

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



ITEM
3.16
(ID # 9295)

MEETING DATE:

Tuesday, April 9, 2019

FROM : TLMA-TRANSPORTATION:

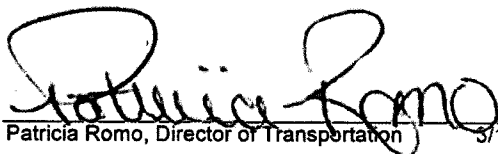
SUBJECT: TRANSPORTATION AND LAND MANAGEMENT AGENCY/ TRANSPORTATION:

Approval and Execution of the Clinton Keith Road Community Facilities District No. 07-2 Transportation Uniform Mitigation Fee Program Improvement Credit Agreement between Brookfield Homes Southern California LLC and the County of Riverside associated with Lot Nos. 1 through 70 of Tract No. 37053-2, District 3. [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve and Execute the Clinton Keith Road Community Facilities District No. 07-2 (Clinton Keith Road CFD) Transportation Uniform Mitigation Fee (TUMF) Program Improvement Credit Agreement between Brookfield Homes Southern California LLC (Developer) and the County of Riverside (County) associated with Lot Nos. 1 through 70 of Tract No. 37053-2.


ACTION: Policy


Patricia Romo, Director of Transportation 3/11/2019

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Perez, seconded by Supervisor Spiegel and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None
Date: April 9, 2019
xc: Transp.

Kecia Harper
Clerk of the Board
By: 
Deputy

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

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: Developer Funded 100%. No General Funds will be used on this project.			Budget Adjustment: No	
			For Fiscal Year: 18/19	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

Brookfield Homes Southern California LLC owns Lot Nos. 1 through 70 of Tract No. 37053-2 (Property). The Property consists of 70 single-family residential units and is located within the boundaries of the Clinton Keith Road Community Facilities District No. 07-2, which is administered by the County.

The Clinton Keith Road CFD is a funding mechanism that provides a means to finance, in part, the Clinton Keith Road Extension, a multi-phased, six-lane project from Antelope Road to State Route 79. Construction of the first phase and second phase of these improvements from Whitewood Road to Leon Road is complete.

In addition, the Clinton Keith Road Improvements have been identified as part of the TUMF Regional System of Highways and Arterials (RSHA) and are to be among those facilities whose construction is to be partly financed by the collection of TUMF. Ordinance 824 established the TUMF Program that requires a developer to pay TUMF, which covers a developer's fair share of the estimated costs to construct transportation improvements needed to mitigate the traffic impacts generated by a developer's project.

The Developer and the County now desire to enter into this credit agreement to provide a means by which the Developer's participation in the Clinton Keith Road CFD is offset against the Developer's obligation to pay the applicable TUMF for the Property. Each residential unit constructed within the Property will be eligible to receive a TUMF credit in an amount set forth in this Agreement.

Impact on Residents and Businesses

The Developer is responsible for disclosing CFD special assessment to potential buyers of the residential homes as part of their purchase transaction.

ATTACHMENTS:

Vicinity Map

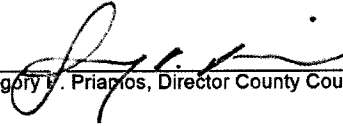
Clinton Keith Road CFD TUMF Agreement

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



Jason Farin, Senior Management Analyst

4/2/2019



Gregory L. Priamos, Director County Counsel

3/14/2019



Leila Moshref-Danesh

3/13/2019

**COMMUNITY FACILITIES DISTRICT NO. 07-2
(CLINTON KEITH ROAD)
IMPROVEMENT CREDIT AGREEMENT
TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM**

This IMPROVEMENT CREDIT AGREEMENT (this "Agreement") is entered into this 9th day of April, 2019, by and between the County of Riverside (the "County") and Brookfield Homes Southern California LLC, a Delaware limited liability company (the "Developer"). The County and the Developer are sometimes hereinafter referred to individually as "Party" and collectively as "Parties".

RECITALS

WHEREAS, the Developer owns Lot Nos. 1 through 70 (the "Property") of Tract No. 37053-2 (the "Tract"), for which a Final Map was recorded on October 25, 2018, as Instrument No. 2018-0421778 and is located within Riverside County, California, as shown by Exhibit "A," attached hereto and incorporated herein by this reference;

WHEREAS, the Property consists of 70 single-family residential units;

WHEREAS, the Tract was conditioned by the County to participate in some form of funding mechanism, such as a Community Facilities District, that would provide a means of financing the construction of public facilities, which include the full-width arterial improvements of Clinton Keith Road from Antelope Road to State Route 79, including associated appurtenances and rights-of-way (the "Project");

WHEREAS, the public facilities improvements described above had been determined by the Board of Supervisors to be necessary to mitigate the transportation and circulation needs, which the development of the Tract will contribute in part;

WHEREAS, the Riverside County Board of Supervisors (the "Board"), on June 12, 2007, adopted Resolution No. 2007-286 establishing Community Facilities District No. 07-2 Clinton Keith Road of the County of Riverside ("Clinton Keith Road CFD") and authorizing the levy of a special tax to pay for the construction or financing of the Clinton Keith Road Improvements and Resolution No. CFD 2007-04 determining the need to incur bonded indebtedness in an aggregate principal amount not to exceed \$60,000,000 to finance the Clinton Keith Road Improvements and Resolution No. CFD 2007-05 calling for a special election held on June 18, 2007, for the qualified electors of the Clinton Keith Road CFD to consider propositions dealing with the levy of the special tax and the incurrence of bonded indebtedness;

WHEREAS, the Board of Supervisors, on June 18, 2007, canvassed the results of the special election and determined that the qualified electors voted and approved the propositions by more than two-thirds of the votes cast and caused a Notice of Special Tax Lien for the Clinton Keith Road CFD to be recorded within fifteen days of the special election certification;

WHEREAS, the County, by the adoption of Ordinance No. 824, as amended from time to time, established the Transportation Uniform Mitigation Fee Program which requires a developer to pay the fee (the "TUMF") which is set by said Ordinance and which is to be paid as a condition of receiving certification allowing for the occupancy of a residential or commercial structure; the TUMF is intended to represent a new structure's fair share of the estimated costs to construct those transportation improvements needed to mitigate the traffic impacts and burdens placed on the Regional System of Highways and Arterials ("RSHA") generated by a residential or commercial development and determined necessary to protect the safety, health and welfare of persons traveling to and from such residential or commercial development using the RSHA;

WHEREAS, the Clinton Keith Road Improvements have been identified as part of the RSHA and to be among those facilities whose construction is to be financed, in part, by the collection of the TUMF;

WHEREAS, the Clinton Keith Road Improvements are to be constructed by the Riverside County Transportation Department as the lead agency from funding that includes the proceeds of special taxes levied or the proceeds of special tax bonds issued by the Clinton Keith Road CFD;

WHEREAS, the qualified electors of the Clinton Keith Road CFD collectively and jointly with the County entered into an agreement entitled "Joint Funding, Credit and Reimbursement Agreement" dated June 12, 2007 and approved by the County Board of Supervisors on that same date, which established the parameters by which the CFD was formed, special tax bonds will be sold, and developers would receive credits against their applicable TUMF and Road and Bridge Benefit District (RBBD) fees;

WHEREAS, the Parties now desire to enter into this Agreement to provide a means by which Developer's participation in the Clinton Keith Road CFD is offset against Developer's obligation to pay the applicable TUMF for the Tract in accordance with the TUMF Administrative Plan; and

WHEREAS, the Tract is located within the boundaries of the Clinton Keith Road CFD, as shown on the Boundary Map of the Clinton Keith Road CFD recorded as Instrument No. 2007-0334626 on May 21, 2007, or within territory that has been annexed to Clinton Keith Road CFD.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, Developer and County hereby agree as follows:

TERMS

1.0 Incorporation of Recitals: The Parties hereby affirm the facts set forth in the Recitals above and agree to the incorporation of the Recitals as though fully set forth herein.

2.0 Construction of Improvements: County shall be responsible for constructing the Clinton Keith Road Improvements.

3.0 TUMF Credits

3.1 TUMF Credits (After Bond Issuance): Upon issuance of the special tax bonds by CFD No. 07-2 (the “Bonds”), the Developer shall be entitled to credit against TUMF fees in an amount equal to the Developer’s Share of Net Bond Proceeds per single-family dwelling unit (SFDU) or multifamily dwelling unit (MFDU) calculated for the Developer’s Tract pursuant to Section 6.1.(a) of the Joint Funding, Credit and Reimbursement Agreement. Each SFDU or MFDU constructed within the Tract shall be eligible to receive a TUMF credit in an amount up to 96% of the TUMF in effect at issuance of a certificate of occupancy for each such unit then applicable to the Tract (the “TUMF Bond Credit”), provided the Developer’s Share of the Net Bond Proceeds equals or exceeds the aggregate amount of the Developer’s TUMF Bond Credit per SFDU or MFDU for the Tract. If the Developer’s Share of the Net Bond Proceeds is less than the amount equal to 96% of the TUMF then applicable per SFDU or MFDU, the Developer shall pay to the County the sum by which the amount equal to 96% of the TUMF then applicable to such units exceeds the TUMF Bond Credit per SFDU or MFDU in securing a certificate of occupancy for such units.

3.2 Program Administration Amount: The issuance of any TUMF credits by the County for parcels within CFD No. 07-2 will require that four percent (4%) of the TUMF in effect at the time of issuance of a certificate of occupancy (the “Program Administration amount”) be paid by the Developer to the County in accordance with the TUMF Ordinance, and will be transferred by the County to the Western Riverside Council of Governments (WRCOG) consistent with the TUMF Administrative Plan. The Program Administration amount represents the estimated maximum cost for administering the TUMF Program by WRCOG.

3.3 TUMF Security Deposit (Prior to Bond Issuance): If prior to the issuance of Bonds, the Developer requests that a certificate of occupancy be issued for each SFDU or MFDU constructed in the Tract, (i) such Developer shall pay to the County the Program Administration amount applicable to the Tract, and (ii) the Developer shall deposit with the County, as a security deposit, an amount equal to 96% of the TUMF then applicable to the Tract (the “TUMF Security Amount”). After satisfying the conditions above, the County will issue a credit to the Developer for such TUMF and, upon a determination by the County that all other conditions to the issuance of such certificate of occupancy have been satisfied, the County will issue such certificate of occupancy. The County shall deposit any TUMF Security Amount received into an account established with the County Treasurer (the “TUMF Security Fund”). The amounts in the TUMF Security Fund shall be kept separate and apart from other funds held by the County Treasurer and shall be invested by the County Treasurer in accordance with the County investment policies. All investment earnings on amounts on deposit in the TUMF Security Fund shall be retained therein until disbursed in accordance with this Agreement.

3.4 TUMF Security Reimbursement (After Bond Issuance): If the Bonds are timely issued in accordance with the Joint Funding, Credit and Reimbursement Agreement, the County shall reimburse from the TUMF Security Fund to the Developer that deposited with the

County a TUMF Security Amount for the Tract (i) an amount equal to such TUMF Security Amount, provided the Developer's Share of the Net Bond Proceeds equals or exceeds the Developer's TUMF Security Amount per SFDU or MFDU for the Tract, or if the Developer's Share of the Net Bond Proceeds is less than the Developer's TUMF Security Amount per SFDU or MFDU, the Developer shall be reimbursed an amount equal to the Developer's Share of the Net Bond Proceeds per such units, and (ii) a pro rata share of the investment earnings, as determined by the County, on amounts held in the TUMF Security Fund during the period in which such TUMF Security Amount was on deposit therein. After having made the transfers required to be made pursuant to the preceding sentence, the County shall transfer to WRCOG all remaining amounts then on deposit in the TUMF Security Fund.

3.5 TUMF Security Disbursement (If No Bond Issuance): If the Bonds are not timely issued in accordance with the Joint Funding, Credit and Reimbursement Agreement, the County shall (i) to the extent that Special Taxes collected with respect to the Properties for which a TUMF Security Amount was deposited with the County remain unexpended and unencumbered, transfer from the TUMF Security Fund to the Developer that deposited such TUMF Security Amount an amount equal to such unexpended and unencumbered Special Taxes, (ii) transfer to WRCOG all such unexpended and unencumbered Special Taxes, and (iii) after having made all transfers required to be made pursuant to the preceding clause (i), transfer to WRCOG all remaining amounts then on deposit in the TUMF Security Fund, including all investment earnings therein; provided, however, that the County shall not be required to so transfer such amounts if, prior to such date, the County and WRCOG have entered into an agreement pursuant to Section VI of the TUMF Administrative Plan. Upon such transfer, the TUMF applicable to each portion of the Properties for which, in accordance with this Agreement, the TUMF Security Amount was deposited with, and the Program Administration amount was paid to, the County shall be deemed to have been paid as and when due.

3.6 Project Advances: Certain developers within the boundaries of CFD No. 07-2 have previously made, and certain of the developers may in the future make, advances of funds to be used by the County to pay expenses in connection with right-of-way acquisition and other costs for the Clinton Keith Road Improvements ("Project Advance"). If prior to issuance of the Bonds, (i) the Developer has made a Project Advance and requests that a certificate of occupancy be issued for a SFDU or MFDU constructed within the Tract(s) owned by such Developer, (ii) such Developer requests that such Project Advance be applied as a credit against the TUMF then applicable to such Tract(s), up to the amount authorized under the TUMF Administrative Plan, (iii) such Developer shall pay to the County the Program Administration Amount applicable to such Tract(s), and (iv) the amount of such Project Advance not previously applied as a credit pursuant to this subsection is at least equal to 96% of the amount of such TUMF, the County may issue a credit to the Developer for such TUMF and, upon a determination by the County that all other conditions to the issuance of such certificate of occupancy have been satisfied, the County may issue such certificate of occupancy.

3.7 RBBD Fee Credits: Upon issuance of the Bonds, if the Developer's Share of the Net Bond Proceeds exceeds the aggregate amount of the Developer's TUMF Bond Credit per SFDU or MFDU for the Tract, the Developer shall be entitled to credit against RBBD fees in an amount equal to the Developer's Share of Net Bond Proceeds minus the aggregate TUMF

Bond Credit per SFDU or MFDU calculated for the Developer's Tract(s) pursuant to a separate RBBD Fee Credit Agreement. If upon issuance of the Bonds, the Developer's Share of the Net Bond Proceeds is less than or equal to the aggregate amount of the Developer's TUMF Bond Credit per SFDU or MFDU for the Tract, RBBD fee credits shall not apply. However, if the Developer has previously made a Project Advance, RBBD fee credits may be issued against the amount of such Project Advance not previously applied as a credit, at the Developer's request.

4.0 Miscellaneous

4.1 Assignment: The Developer may assign all or a portion of its rights pursuant to this Agreement to a purchaser of one or more lots within the Tract (an "Assignment"). The Developer and such purchaser and assignee (the "Assignee") shall provide to the County such reasonable proof as it may require that the Assignee is the purchaser of said lots within the Tract. Any assignment pursuant to this Section shall not be effective unless and until the Developer and Assignee have executed an assignment agreement with the County in a form reasonably acceptable to County, whereby the Developer and the Assignee agree, except as may be otherwise specifically provided therein, to the following: (i) the Assignee shall receive all or a portion of the Developer's rights pursuant to this Agreement, including the TUMF credit amount for each single-family dwelling unit developed on a lot within the Tract or for each multifamily dwelling unit developed on a parcel within the Tract purchased by the Assignee pursuant to this Agreement and (ii) the Assignee shall be bound by all applicable provisions of this Agreement.

4.2 Relationship between the Parties: All Parties hereby mutually agree that this Agreement shall not operate to create the relationship of partnership, joint venture, or agency between the County and the Developer.

4.3 Indemnification: Developer agrees to protect, indemnify, defend and hold the Community Facilities District, the County, its elected officials, directors, officers, employees, agents and representatives, individually or any combination thereof (the "Indemnified Parties"), harmless from and against any and all claims, including, but not limited to, third-party claims, and against any and all losses, liabilities, expenses, suits, actions, decrees, judgments, awards, reasonable attorney's fees, and court costs which the Indemnified Parties may suffer or which may be sought against or recovered or obtained from the Indemnified Parties, as a result of, or by reason of, or arising out of, or in consequence of (a) the approval of this Agreement, (b) the awarding of credit pursuant to or on account of this Agreement, and/or (c) the untruth or inaccuracy of any representation or warranty made by said Developer in this Agreement. If said Developer fails to do so, the Indemnified Parties shall have the right, but not the obligation, to defend the same and charge all of the direct or incidental costs of such defense, including reasonable attorney's fees or court costs, to and recover the same from said Developer. The provisions of this Section shall survive the termination discharge or other termination of this Agreement.

4.4 Warranty as to Tract Ownership; Authority to Enter Agreement: The Developer hereby warrants that it owns fee title to the Tract and that it has the legal capacity to enter into this Agreement. All Parties warrant that the individual(s) who have signed this

Agreement on behalf of such Party has the legal power, right, and authority to enter into this Agreement and such individual signing this Agreement has been duly authorized to do so, on behalf of said Party.

4.5 Other Agreements: Nothing contained herein shall be construed as affecting the County's or the Developer's respective duty to perform its respective obligations under other agreements, land use regulations or subdivision requirements relating to the development of the Tract(s), which obligations are and shall remain independent of the Developer's rights and obligations, and the County's rights and obligations, under this Agreement.

4.6 Notices: All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

To County: County of Riverside
Transportation Department
Patricia Romo, Director of Transportation
4080 Lemon Street, 8th Floor
Riverside, CA 92501
Phone No. (951) 955-6740
Fax No. (951) 955-3198

To Developer: Brookfield Homes Southern California LLC
Attention: Shaun Bowen
3200 Park Center Drive, Suite 1000
Costa Mesa, CA 92629
Phone No. (714) 200-1609
Fax No. (714) 200-1861

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

4.7 Cooperation; Further Acts: All Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

4.8 Interpretation; References; Captions: It is agreed that the Parties and their agents, including legal counsel, have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and that any ambiguity shall not be construed against any of the Parties as the Party responsible for drafting this Agreement. Any term referencing time, days, or period for performance shall be deemed calendar days and not business days. All references to the Developer include all its officers, personnel, employees, agents and representatives, except as otherwise specified in this Agreement. All references to the County include its elected officials, directors, officers,

employees, agents and representatives, except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

4.9 Amendments: This Agreement may only be amended by an instrument in writing executed and delivered by the County and the Developer.

4.10 Waivers: No waiver of, or consent with respect to, any provision of this Agreement by a Party hereto shall in any event be effective unless the same shall be in writing and signed by such Party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

4.11 Binding Effect: Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

4.12 Third Party Beneficiaries: There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

4.13 Invalidity; Severability: The provisions of this Agreement are specifically made severable. If any clause, provision, right and/or remedy provided for herein is unlawful or unenforceable, the remainder of this Agreement shall remain in effect and be enforced as if such clause, provision, right and/or remedy was not contained herein.

4.14 Consent to Jurisdiction and Venue: This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of Riverside, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, the Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

4.15 Attorneys' Fees: If any action is instituted to interpret or enforce any of the provisions of this Agreement, the Party prevailing in such action shall be entitled to recover from the other Party thereto reasonable attorney's fees and costs of such suit (including both prejudgment and post judgment fees and costs) as determined by the court as part of the judgment.

4.16 Time is of the Essence: Time is of the essence with respect to the Developer's performance of its obligations under this Agreement.

4.17 Merger Clause: This Agreement contains the entire agreement between

the Parties with respect to matters specifically addressed herein and supersedes any prior oral or written statements, negotiations, or understandings concerning such matters which are hereby merged into this Agreement.

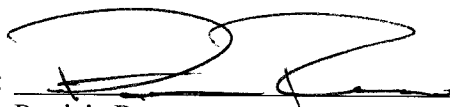
4.18 Counterparts: This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

[Signatures of Parties on Following Pages]

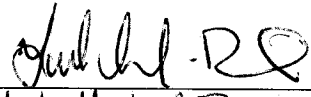
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

COUNTY OF RIVERSIDE

RECOMMENDED FOR APPROVAL:

By: 
Patricia Romo
Director of Transportation

APPROVED AS TO FORM:

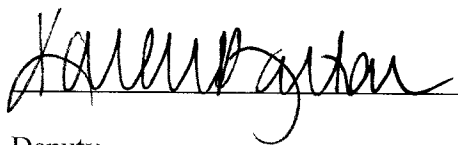
By: 
Leila Mostafaei-Danesh
Deputy County Counsel

APPROVAL BY THE COUNTY BOARD OF SUPERVISORS:

By: 
KEVIN JEFFRIES
Chairman, County Board of Supervisors

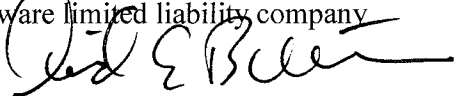
ATTEST:

Kecia Harper
Clerk of the Board

By: 
Deputy

DEVELOPER

Brookfield Homes Southern California LLC, a
Delaware limited liability company

By: 

David E. Bartlett
Printed Name

Vice President
Title

By: 

Richard T. Whitney
Printed Name

Chief Financial Officer
Title

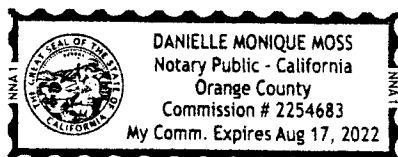
A notary public or other officer completing this certificate verified only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF Orange) ss.

On February 27, 2019, before me, Danielle Monique Moss, Notary Public, personally appeared David E. Bartlett & Richard T. Whitney, 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.



Danielle Monique Moss
Notary Public

EXHIBIT "A"

VICINITY MAP AND FINAL TRACT MAP

[ATTACHED BEHIND THIS PAGE]

0 335 670 1,340 Feet

1 inch = 833 feet

Orthophotos Flown 2/11 (WR, CV) or 4/07 (REMAP, Blythe)
Printed by almedina on 3/7/2019

Vicinity Map Tract 37053-2 Lot Nos. 1-70

The County of Riverside assumes no warranty or legal responsibility for the information contained on this map. Data and information represented on this map is subject to updates, modifications and may not be complete or appropriate for all purposes. County GIS and other sources should be queried for the most current information. Do not copy or resell this map.

