described as follows;

Beginning at the northeast corner of said Lot A; thence,

- 1st along the easterly boundary of said Lot A S 27° 37' 32" E, 304.24; thence,
- 2nd continuing along said easterly boundary S 62° 22' 28" W, 12.00 feet; thence,
- 3rd continuing along said easterly boundary S 27° 37' 32" E, 64.83 feet; thence,
- 4th leaving said easterly boundary N 34°28'24" W 44.97 feet; thence,
- 5th S 84°05'12" W, 19.84 feet; thence,
- 6th N 34°09'30" W, 170.91 feet; thence,
- 7th N 72°55'00" W, 83.47 feet; thence,
- 8th S 33°35'08" W, 40.37 feet; thence,
- 9th S 20°01'08" W, 42.62 feet; thence,
- 10th N 80°18'39" W, 56.23 feet; thence,
- 11th N 55°56'50" W, 22.77 feet; thence,
- 12th N 09°26'13" W, 16.42 feet to a point on the northerly boundary of said Lot A; thence,
- 13th along said northerly boundary N 44°45'24" E, 71.55 feet; thence,
- 14th continuing along said northerly boundary N 31°21'33" E, 122.21 feet; thence,
- 15th continuing along said northerly boundary S 28°21'27" E, 18.39 feet; thence,
- 16th continuing along said northerly boundary N 61°38'33" E, 58.66 feet to the point of beginning.

Containing 30,932 square feet, more or less.

This real property description was prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act.

Signature:



Mark E. Reinhardt, PLS

Date: 6-12-2015





0 50' 100'
SCALE: 1"=100'

KANAN RD.

ROCK TREE DR.

P.O.B.

Medea Creek Project Easement Area
30,932 S.F. / 0.71 Acres

Medea Creek Property

Lot A Tract No. 53752
Book 1282, Page 51

Line Table		
Line #	Direction	Length
L1	S27°37'32"E	304.24'
L2	S62°22'28"W	12.00'
L3	S27°37'32"E	64.83'
L4	N34°28'24"W	44.97'
L5	S84°05'12"W	19.84'
L6	N34°09'30"W	170.91'
L7	N72°55'00"W	83.47'
L8	S33°35'08"W	40.37'
L9	S20°01'08"W	42.62'
L10	N80°18'39"W	56.23'
L11	N55°56'50"W	22.77'
L12	N9°26'13"W	16.42'
L13	N44°45'24"E	71.55'
L14	N31°21'33"E	122.21'
L15	S28°21'27"E	18.39'
L16	N61°38'33"E	58.66'



Exhibit C Sketch
Medea Creek Project
Easement Area

MNS
ENGINEERS INC
201 N. Calle Cesar Chavez, Ste 300
Santa Barbara, CA 93103
805.692.6921 Phone

ENGINEERING
PLANNING
SURVEYING
CONSTRUCTION MANAGEMENT

City of Agoura Hills
30001 Ladyface Circle
Agoura Hills, CA 91301

CERTIFICATE OF ACCEPTANCE
(California Government Code § 27281)
(Portion of APN 2048-007-004)

This is to certify that the approximate 30,932 square foot easement on, over, above, under, through, and across the real property identified as Los Angeles County Tax Assessor's Parcel Number 2048-007-004 granted by AvalonBay Communities, Inc., a Maryland corporation, is hereby accepted by the undersigned officer on behalf of the City of Agoura Hills under the authority of the City Council of the City of Agoura Hills and the City of Agoura Hills consents to the recordation thereof by its duly authorized officer.

**CITY OF AGOURA HILLS, a
municipal corporation**

Dated: _____

By: _____
Greg Ramirez, City Manager

ATTEST:

Kimberly Rodrigues, MMC, City Clerk

Approved as to form:

RICHARDS, WATSON & GERSHON

Candice K. Lee, City Attorney