

## **Attachment 4**

### **ATTACHMENT 4**

#### **First Amendment to Easement Agreement for 1955 Right of Way Grant**

Recorded at request by  
and to be returned to:  
County of Santa Barbara  
General Services Department  
Real Property Division  
**Will Call**  
1105 Santa Barbara St 2<sup>nd</sup> Flr  
Santa Barbara CA 93101  
**COUNTY OF SANTA BARBARA**  
**OFFICIAL BUSINESS**

No fee pursuant to  
Government Code §6103

SPACE ABOVE THIS LINE FOR RECORDER'S USE  
General Service #'s 003578 & 003833  
A.P.N. 105-073-008 (portion of)

**FIRST AMENDMENT TO  
EASEMENT AGREEMENT FOR 1955 RIGHT OF WAY GRANT  
(ORCUTT STORM DRAIN EASEMENT)**

**THIS FIRST AMENDMENT TO EASEMENT AGREEMENT FOR 1955 RIGHT OF WAY GRANT (ORCUTT STORM DRAIN EASEMENT)** ("First Amendment"), is entered into by and between the County of Santa Barbara, a political subdivision of the State of California ("COUNTY") and TEIXEIRA CAPITAL PARTNERS, LLC, a California limited liability company ("OWNER"), parties to the Easement Agreement for 1955 Right of Way Grant (Orcutt Storm Drain Easement) ("Agreement")

**WHEREAS**, OWNER is the owner in fee simple of certain real property located in the unincorporated area of the County of Santa Barbara, commonly known at 155 East Clark Avenue, Orcutt, California, and currently identified as Santa Barbara County Assessor's Parcel Number 105-073-008, consisting of approximately 7,000 square feet ("Property");

**WHEREAS**, the Agreement was made by and between COUNTY and OWNER's predecessor in interest, Eric Dias and Lisa Dias, husband and wife, as Community Property, hereinafter referred to as ("DIAS"), recorded September 9, 2008; and

**WHEREAS**, in the Agreement, DIAS recognized the easement granted to COUNTY, for drainage purposes, by the Right of Way Grant, recorded in June of 1955, as Instrument Number 11224, in the Official Records of the County of Santa Barbara on June 24, 1955, in Book 1321, Pages 386 through 389, [incorrectly referenced in the Easement Agreement for 1955 Right of Way Grant (Orcutt Storm Drain Easement) as Page 384] (the "Original Storm Drain Easement Area"); and

**WHEREAS**, the Original Storm Drain Easement Area is described in Attachment 2, Exhibit A and depicted in, Attachment 2, Exhibit B attached hereto and incorporated by this reference; and

**WHEREAS**, OWNER has designed the plans for construction of a new three-story commercial building consisting of approximately 8,435 square feet, hereinafter referred to as the ("PROJECT"), pursuant to COUNTY Land Use Permit Number 15LUP-00000-00244, approval by the North Board of Architectural Review (15BAR-00000-00055) and Development Permit Number D0190087; and

**WHEREAS**, OWNER wishes to relocate the existing storm drain line outside the Original Storm Drain Easement Area; and

**WHEREAS**, OWNER in connection with PROJECT has prepared proposed plans to construct a relocated storm drain line and all appurtenant facilities to be within a new easement area recorded as Instrument Number 2017-\_\_\_\_\_, in the Official Records of the County of Santa Barbara on September \_\_\_, 2017, Attachment 1, attached hereto and incorporated herein by this reference ("Relocated Storm Drain Easement Area"); and

**WHEREAS**, the Relocated Storm Drain Easement Area is legally described and depicted in Attachment 1 and shown in Attachment 3, attached hereto and incorporated herein by this reference;

**WHEREAS**, in connection with the PROJECT, OWNER and COUNTY entered into an Exchange of Real Property Interest Agreement that relocated COUNTY's easement from the Original Storm Drain Easement Area to the Relocated Storm Drain Easement Area, subject to the terms and conditions of the Agreement, as amended by this First Amendment.

**NOW THEREFORE**, in consideration of the mutual covenants and conditions described herein and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, COUNTY and OWNER agree as follows:

1. **RECITALS**: The above recitals are true and correct and are incorporated into the terms and conditions of this First Amendment as set forth in full herein.
2. **AMENDMENTS**: The Agreement shall be amended as follows:
  - a. All references in the Agreement to DIAS shall be replaced with OWNER as defined herein.
  - b. All references in the Agreement to "easement area" shall refer to the "Relocated Storm Drain Easement Area" as particularly shown on Attachment 3 and described in Attachment 1 attached hereto and incorporated herein by reference.
  - c. The four WHEREAS provisions shall be deleted in their entirety.
  - d. Exhibits "A" and "B" to the Agreement shall be deleted in their entirety.
  - e. Section 1 of the Agreement shall be deleted in its entirety.
  - f. The last paragraph before the paragraph beginning "IN WITNESS WHEREOF" is to be amended and is to read as follows:

"The Easement Deed attached hereto as Attachment 1 granting to the COUNTY the Relocated Storm Drain Easement Area recorded as Instrument Number 2017-\_\_\_\_\_, in the Official Records of the County of Santa Barbara on September \_\_\_, 2017, shall remain in full force and effect except as expressly provided herein.

3. **FULL FORCE AND EFFECT**: Except as set forth in this First Amendment, the terms and conditions of the original Agreement shall remain in full force and effect.
4. **BINDING EFFECT**: The Agreement as amended by this First Amendment shall remain and shall be appurtenant to the Property. The terms and conditions of the Agreement as amended shall be a covenant on the Property and shall bind OWNER, their heirs, representatives, successors and assigns.

IN WITNESS WHEREOF, COUNTY and OWNER have executed this First Amendment to Easement Agreement for the 1955 Right of Way Grant (Orcutt Storm Drain Easement) and shall be effective upon recordation.

**"COUNTY"**

COUNTY OF SANTA BARBARA, a political  
Subdivision of the State of California

**"OWNER"**

TEIXEIRA CAPITAL PARTNERS, LLC  
a Limited Liability Company

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

Joan Hartmann, Chair  
Board of Supervisors

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

Kevin Teixeira  
Manager

Date: \_\_\_\_\_

Date: 9.6.17

**APPROVED AS TO FORM:**

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

Scott Greenwood  
Deputy County Counsel

## ACKNOWLEDGEMENT

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

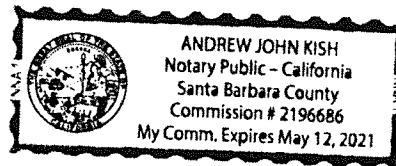
STATE OF CALIFORNIA )  
 )  
COUNTY OF SANTA BARBARA )

On September 6, 2017 before me, Andrew John Kish Notary Public, personally appeared Kevin Teixeira who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)



## ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA )  
 )  
COUNTY OF SANTA BARBARA )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared Joan Hartmann who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal) \_\_\_\_\_

ATTACHMENT 1

Recorded at request by  
and to be returned to:  
County of Santa Barbara  
General Services Department  
Real Property Division  
**Will Call**  
1105 Santa Barbara St 2<sup>nd</sup> Flr  
Santa Barbara CA 93101  
**COUNTY OF SANTA BARBARA**  
**OFFICIAL BUSINESS**

No fee pursuant to  
Government Code §6103

SPACE ABOVE THIS LINE FOR RECORDER'S USE  
General Service #'s 003578 & 003833  
A.P.N. 105-073-008 (portion of)

**EASEMENT DEED**  
**(Permanent Easement)**

**GRANT OF EASEMENT FOR STORMWATER DRAINAGE FACILITIES**

**THIS GRANT OF EASEMENT FOR STORMWATER DRAINAGE FACILITIES**, (the "Agreement"), is entered into by and between and TEIXEIRA CAPITAL PARTNERS, LLC, a California limited liability company, hereinafter referred to as "OWNER", and the COUNTY OF SANTA BARBARA, a political subdivision of the State of California, hereinafter referred to as "COUNTY".

**WHEREAS**, OWNER is the owner of that certain real property located in the unincorporated area of the County of Santa Barbara, commonly known at 155 East Clark Avenue, Orcutt, California, and currently identified as Santa Barbara County Assessor's Parcel Number 105-073-008, hereinafter referred to as the "Property"; and

**WHEREAS**, OWNER wishes to relocate the existing storm drain line outside the Right of Way Grant, recorded in June of 1955, as Instrument Number 11224, in the Official Records of the County of Santa Barbara on June 24, 1955, in Book 1321, Pages 386 through 389, hereinafter referred to as the "Right of Way Grant"; and

**WHEREAS**, OWNER has designed the plans for construction of a new three-story commercial building, hereinafter referred to as the "Project", pursuant to COUNTY Land Use Permit Number 15LUP-00000-00244, approval by the North Board of Architectural Review (15BAR-00000-00055) and Development Permit Number D0190087; and

**WHEREAS**, COUNTY agrees to the OWNER's request to relocate the existing storm drain easement area described in the Right of Way Grant to facilitate the Project; and

**WHEREAS**, COUNTY is willing to accept the OWNER's granting of a relocated storm drain easement pursuant to the terms and conditions set forth in this Easement Deed.

**NOW THEREFORE, for valuable consideration, OWNER hereby grants and agrees as follows:**

1. OWNER hereby grants to the COUNTY, its successors and assigns, as COUNTY herein, a permanent easement and right-of-way in perpetuity for storm drainage purposes, in, on, over, under, along, and across a portion of the Property to provide access for the excavation, removal, demolition, and alteration of improvements, vegetation and topography, and for the construction, reconstruction, replacement, repair, use and maintenance of various improvements including but not limited to all related purposes for the operation of drainage line, structures and appurtenances incidental thereto, ("Facilities"). The permanent easement area containing approximately 1,050 sq.ft., granted hereby is more particularly described in Exhibit "A" and shown on Exhibit "B" ("Permanent Easement") attached hereto and incorporated herein by this reference.

2. OWNER and successors in interest retain the right to use the Permanent Easement except that within the Permanent Easement area, no permanent improvements, fences, vegetation or permanent encroachments of any kind can be erected or other use made which would interfere with the present or future surface and subsurface access rights granted herein.

3. Notwithstanding the foregoing, OWNER shall have the right to use and maintain the Permanent Easement area that is not encumbered by the DISTRICT's Facilities for ingress and egress, temporary parking, hardscape and landscape. COUNTY's rights to the Permanent Easement used and maintained by the OWNER are not diminished by this acknowledgement.

4. OWNER shall not disturb or damage COUNTY's Facilities on the Property. In the event said Facilities are disturbed or damaged by OWNER, OWNER's successors, assigns, designees, employees, or contractors, then OWNER shall immediately contact COUNTY and shall repair or replace said Facilities to COUNTY's satisfaction.

5. COUNTY shall have the right to clear or keep clear from the Permanent Easement all buildings, structures and improvements that interfere with the use of the Permanent Easement, not approved and accepted by the COUNTY at the expense of whoever is responsible for the installation of same.

6. OWNER shall not use or deposit, or permit its contractors, agents, officers, members, employees, invitees, or licensees to use or deposit, any Hazardous Material, as defined below, in the Facilities, in violation of any environmental laws. The term "Hazardous Material" means any chemical substance, material, controlled substance, object, condition, waste, living organism or combination thereof, which is or may be hazardous to human health or safety or to the environment due to its radioactivity, ignitability, corrosivity, reactivity, explosivity, toxicity, carcinogenicity, mutagenicity, infectiousness or other harmful or potentially harmful properties or effects, including, without limitation, petroleum and petroleum products, asbestos, radon, lead, polychlorinated biphenyls and all of those chemicals, substances, materials, controlled substances, objects, conditions, wastes, living organisms or combinations thereof which are listed, defined or regulated in any matter by any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of courts, ordinances, rules, codes, orders, decrees, directives, guidelines, permits or permit conditions applicable to the Property.



7. OWNER, its successors and assigns, shall be responsible for any and all cost and damage, including without limitation any consequential damages resulting from the failure of the Facilities in the Permanent Easement due to the OWNER's proposed construction activity, future building load failure, any intervening circumstances, natural or unnatural, or as a result of other activities on the Property by OWNER.

8. OWNER agrees to indemnify, defend and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Permanent Easement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law. OWNER'S indemnification obligation does not apply to COUNTY'S sole negligence or willful misconduct.

DATE: September 6, 2017

**"OWNER"**

TEIXEIRA CAPITAL PARTNERS, LLC  
a Limited Liability Company

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

Kevin Teixeira  
Manager

## ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA )

COUwNTY OF SANTA BARBARA )

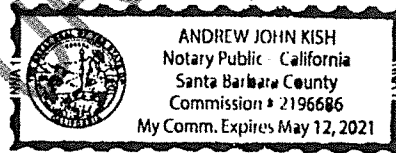
On September 6, 2017 before me, Andrew John Kish Notary Public, personally appeared Kevin Teixeira who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Andrew John Kish  
Signature

(Seal)



Attachment "1"  
**Exhibit "A"**  
Relocated Storm Drain Easement Area  
(Permanent Easement)  
Storm Drain Legal Description

Being a strip of land 15.00 feet in width over a portion of a portion of Lot 1, Block 2 of the Twitchell's Division, in the Town of Orcutt, County of Santa Barbara, State of California as per map recorded in Book 3 of Maps and Surveys, Page 65, and shown on the map filed in Book 173 of Records of Survey, Page 51, both in the office of the County Recorder of said County and State, the northerly line of which is described as follows:

Commencing at the Northeast corner of that portion of said Lot 1 shown on said Record of Survey, thence, S00°16'17"W, 29.41 feet along the East line of said Lot 1 to the **True Point of Beginning**; thence, N89°28'30"W, departing said East line, 70.02 feet to a point on the West line of said Lot 1.

End of Description

Containing 1050 sq. ft. +/-

A sketch for the easement herein described is depicted on Exhibit "B" attached hereto and made a part hereof.

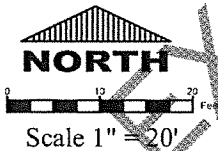
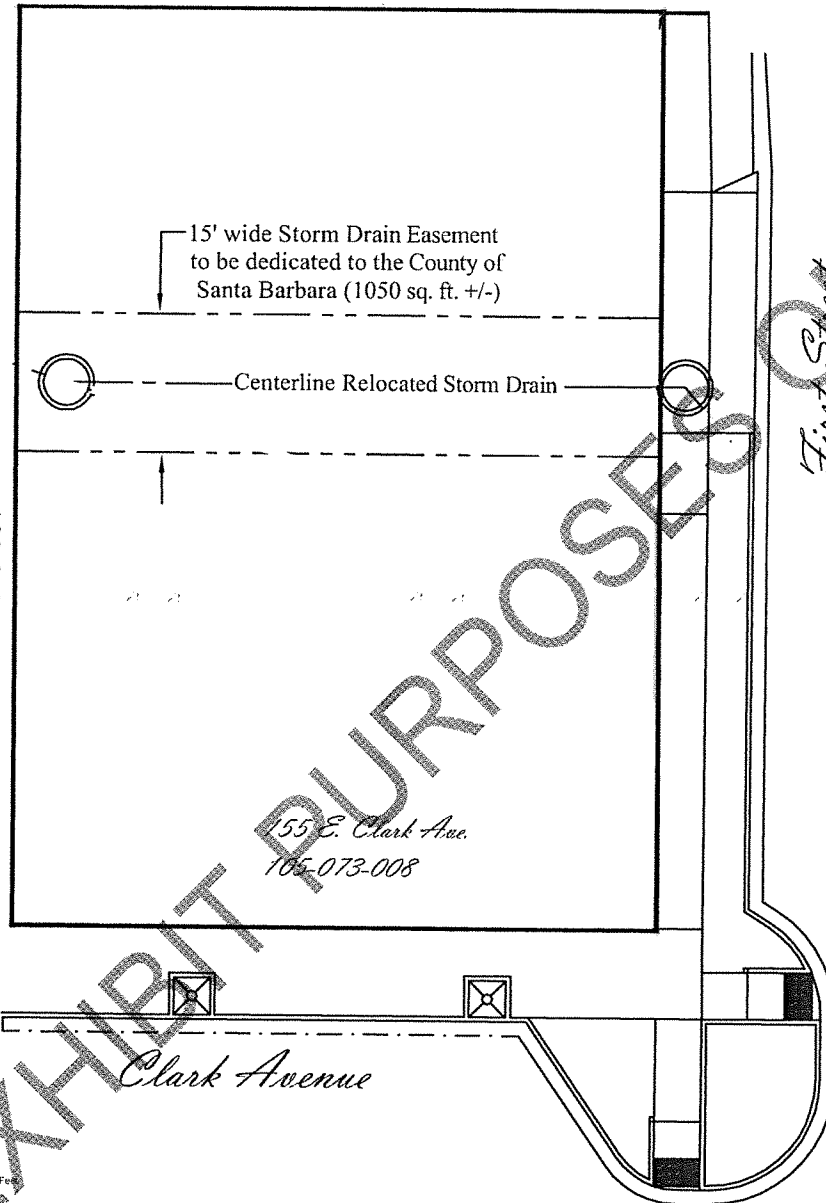
This description was prepared by me or under my direction in conformance with the requirements of the Professional Land Surveyor's Act this 7th day of August, 2017.

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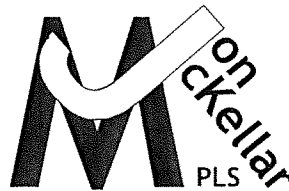
Jon McKellar  
PLS 7578

125 W. First St.  
105-073-007

Anytime Fitness  
153 E. Clark Ave.  
105-073-009



Attachment "I"  
Exhibit "B"  
Relocated Storm Drain Easement Area  
(Permanent Easement)  
Storm Drain Easement Depiction



A Professional Land Surveying & Consulting Company  
2605 South Miller Street, Suite 107  
Santa Maria, CA 93455  
805-680-1895 bus.  
805-928-9713 fax  
jon@jonmckellar.com  
<http://www.jonmckellar.com>

Attachment "2"  
**Exhibit "A"**  
Original Storm Drain Easement Area  
Existing Easement Description

Being all that 20.00 foot wide strip of land in the County of Santa Barbara, State of California, described in the Right of Way Grant to the County of Santa Barbara recorded June 24, 1955 as Instrument No. 11224 in Book 1321, Page 386 Official Records of said County and State, over that portion of Lot 1, Block 2 of the Twitchell's Division of the Town of Orcutt as per map recorded in Book 3 of Maps and Surveys, Page 65, and shown on the map filed in Book 173 of Records of Survey, Page 51, all in the office of the County Recorder of said County and State.

End of Description

Containing 1477 sq. ft. +/-

A sketch for the easement vacation herein described is depicted on Exhibit "B" attached hereto and made a part hereof.

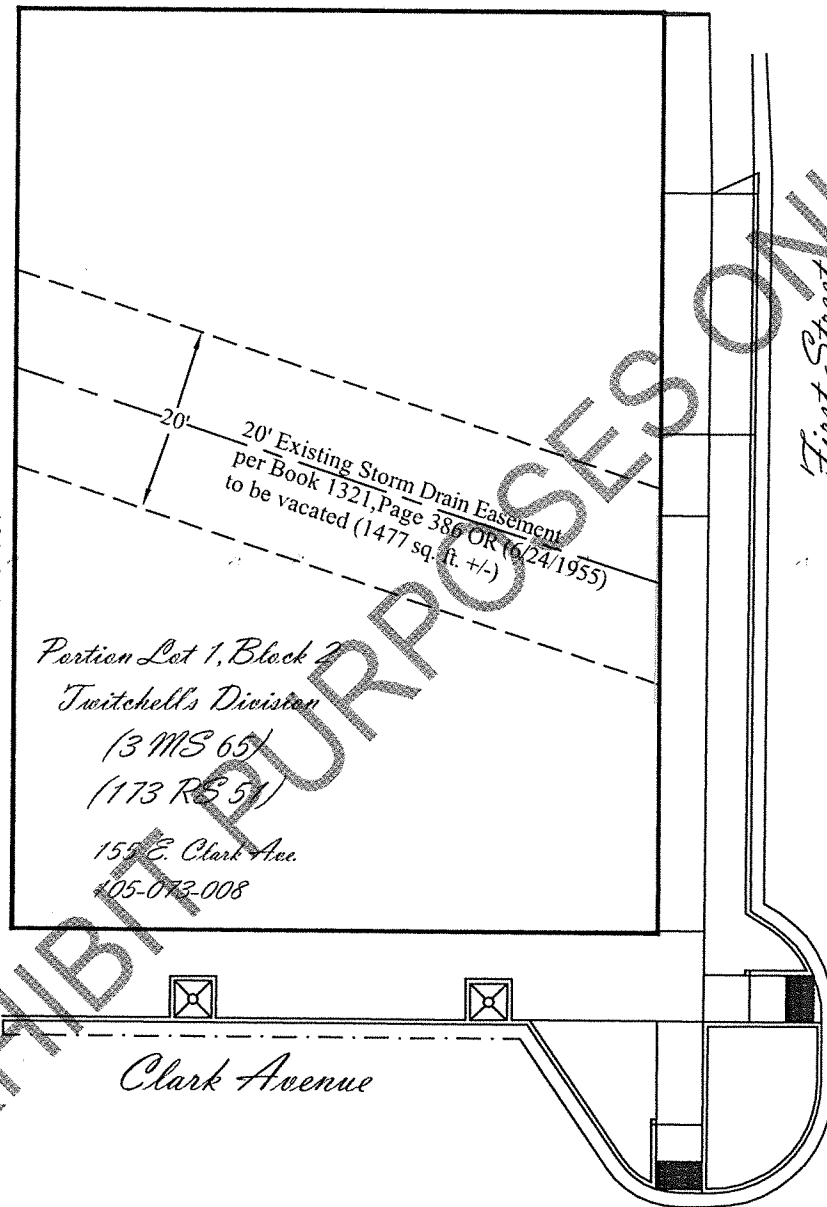
This description was prepared by me or under my direction in conformance with the requirements of the Professional Land Surveyor's Act this 7th day of August, 2017.

---

Jon McKellar  
PLS 7578

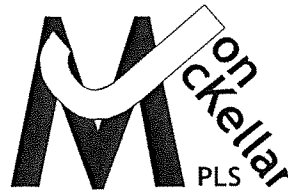
125 N. First St.  
105-073-007

Anytime Fitness  
153 E. Clark Ave.  
105-073-009



Attachment "2"  
Exhibit "B"

Original Storm Drain Easement Area  
Existing Easement Depiction



A Professional Land Surveying & Consulting Company  
2605 South Miller Street, Suite 107  
Santa Maria, CA 93455  
805-680-1895 bus.  
805-928-9713 fax  
jon@jonmckellar.com  
<http://www.jonmckellar.com>

Attachment 3



Not To Scale

120 N. First St.  
APN 105-073-007

70'

15'

*First Street*

PROPOSED BUILDING  
155 EAST CLARK AVENUE  
ORCUTT CA 93455  
APN 105-073-008

153 E. Clark Ave.  
APN 105-073-009

*Clark Avenue*



Relocated Storm Drain Easement  
Approx. Easement Area - 1,050 sq. ft.

CERTIFICATE OF ACCEPTANCE

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA: SS. §27281

THIS IS TO CERTIFY that the interest in real property conveyed by the Grant of Easement for Stormwater Drainage Facilities Permant Permanent dated September 6, 2017, from TEIXEIRA CAPITAL PARTNERS, LLC, a California limited liability company, as "OWNER", to COUNTY OF SANTA BARBARA, a political subdivision of the State of California, its successors or assigns, as the County, is hereby accepted by Order of the Board of Supervisors on \_\_\_\_\_, 2017, and the County of Santa Barbara consents to recordation thereof by its duly authorized officer

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ 2017

CLERK

CLERK OF THE BOARD OF SUPERVISORS  
COUNTY OF SANTA BARBARA

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

APPROVED AS TO FORM:

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

Scott Greenwood  
Deputy County Counsel