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**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

FORM APPROVED COUNTY COUNSEL
BY: PATRICIA MUNROE 8/12/13
DATE

FROM: Economic Development Agency/Facilities Management and Transportation Department

SUBMITTAL DATE:
September 12, 2013

SUBJECT: Right of Way Acquisition Agreement and Temporary Construction Access Agreement for the Fred Waring Drive Improvement Project

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached Right of Way Acquisition Agreement for Parcel 0689-026B and Temporary Construction Access Agreement for Parcel 0689-026A, all within a portion of Assessor's Parcel Number 609-362-011;
2. Authorize the Chairman of the Board to execute these agreements on behalf of the County;

(Concurrent)
Patricia Romo
Assistant Director of Transportation

Juan C. Perez, Director
Transportation and Land Management

Robert Field
Assistant County Executive Officer/EDA

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 8,900	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2013/14

COMPANION ITEM ON BOARD AGENDA: No

SOURCE OF FUNDS: Palm Desert Finance Authority-100%	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

BY: Jennifer L. Sargent

County Executive Office Signature

Dep't Recomm.: Consent Policy
Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.: 3-34 of 1/08/13

District: 4/4

Agenda Number: **3-34**

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD

RECOMMENDED MOTION: (Continued)

3. Authorize the Assistant County Executive Officer/EDA or designee to execute any other documents and administer all actions necessary to complete these transactions; and
4. Authorize and allocate the sum of \$150 to acquire Parcel 0689-026B, \$6,500 for temporary access to Parcel 0689-026A, as well as \$2,250 to pay all related transaction costs.

BACKGROUND:

The County of Riverside Transportation Department (RCTD) is proposing to widen Fred Waring Drive, between Adams Street and Port Maria Road in the Bermuda Dunes/La Quinta area of eastern Riverside County (Project). The Project includes widening the existing Fred Waring Drive from four to six lanes, installation of a sound wall on the south side of Fred Waring Drive, and construct a parking lane on the north side of Fred Waring Drive to allow for safe ingress/egress from the residential homes.

On January 8, 2013, the Board approved Item 3-34 adopting the Mitigated Negative Declaration for Environmental Assessment No. 42564, approving the Fred Waring Drive Improvement Project, and adopting the Mitigation Monitoring and Reporting Program for the Project.

RCTD has contracted with Overland, Pacific & Cutler (OPC), acquisition consultants, with oversight role by Economic Development Agency/Facilities Management (EDA/FM). OPC has negotiated the acquisition of a permanent easement and temporary access right from a portion of the property with the following owner:

Parcel No.	Assessor's Parcel No. (portion)	Owner	Purchase Price	Temporary Access	*Associated Costs	Total
0689-026A 0689-026B	609-362-011	Finley/Dorfler	\$150	\$6,500	\$2,250	\$8,900

*Preliminary Title Report, County Appraisal, Consultant Time, and Staff Time

The Form 11 has been reviewed and approved by County Counsel as to legal form.

FINANCIAL DATA: (Commences on Page 3)

FINANCIAL DATA:

The following summarizes the funding necessary for the acquisition and temporary access of a portion of Assessor's Parcel Number: 609-362-011:

Purchase Price	\$ 150
Temporary Access (Rental Price)	6,500
Associated Costs (Preliminary Title Report, County Appraisal, Consultant Time, and Staff Time)	2,250
Total Estimated Acquisition Costs	\$8,900

All costs associated with the acquisition of this property are fully funded in the Transportation Department's budget for FY 2013/14. No additional net county cost will be incurred as a result of this transaction.

Attachments:

Right of Way Acquisition Agreement for Parcel 0689-026B (4)
Temporary Construction Access Agreement for Parcel 0689-026A (4)

1 COUNTY OF RIVERSIDE, a political subdivision of the State of California
2 (“County”), and

3
4 DAVID L. FINLEY and TERESA E. DORFLER, Trustees of the Finley Living Trust dated
5 July 12, 1995 (“Grantor”)

6 PROJECT: Fred Waring Drive Improvements

7 APN: 609-362-011 (PORTION)

8 PARCEL NO.: 0689-026A
9

10 **TEMPORARY CONSTRUCTION ACCESS AGREEMENT**

11 This Temporary Construction Access Agreement (“Agreement”) is made by and
12 between the COUNTY OF RIVERSIDE, a political subdivision of the State of California,
13 (“County”) and DAVID L. FINLEY and TERESA E. DORFLER, Trustees of the Finley
14 Living Trust dated July 12, 1995 (“Grantor”). County and Grantor are sometimes
15 collectively referred to as “Parties.”

16 1. RIGHTS GRANTED. The right is hereby granted to County to enter upon
17 and use the land of Grantor in the County of Riverside, State of California, as portion of
18 Assessor’s Parcel Number 609-362-011, highlighted on Attachment “1,” attached
19 hereto (“Property”), and made a part hereof, for temporary access and for all purposes
20 necessary to facilitate and accomplish the construction of Fred Waring Drive
21 Improvements Project.

22 2. AFFECTED PARCEL. The temporary construction access, used during
23 construction of the Project, referenced as Parcel No. 0689-026A consisting of 1,483
24 square feet as depicted on Attachment “2,” attached hereto, and made a part hereof
25 (“TCA Area”).

26 3. COMPENSATION. County shall pay to the order of Grantor the sum of
27 Six Thousand Five Hundred Dollars (\$6,500.00) for the right to enter upon and use the
28

1 TCA Area in accordance with the terms hereof.

2 4. NOTICE TO GRANTOR. County shall provide a 30 day written notice to
3 the Grantor prior to using the rights herein granted. The rights herein granted may be
4 exercised for six (6) months from the 30 day written notice, or until completion of said
5 Project, whichever occurs later.

6 5. EQUIPMENT. It is understood that the County may enter upon the TCA
7 Area where appropriate or designated for the purpose of getting equipment to and from
8 the TCA Area. County agrees not to damage the TCA Area in the process of
9 performing such activities.

10 6. DEBRIS REMOVED. At the termination of the period of use of TCA Area
11 by County, but before its relinquishment to Grantor, debris generated by County's use
12 will be removed and the surface will be graded and left in a neat condition.

13 7. HOLD HARMLESS. Grantor shall be held harmless from all claims of
14 third persons arising from the County's use of the TCA Area permitted under this
15 Agreement; however, this hold harmless agreement does not extend to any liability
16 arising from or as a consequence of the presence of hazardous waste on the Property.

17 8. OWNERSHIP. Grantor hereby warrants that they are the owners of the
18 Property and that they have the right to grant County permission to enter upon and use
19 the Property.

20 9. ENTIRE AGREEMENT. This Agreement is the result of negotiations
21 between the parties hereto. This Agreement is intended by the parties as a final
22 expression of their understanding with respect to the matters herein and is a complete
23 and exclusive statement of the terms and conditions thereof. This Agreement
24 supersedes any and all other prior agreements or understandings, oral or written, in
25 connection therewith. No provision contained herein shall be construed against the
26 County solely because it provided or prepared this Agreement.

27 10. MODIFICATIONS IN WRITING. This Agreement shall not be changed,
28 modified, or amended except upon the written consent of the parties hereto.

1 11. SUCCESSORS AND ASSIGNS. Grantor, its assigns and successors in
2 interest, shall be bound by all the terms and conditions contained in this Agreement,
3 and all the parties thereto shall be jointly and severally liable thereunder.

4 12. TITLES AND HEADINGS. Titles and headings to articles, paragraphs or
5 subparagraphs herein are for the purpose of convenience and reference only, and shall
6 in no way limit, define or otherwise affect the provisions of this Agreement.

7 13. GOVERNING LAW AND VENUE. Any action at law or in equity brought
8 by either of the Parties hereto for the purpose of enforcing a right or rights providing for
9 by this Agreement shall be tried in a court of competent jurisdiction in the County of
10 Riverside, State of California, and the Parties hereby waive all provisions of law
11 providing for a change of venue in such proceedings to any other county.

12 14. POSSESSION AND USE. It is mutually understood and agreed by and
13 between the Parties hereto that the right of possession and use of the subject property
14 by County, including the right to remove and dispose of improvements, shall
15 commence upon the execution of this Agreement by all parties. The Purchase Price
16 includes, but is not limited to, full payment for such possession and use.

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1 15. COUNTERPARTS. This Agreement may be signed in counterpart or
2 duplicate copies, and any signed counterpart or duplicate copy shall be equivalent to a
3 signed original for all purposes.

4 In Witness Whereof, the Parties have executed this Agreement the day and year
5 last below written.

6
7 COUNTY:
8 COUNTY OF RIVERSIDE

GRANTOR:
DAVID L. FINLEY and TERESA E.
DORFLER, Trustees of the Finley Living
Trust dated July 12, 1995

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12 By: _____
13 John J. Benoit, Chairman
14 Board of Supervisors

By: 
David L. Finley; Trustee

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16 ATTEST:
17 Kecia Harper-Ihem
18 Clerk of the Board
19 By: _____
20 Deputy

By: 
Teresa E. Dorfler; Trustee

21 APPROVED AS TO FORM:
22 Pamela J. Walls, County Counsel

23 By: 
24 Patricia Munroe
25 Deputy County Counsel
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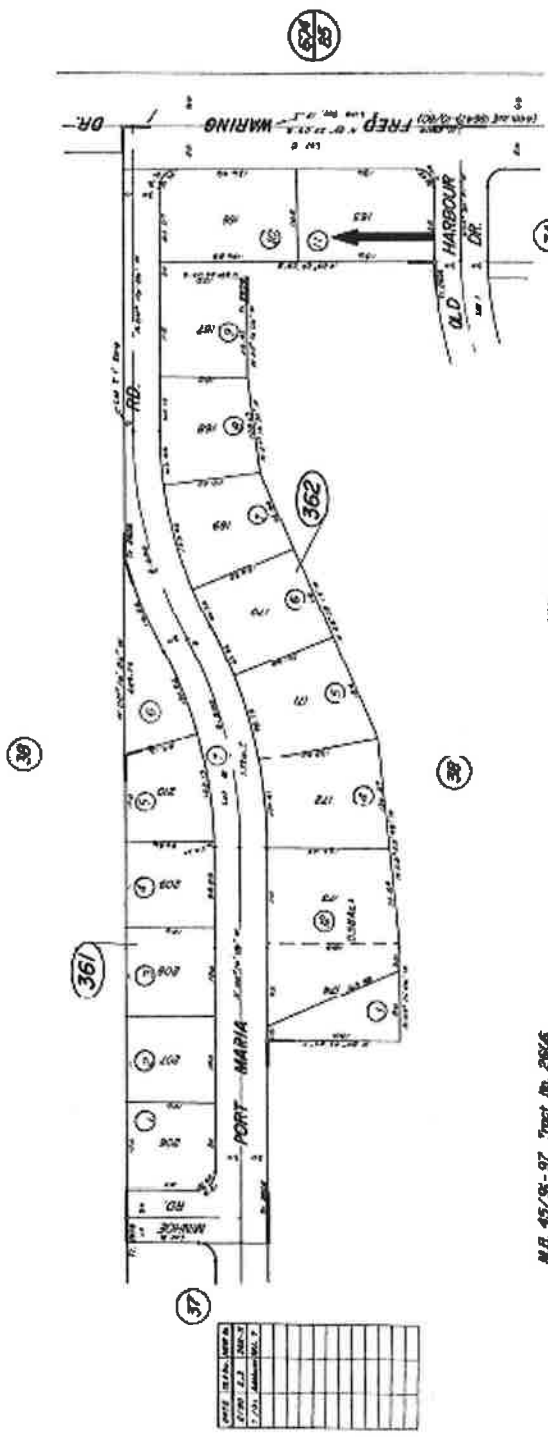
ATTACHMENT "1"
EXHIBIT OF PROPERTY DEPICTION

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THIS MAP IS FOR
ASSESSMENT PURPOSES ONLY

FOR SE 1/4 SEC. 17, T. 5 S., R. 7 E

609-36 T.O. 4, 7504, 7510

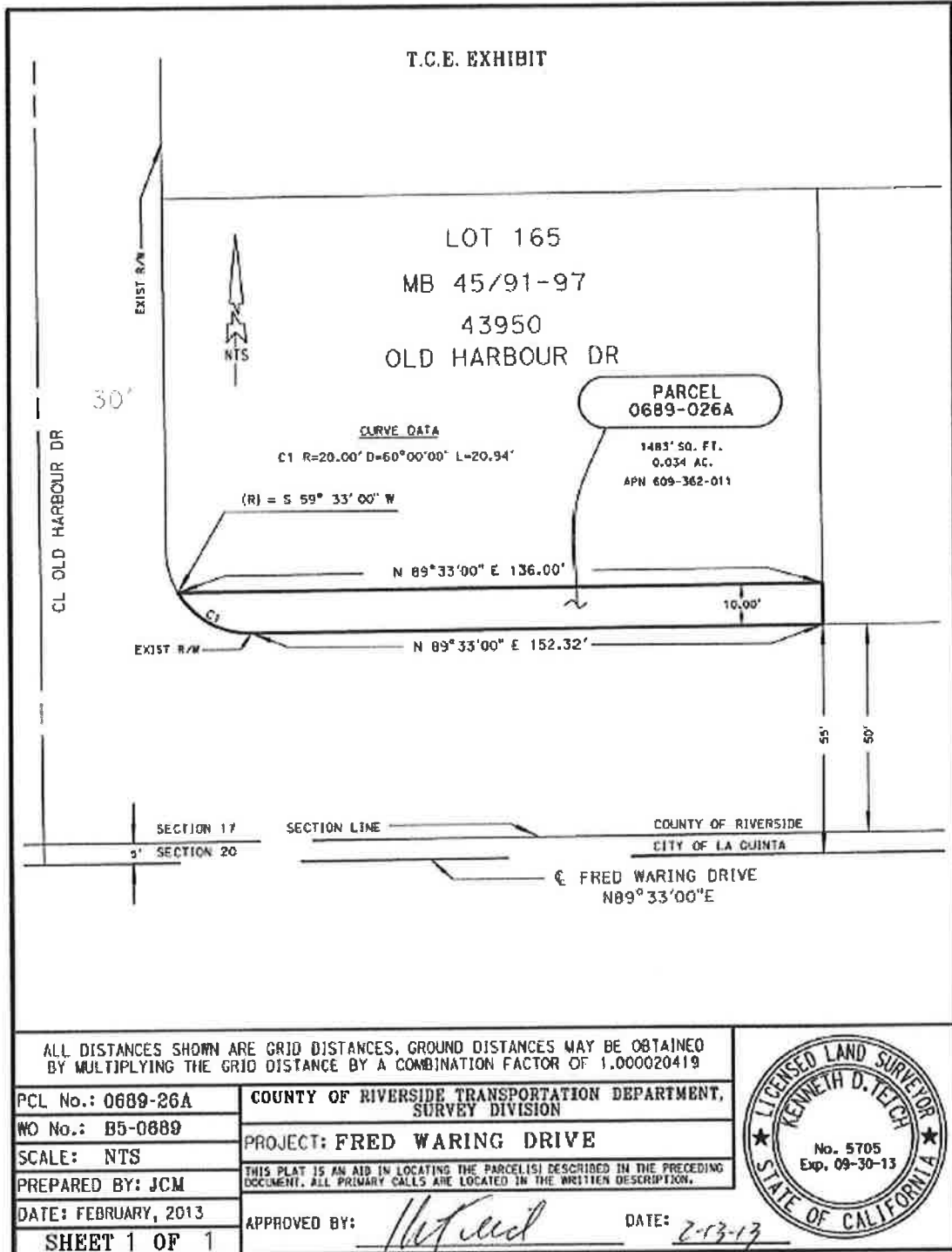


ASSESSOR'S MAP BK. 609 PG. 36
RIVERSIDE COUNTY, CALIF.

M.B. 45/36-37 Tract No. 2866

OCT. 1967

ATTACHMENT "2"
 EXHIBIT OF
 TEMPORARY CONSTRUCTION EASEMENT/ACCESS AREA



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1 PROJECT: Fred Waring Drive Improvements
2 APN: 609-362-011 (PORTION)
3 PARCEL: 0689-026B
4

5 **RIGHT OF WAY ACQUISITION AGREEMENT**

6 This Right of Way Acquisition Agreement, ("Agreement"), is made by and
7 between the COUNTY OF RIVERSIDE, a political subdivision of the State of California
8 ("County"), and DAVID L. FINLEY and TERESA E. DORFLER, Trustees of the Finley
9 Living Trust dated July 12, 1995, ("Grantor"). County and Grantor are sometimes
10 collectively referred to as "Parties."

11 **RECITALS**

12 WHEREAS, Grantor owns that certain real property located at 43950 Old
13 Harbour Drive, in the County of Riverside, State of California, as depicted on the
14 Assessors Map identified as Attachment "1," attached hereto and made a part hereof.
15 The real property consisting of 16,553 square feet of land and improved with a single
16 dwelling residence also known as Assessor's Parcel Number: 609-362-011
17 ("Property"); and

18 WHEREAS, Grantor desires to sell to the County and the County desires to
19 purchase a portion of the Property for the purposes of constructing road improvements
20 for the Fred Waring Drive Improvement Project ("Project") as follows: a Utility
21 Easement Deed of (16) square feet, in favor of County of Riverside and referenced as
22 parcel 609-362-011 (portion) legally described and depicted as Exhibit A and B hereto
23 and made a part hereof; pursuant to the terms and conditions set forth herein; and

24 WHEREAS, concurrently with this Agreement, the Parties intend to enter into a
25 Temporary Construction Access Agreement to grant County the right to temporarily
26 use portions of the Property, as described therein, for the construction of the Project,
27 and

1 WHEREAS, the Effective Date is the date on which this Agreement is approved
2 and fully executed by County and Grantor as listed on the signature page of this
3 Agreement;

4 NOW, THEREFORE, in consideration of the payment and other obligations set
5 forth below, Grantor and County mutually agree as follows:

6
7 **ARTICLE 1. AGREEMENT**

8 1. Recitals. All the above recitals are true and correct and by this reference
9 are incorporated herein.

10 2. Consideration. For good and valuable consideration, Grantor agrees to
11 sell and convey to the County, and the County agrees to purchase from Grantor all of
12 the Right-of-Way Property described herein, under the terms and conditions set forth in
13 this Agreement. The full consideration for the Right-of-Way Property consists of the
14 purchase price amount for the real property interests to be acquired by the County
15 ("Purchase Price"). The Purchase Price in the amount of One Hundred Fifty Dollars
16 and Zero Cents (\$150.00) is to be distributed to Grantor in accordance with this
17 Agreement. Grantor will be responsible for any apportionment or allocation of the
18 Purchase Price if required for any separately held interests that exist.

19 3. County Responsibilities.

20 A. Upon the mutual execution of this Agreement, County will open
21 escrow ("Escrow") with Lawyers Title Company ("Escrow Holder"). Promptly on the
22 Escrow Holder's request the Parties shall execute such additional Escrow instructions
23 as are reasonably required to consummate the transaction contemplated by this
24 Agreement and are not inconsistent with this Agreement. In the event of any conflict
25 between the terms of this Agreement and any additional Escrow instructions, the terms
26 of this Agreement shall control. The Escrow Holder will hold all funds deposited by the
27 County in an escrow account ("Escrow Account") that is interest bearing and at a bank
28 approved by County with interest accruing for the benefit of County. The Escrow

1 Account shall remain open until all charges due and payable have been paid and
2 settled; any remaining funds shall be refunded to the County.

3 B. Upon the opening of Escrow, the County shall deposit the
4 Consideration as follows:

5 i. Purchase Price. Deposit into Escrow the Purchase Price in
6 the amount of One Hundred Fifty Dollars and Zero Cents (\$150.00) (the "Deposit").

7 C. On or before the date that Escrow is to close ("Close of Escrow"):

8 i. Closing Costs. County will deposit to Escrow Holder
9 amounts sufficient for all escrow, recording and re-conveyance fees incurred in this
10 transaction, and if title insurance is desired by County, the premium charged therefore.
11 Said escrow and recording charges shall not include documentary transfer tax as
12 County is exempt pursuant to Ca Govt. Code section 6103 and Ca Revenue and
13 Taxation Code section 11922.

14 ii. County will deposit all other such documents consistent with
15 this Agreement as are reasonably required by Escrow Holder or otherwise to close
16 Escrow.

17 D. County will authorize the Escrow Holder to close Escrow and
18 release the Deposit, in accordance with the provisions herein, to Grantor conditioned
19 only upon the satisfaction by County.

20 i. The deposit of the following documents into Escrow for
21 recordation in the Official Records of the County Recorder of Riverside County
22 ("Official Records") upon Close of Escrow:

23 a. One (1) deed, Easement Deed executed,
24 acknowledged and delivered to Overland, Pacific and Cutler, Real Property Agent for
25 the County or to Escrow Holder, substantially in the forms attached hereto as
26 Attachment "2," (Easements Deed) granting the portion of the Property, subject to the
27 following:

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1 1. Free and clear of all liens, encumbrances,
2 easements, leases (recorded or unrecorded), and taxes except those encumbrances
3 and easements which, in the sole discretion of the County, are acceptable, except:

4 2. Current fiscal year, including personal
5 property tax, if any, and any further assessment thereto under Chapter 3.5 of Revenue
6 and Taxation Code of the State of California;

7 3. Easements or rights of way of record over said
8 land for public or quasi-public utility or public street purposes, if any;

9 4. Any items on the Preliminary Title Report
10 (PTR) not objected to by County in a writing provided to Escrow Holder before the
11 Close of Escrow;

12 5. Any other taxes owed whether current or
13 delinquent are to be made current.

14 E. At closing or Close of Escrow, County is authorized to deduct and
15 pay from amount shown in the Deposit, any amount necessary to satisfy and handle all
16 real property taxes, bonds, and assessments in the following manner:

17 a. All real property taxes shall be prorated, paid, and canceled
18 pursuant to the provisions of section 5081 et. seq., of the Revenue and Taxation Code.

19 b. Pay any unpaid liens or taxes together with penalties, cost
20 and interest thereon, and any bonds or assessments that are due on the date title is
21 transferred.

22 F. County shall direct Escrow Holder to disburse purchase price
23 minus any and all charges due upon Close of Escrow in accordance with the escrow
24 instructions contained in this Agreement.

25 I. County shall provide 30 days written notice to Grantor prior to the
26 construction of the Project (“Notice of Commencement”).

27 J. County shall be responsible for wall reconstruction, hardscape,
28 walkways, entry paving, realigning gates and fencing, drainage and streetscape curb

1 and gutters. County shall protect in place existing landscaping and replace anything
2 that is removed or damaged in kind as necessary to restore property to preconstruction
3 condition.

4 4. Grantor Responsibilities.

5 A. Execute and acknowledge a Utility Easement Deed in favor of the
6 County of Riverside and deliver deed to Overland, Pacific and Cutler, Real Property
7 Agent for the County or to the Escrow Holder.

8 B. Grantor shall indemnify, defend, protect, and hold the County of
9 Riverside, its Agencies, Districts, Departments, their respective directors, Board of
10 Supervisors, elected and appointed officials, employees, agents, representatives,
11 successors, and assigns free and harmless from and against any and all claims,
12 liabilities, penalties, forfeitures, losses, or expenses, including without limitation,
13 attorneys' fees, whatsoever, arising from or caused in whole or in part, directly or
14 indirectly, by either (a) the presence in, within, under, or about the parcel for the
15 presence of hazardous materials, toxic substances, or hazardous substances as a
16 result of Grantor's use, storage, or generation of such materials or substances or (b)
17 Grantor's failure to comply with any federal, state, or local laws relating to such
18 materials or substances. For the purpose of this Agreement, such materials or
19 substances shall include without limitation hazardous substances, hazardous
20 materials, or toxic substances as defined in the Comprehensive Environmental
21 Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. section
22 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. sections 5101 to
23 5128; the Resource Conservation and Recovery Act, 42 U.S.C. sections 6901-87
24 (1988); and those substances defined as hazardous wastes in section 25117 of the
25 California Health and Safety Code or hazardous substances in section 25316 of the
26 California Health; and in the regulations adopted in publications promulgated pursuant
27 to said laws.

28

1 E. Grantor shall be obligated hereunder to include without limitation,
2 and whether foreseeable or unforeseeable, all costs of any required or necessitated
3 repair, clean-up, detoxification, or decontamination of the parcel, and the preparation
4 and implementation of any closure, remedial action, or other required plans in
5 connection therewith, and such obligation shall continue under the parcel has been
6 rendered in compliance with applicable federal, state, and local laws, statutes,
7 ordinances, regulations, and rules.

8
9 **Article II. MISCELLANEOUS**

10 1. It is mutually understood and agreed by and between the Parties hereto
11 that the right of possession and use of the subject property by County, including the
12 right to remove and dispose of improvements, shall commence upon the execution of
13 this Agreement by all parties. The Purchase Price includes, but is not limited to, full
14 payment for such possession and use.

15 2. This Agreement embodies all of the considerations agreed upon between
16 the County and Grantor. This Agreement was obtained without coercion, promises
17 other than those provided herein, or threats of any kind whatsoever by or to either
18 party.

19 3. The performance of this Agreement constitutes the entire consideration
20 for the acquisition of the Property and shall relieve the County of all further obligations
21 or claims pertaining to the acquisition of the Property or pertaining to the location,
22 grade or construction of the proposed public improvement.

23 4. This Agreement is made solely for the benefit of the Parties to this
24 Agreement and their respective successors and assigns, and no other person or entity
25 may have or acquired any right by virtue of this Agreement.

26 5. This Agreement shall not be changed, modified, or amended except upon
27 the written consent of the Parties hereto.

28

1 6. This Agreement is the result of negotiations between the Parties and is
2 intended by the Parties to be a final expression of their understanding with respect to
3 the matters herein contained. This Agreement supersedes any and all other prior
4 agreements and understandings, oral or written, in connection therewith. No provision
5 contained herein shall be construed against the County solely because it prepared this
6 Agreement in its executed form.

7 7. Any action at law or in equity brought by either of the Parties for the
8 purpose of enforcing a right or rights provided for by this Agreement shall be tried in a
9 court of competent jurisdiction in the County of Riverside, State of California, and the
10 Parties hereby waive all provisions of law providing for a change of venue in such
11 proceedings to any other county.

12 8. Grantor and its assigns and successors in interest shall be bound by all
13 the terms and conditions contained in this Agreement, and all the Parties thereto shall
14 be jointly and severally liable thereunder.

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1 9. This Agreement may be signed in counterpart or duplicate copies, and
2 any signed counterpart or duplicate copy shall be equivalent to a signed original for all
3 purposes.

4 In Witness Whereof, the Parties have executed this Agreement the day and year
5 last below written.

6
7 COUNTY:
8 COUNTY OF RIVERSIDE

GRANTOR:
DAVID L. FINLEY and TERESA E.
DORFLER, Trustees of the Finley Living
Trust dated July 12, 1995

9
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11
12 By: _____
13 John J. Benoit, Chairman
14 Board of Supervisors

By: 
David L. Finley; Trustee

By: 
Teresa E. Dorfler; Trustee

15
16 ATTEST:
17 Kecia Harper-Ihem
18 Clerk of the Board

19 By: _____
20 Deputy

21 APPROVED AS TO FORM:
22 Pamela J. Walls, County Counsel

23 By: 
24 Patricia Munroe
25 Deputy County Counsel
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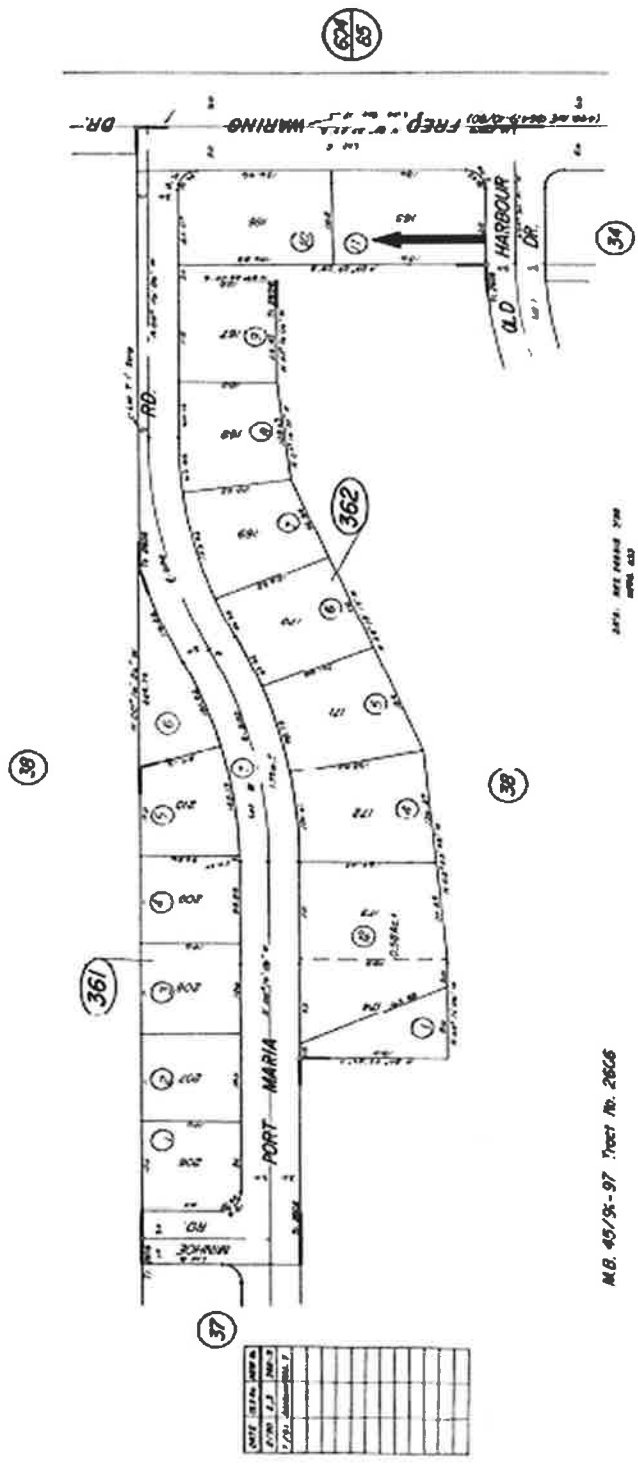
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ATTACHMENT "1"
Assessor's Plat Map

THIS MAP IS FOR
ASSESSMENT PURPOSES ONLY

POR. SE 1/4 SEC. 17, T. 5S., R. 7E

609-36
T.G.A. 7504, 7510



ASSASSOR'S MAP BK. 609 PG. 56
RIVERSIDE COUNTY, CALIF.

DATE: 08/11/06
BY: [illegible]

M.B. 45/55-97 Tract No. 2606

OCT. 967

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Exhibit A

LEGAL DESCRIPTION

All that certain real property situated in the County of Riverside, State of California, described as follows:

Lot 165 of Tract 2606, in the County of Riverside, State of California, as per Map recorded in Book 45, Pages 91-97 of Maps, in the office of the County Recorder of said County.

Assessor's Parcel Number: 609-362-011-8

Exhibit B

EXHIBIT "B"

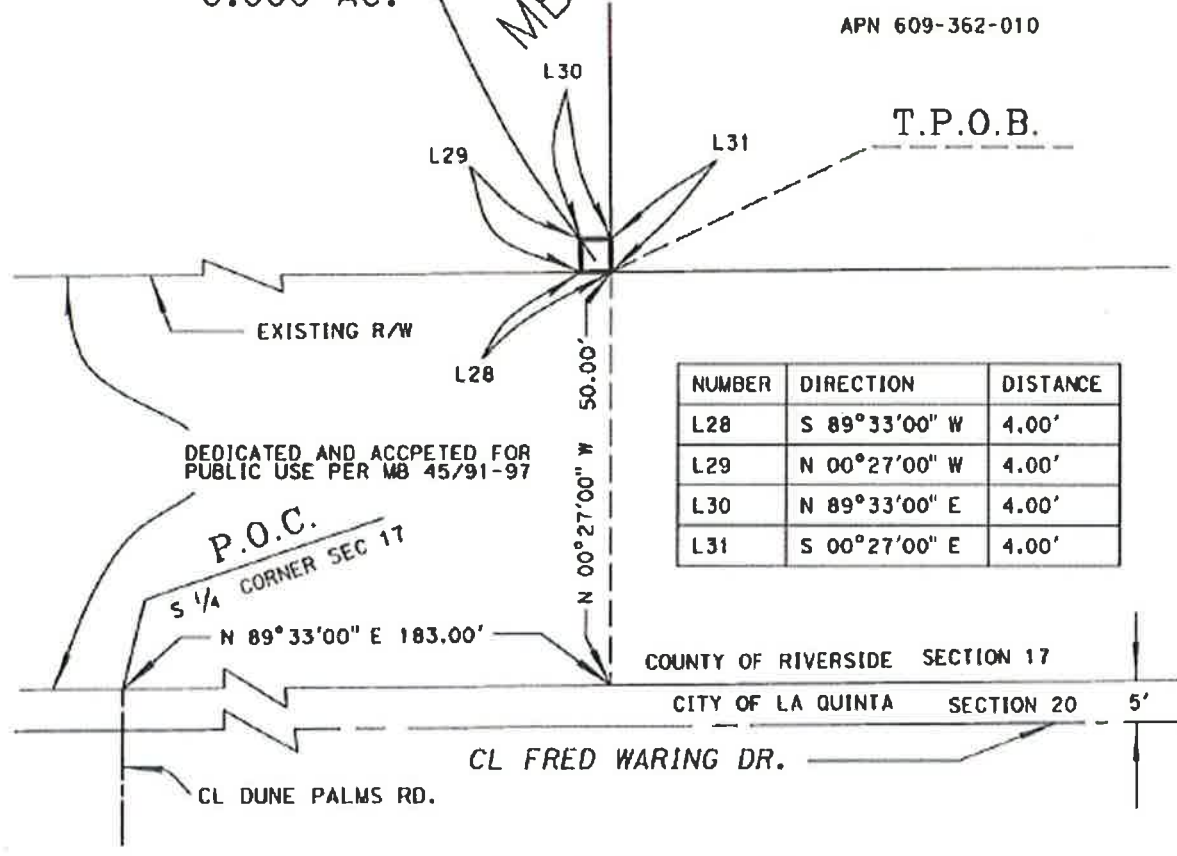
T.5S., R.7E., S.B.M.
SECTION 17



LOT 165
APN 609-362-011
**PARCEL
0689-026B**
16 SQ. FT.
0.000 AC.

LOT 166
APN 609-362-010

MB 45/91-97



NUMBER	DIRECTION	DISTANCE
L28	S 89°33'00" W	4.00'
L29	N 00°27'00" W	4.00'
L30	N 89°33'00" E	4.00'
L31	S 00°27'00" E	4.00'

DEDICATED AND ACCPETED FOR PUBLIC USE PER MB 45/91-97

P.O.C.
S 1/4 CORNER SEC 17

COUNTY OF RIVERSIDE SECTION 17
CITY OF LA QUINTA SECTION 20 5'

CL FRED WARING DR.

CL DUNE PALMS RD.

ALL DISTANCES SHOWN ARE GRID DISTANCES. GROUND DISTANCES MAY BE OBTAINED BY MULTIPLYING THE GRID DISTANCE BY A COMBINATION FACTOR OF 1.000020419

PCL No.: 0689-026B	COUNTY OF RIVERSIDE TRANSPORTATION DEPARTMENT, SURVEY DIVISION
WO No.: B5-0689	PROJECT: FRED WARING DRIVE
SCALE: NTS	THIS PLAT IS AN AID IN LOCATING THE PARCEL(S) DESCRIBED IN THE PRECEDING DOCUMENT. ALL PRIMARY CALLS ARE LOCATED IN THE WRITTEN DESCRIPTION.
PREPARED BY: JCM	APPROVED BY: <i>Leahly R...</i>
DATE: MAY, 2013	DATE: 5/13/2013
SHEET 1 OF 1	



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ATTACHMENT "2"
Utility Deed