



## City Council Staff Report

Date: December 7, 2016 CONSENT CALENDAR

Subject: APPROVAL OF RIGHT OF WAY ACQUISITION AGREEMENTS WITH ROBERT W. MINER, JR., FOR ASSESSORS PARCEL NUMBERS (APN) 669-060-022, 669-060-026, 669-070-004, 669-093-002, AND 669-093-003 FOR THE INDIAN CANYON DRIVE WIDENING & BRIDGE REPLACEMENT, CITY PROJECT NO. 01-11, FEDERAL AID PROJECT NO. BRLO 5282 (017)

From: David H. Ready, City Manager

Initiated by: Engineering Services Department

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### SUMMARY

The City has successfully completed the right-of-way acquisition process with the owners of the properties identified by Assessor's Parcel Numbers (APN) 669-060-022, 669-060-026, 669-070-004, 669-093-002, and 669-093-003 to obtain various rights-of-way and temporary construction easements required to construct improvements associated with the Indian Canyon Drive Widening & Bridge Replacement, City Project No. 01-11, Federal Aid Project No. BRLO 5282 (017), (the "Project"). This action will approve and authorize the City Manager to enter into the agreements allowing for acquisition of various rights-of-way and temporary construction easements for the Project across APN 669-060-022, 669-060-026, 669-070-004, 669-093-002, and 669-093-003.

### RECOMMENDATION:

1. Approve a Right-of-Way Agreement for Acquisition of Real Property Interest and Escrow Instructions, Agreement (A\_\_\_\_), in the amount of \$14,371 with Robert W. Miner, Jr., as Sole Successor Trustee of the Robert Wilson Miner Trust dated April 13, 1998, for acquisition of 1,886 square feet of right-of-way across the property identified as APN 669-060-022; and
2. Approve a Temporary Construction Easement Agreement, (A\_\_\_\_), in the amount of \$25,029 with Robert W. Miner, Jr., as Sole Successor Trustee of the Robert Wilson Miner Trust dated April 13, 1998, for rental for a period of 5 years of 6,899 square feet of a portion of the property identified as APN 669-060-022; and

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3. Approve a Right-of-Way Agreement for Acquisition of Real Property Interest and Escrow Instructions, Agreement (A\_\_\_\_), in the amount of \$68,524 with Robert W. Miner, Jr., as Sole Successor Trustee of the Robert Wilson Miner Trust dated April 13, 1998, for acquisition of various rights-of-way across the properties identified as APN 669-060-026 and 669-070-004; and
4. Approve a Temporary Construction Easement Agreement, (A\_\_\_\_), in the amount of \$29,776 with Robert W. Miner, Jr., as Sole Successor Trustee of the Robert Wilson Miner Trust dated April 13, 1998, for rental for a period of 5 years of 27,427 square feet of a portion of the properties identified as APN 669-060-026 and 669-070-004; and
5. Approve a Right-of-Way Agreement for Acquisition of Real Property Interest and Escrow Instructions, Agreement (A\_\_\_\_), in the amount of \$37,264 with Robert W. Miner, Jr., Successor Trustee of the Robert Wilson Miner Trust dated April 13, 1998, for acquisition of a 16,344 square feet slope easement across the properties identified as APN 669-093-002 and 669-093-003; and
6. Approve a Temporary Construction Easement Agreement, (A\_\_\_\_), in the amount of \$16,136 with Robert W. Miner, Jr., as Successor Trustee of the Robert Wilson Miner Trust dated April 13, 1998, for rental for a period of 5 years of 14,860 square feet of a portion of the properties identified as APN 669-093-002 and 669-093-003; and
7. Authorize the City Manager to execute all necessary documents, open escrow, and pay for associated escrow and title costs associated with the right-of-way acquisitions.

STAFF ANALYSIS:

After the City initiated the Indian Canyon Drive / Interstate 10 Interchange Project ("I-10 Project") in 2000, the Public Works and Engineering Department ("Department") turned its attention to widening Indian Canyon Drive through the Whitewater River up to Garnet Avenue to correspond with the ultimate 6-lane roadway to be constructed from Garnet Avenue over Interstate 10 as part of the I-10 Project. In pursuit of this goal, the Department applied for and obtained federal grants for widening Indian Canyon Drive, from the Union Pacific Railroad ("UPRR") bridge to Garnet Avenue, from 2 lanes to 6 lanes. The Department was initially successful in being awarded a federal grant of \$4,286,000 from the Highway Bridge Program ("HBP"), administered through the California Department of Transportation ("Caltrans"). Subsequently, as the scope of the Project has changed from widening of the existing UPRR bridge to complete replacement of the UPRR bridge, and the total cost of the Project has increased, the Department has successfully increased the total federal funding for the Project to \$17.4 Million.

In May 2001, the Department obtained approval from Caltrans to proceed with the preliminary engineering phase for this project. Subsequently, the City Council awarded a contract to Dokken Engineering on March 20, 2002, for professional environmental and engineering design services, and right-of-way acquisition services, for the Project.

The Project extends through environmentally sensitive habitat occupied by certain protected species, and environmental analysis and approvals of the Project by resource agencies occurred concurrently as the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) was being developed and approved. Following final approvals of the CVMSHCP by the resource agencies in 2008, which lists the Project as a "Covered Project", the City obtained final environmental approvals for the Project from Caltrans and resources agencies in 2009.

Following environmental approvals of the Project, Dokken Engineering has continued with the final design and right-of-way acquisition phases. The Project will require the acquisition of rights-of-way from various parcels, as shown in Figure 1.

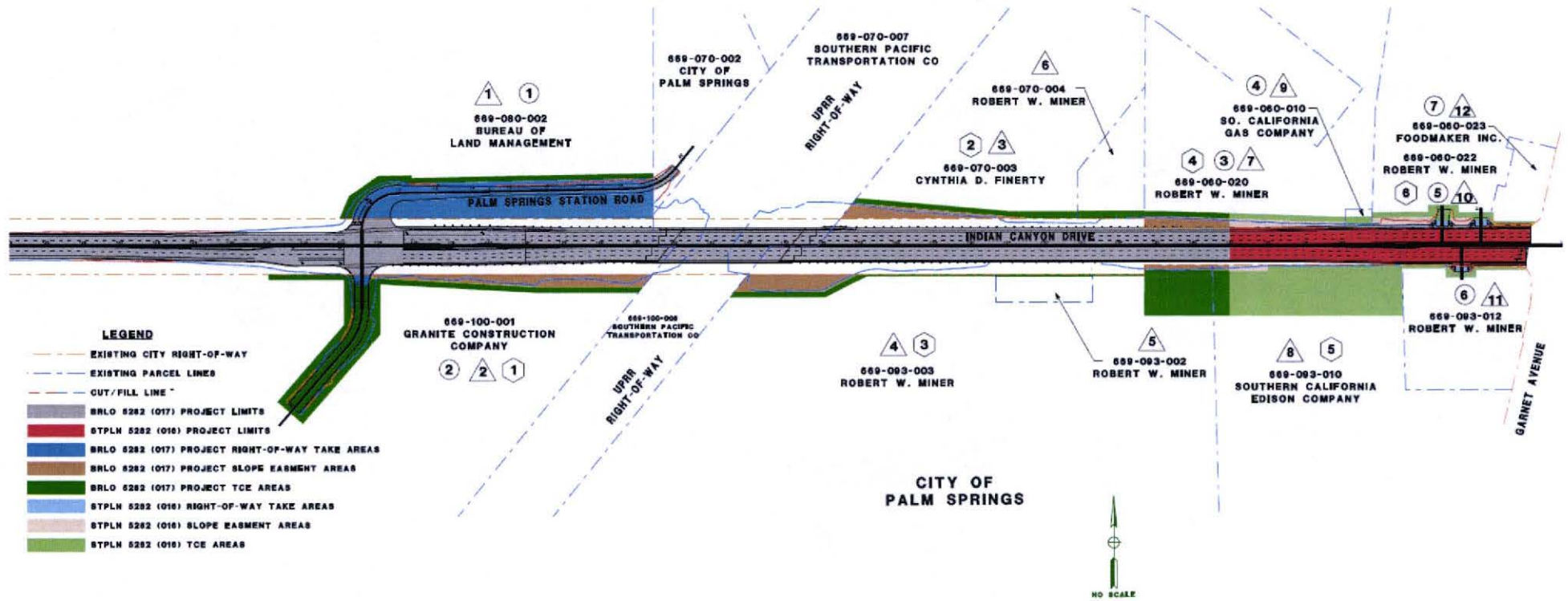


Figure 1

At its Closed Session meeting of October 21, 2015, the City Council received a report from staff on the fair market value of the required rights-of-way for the Project, and directed staff to proceed with final negotiations and acquisition with the affected property owners. The City has completed negotiations with the owners of the properties identified by APN 669-060-022, 669-060-026, 669-070-004, 669-093-002, and 669-093-003 for acquisition of various rights-of-way and temporary construction easements as shown in Figures 2 through 4.

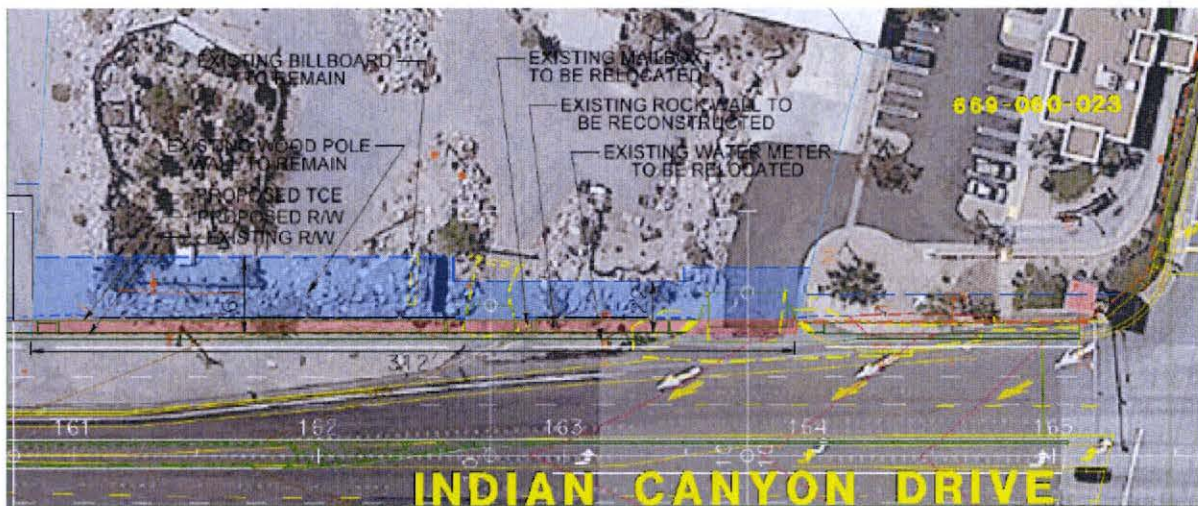
**APN# 669-060-022; Robert W. Miner Trust**

**APN: 669-060-022**  
OWNER: ROBERT W. MINER TRUST

- **Right of Way: 1,886 Square Feet**
- **Temporary Construction Easement: 6,899 Square Feet**

**LEGEND:**

- EXISTING PARCEL APN 669-060-022
- EXISTING RIGHT-OF-WAY/ PROPERTY BOUNDARY
- PROPOSED RIGHT-OF-WAY/ PROPERTY BOUNDARY
- PROPOSED TEMPORARY CONSTRUCTION EASEMENT
- PROPOSED ROADWAY
- PROPOSED SLOPE EASEMENT
- RIGHT-OF-WAY TAKE AREA
- TEMPORARY CONSTRUCTION EASEMENT AREA



**Figure 2**

Right-of-way negotiations have concluded for acquisition of the permanent right-of-way and temporary construction easement across the property identified by APN 669-060-022, and agreements are recommended for approval whereby the City will acquire 1,886 square feet of permanent right-of-way in the amount of \$14,371 and rent the required 6,899 square feet of the property at a cost of \$25,029 for a period terminating on July 1, 2022.















**APN# 669-060-026; Robert W. Miner Trust**

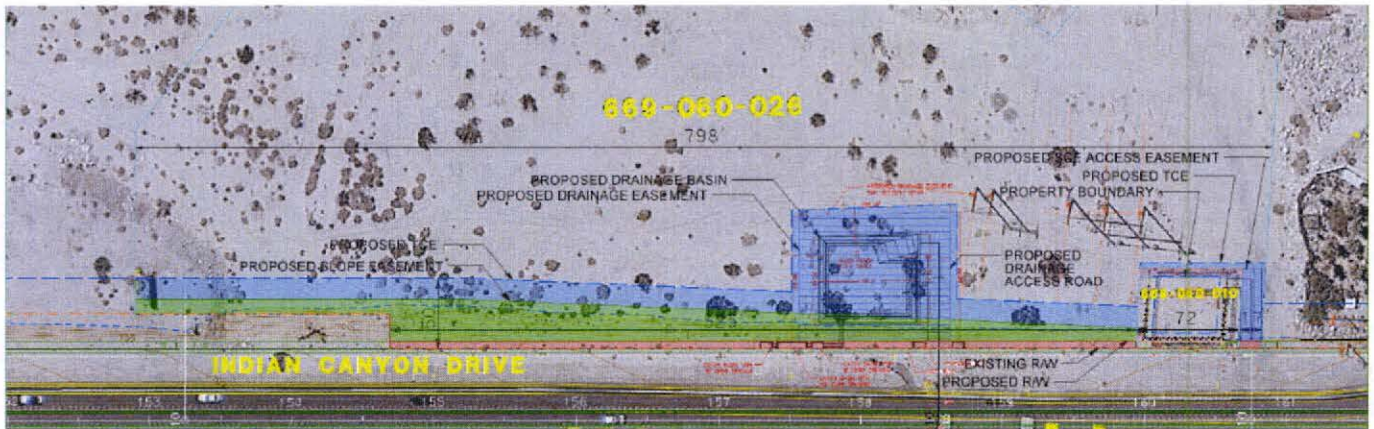
**APN: 669-060-026 / 669-070-004**

OWNER: ROBERT W. MINER TRUST

- **Fee Acquisition: 432 Square Feet**
- **R/W Acquisition: 3,246 Square Feet**
- **Slope Easement: 12,197 Square Feet**
- **Drainage Easement: 8,746 Square Feet**
- **Access Easement: 5,218 Square Feet**
- **So. Cal. Gas Access Easement: 825 Square Feet**
- **Temporary Construction Easement: 27,427 Square Feet**

**LEGEND:**

	EXISTING PARCEL APN 669-060-026
	EXISTING RIGHT-OF-WAY/ PROPERTY BOUNDARY
	PROPOSED RIGHT-OF-WAY/ PROPERTY BOUNDARY
	PROPOSED SLOPE EASEMENT
	PROPOSED TEMPORARY CONSTRUCTION EASEMENT
	PROPOSED DRAINAGE EASEMENT
	PROPOSED ACCESS EASEMENT
	PROPOSED ROADWAY
	RIGHT-OF-WAY EASEMENT AREAS
	FEE ACQUISITION AREA
	TEMPORARY CONSTRUCTION EASEMENT AREA
	SLOPE EASEMENT AREA
	DRAINAGE EASEMENT AREA
	ACCESS EASEMENT AREA



**Figure 3**

Right-of-way negotiations have concluded for acquisition of the permanent rights-of-way and temporary construction easement across the properties identified by APN 669-060-026 and 669-070-004, and agreements are recommended for approval whereby the City will acquire: 432 square feet of fee acquisition; 3,246 square feet of permanent right-of-way; 12,197 square feet of permanent slope easement; 8,746 square feet of permanent drainage easement; 5,218 square feet of permanent access easement; and 825 square feet of permanent access easement replacement for So. Cal. Gas. Co. utility parcel, for the total amount of \$68,524; and rent the required 27,427 square feet of the property at a cost of \$29,776 for a period terminating on July 1, 2022.

**APN# 669-093-002 & APN# 669-093-003; Robert W. Miner**

**APN: 669-093-002 & 669-093-003**  
OWNER: ROBERT W. MINER TRUST

- **Slope Easement: 16,344 Square Feet**
- **Temporary Construction Easement: 14,860 Square Feet**

**LEGEND:**

- EXISTING PARCEL
- EXISTING RIGHT-OF-WAY/ PROPERTY BOUNDARY
- PROPOSED RIGHT-OF-WAY/ PROPERTY BOUNDARY
- PROPOSED TEMPORARY CONSTRUCTION EASEMENT
- PROPOSED ROADWAY
- PROPOSED SLOPE EASEMENT
- TEMPORARY CONSTRUCTION EASEMENT AREA
- SLOPE EASEMENT AREA



**Figure 4**

Right-of-way negotiations have concluded for acquisition of the permanent slope easement and temporary construction easement across the properties identified by APN 669-093-002 and 669-093-003, and agreements are recommended for approval whereby the City will acquire 16,334 square feet of permanent slope easement in the amount of \$37,264 and rent the required 14,860 square feet of the property at a cost of \$16,136 for a period terminating on July 1, 2022.

The various agreements to acquire the permanent rights-of-way and temporary construction easements are included as **Attachments 1 – 6** of this report.

**ENVIRONMENTAL IMPACT:**

Section 21084 of the California Public Resources Code requires Guidelines for Implementation of the California Environmental Quality Act ("CEQA"). In accordance with the CEQA Guidelines, the City acting as "Lead Agency" pursuant to CEQA, previously completed an environmental analysis of the potential impacts resulting from construction of the Project. On November 4, 2009, the City Council adopted Resolution No. 22620, adopting and ordering the filing of a Mitigated Negative Declaration for the Project. Subsequently, on November 5, 2009, staff filed a Notice of Determination with

the Riverside County Clerk and State Clearing House; a copy of the Notice of Determination is included as **Attachment 7**.

The Project is funded, in part, by federal funds, requiring local oversight by the State of California, Department of Transportation ("Caltrans"). As a federally funded project, the Project is subject to environmental review pursuant to the National Environmental Policy Act ("NEPA"). On September 24, 2009, Caltrans, acting as the lead agency pursuant to NEPA, made an environmental determination that the Project does not individually or cumulatively have a significant impact on the environment as defined by NEPA and is excluded from the requirements to prepare an Environmental Assessment ("EA") or Environmental Impact Statement ("EIS"), has considered unusual circumstances pursuant to 23 CFR 771.117(b), and that it qualifies for a Categorical Exclusion under Section 6005 of 23 U.S.C. 327. A copy of the NEPA Categorical Exclusion issued by Caltrans is included as **Attachment 8**.

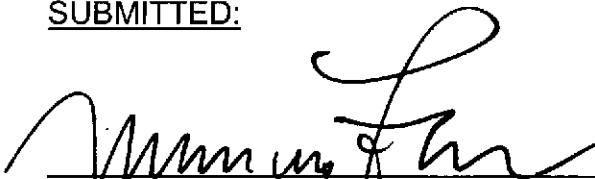
FISCAL IMPACT:

The costs to acquire the required rights-of-way across the properties identified by APN 669-060-022, 669-060-026, 669-070-004, 669-093-002, and 669-093-003 for the Project is \$191,100 plus escrow and title fees of approximately \$20,000. Funding for the Project is made possible by the federal HBP grant which will cover 88.53% of all eligible project costs. Regional and Local Measure A funds will pay for the 11.47% matching funds at a 75%/25% ratio. Sufficient funding is available for payment of \$191,100 for the required rights-of-way and temporary construction easements from the following accounts:

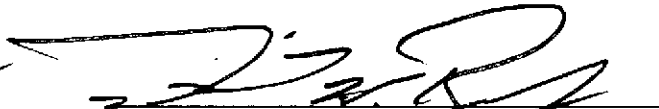
Capital Project Fund, Account No. 261-4491-50196; \$169,180.83  
Regional Measure A, Account No. 134-4497-50196; \$16,439.38  
Local Measure A, Account No. 134-4498-50196; \$5,479.79

Applicable escrow fees will be funded from these accounts accordingly.

SUBMITTED:



Marcus L. Fuller, MPA, P.E., P.L.S.  
Assistant City Manager/City Engineer



David H. Ready, Esq., Ph.D.  
City Manager

Attachments:

1. Agreements (6)
2. CEQA Notice of Determination
3. NEPA Categorical Exclusion



# **ATTACHMENT 1**

Project: Indian Cyn. Drive Widening and Bridge Replacement @ UPRR  
Project No.: Federal Project No. BRLO 5282 (017), City Project No. 01-11  
APN: 669-060-022

**RIGHT-OF-WAY AGREEMENT FOR ACQUISITION OF REAL PROPERTY  
INTEREST AND ESCROW INSTRUCTIONS**

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THIS RIGHT-OF-WAY AGREEMENT FOR ACQUISITION OF REAL PROPERTY INTEREST AND ESCROW INSTRUCTIONS ("**Agreement**"), dated and entered into for solely for reference purposes as of \_\_\_\_\_, 20\_\_, by and between the CITY OF PALM SPRINGS, a California charter city and municipal corporation ("**Buyer**") and **Robert W. Miner, Jr., as Sole Successor Trustee of the Robert Wilson Miner Trust dated April 13, 1998 ("Seller")**, with reference to the following facts:

**RECITALS**

A. Seller is the owner of certain real property comprised of approximately one thousand eight hundred eighty-six (1,886) square feet, located in the City of Palm Springs (the "**City**"), the County of Riverside (the "**County**"), State of California (the "**State**"), which is a portion of Assessor's Parcel No. 669-060-022, more particularly described on Exhibit A and shown on Exhibit B attached hereto (the "**Easement Area**").

B. Seller desires to convey to Buyer and Buyer desires to acquire from Seller an easement to the Easement Area, in accordance with the terms and conditions contained in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by Seller, Buyer and Seller (hereinafter collectively referred to as the "parties", or individually as a "party") hereby agree as follows:

**AGREEMENT**

1. PURCHASE AND SALE.

1.1. Agreement to Buy and Sell. Subject to the terms and conditions set forth herein, Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to acquire and purchase from Seller, a right-of-way for streets, highways, sanitary sewer lines, domestic water lines, public utilities, and other appurtenant uses, together with the right to construct, maintain, repair, operate, use, dedicate or declare the same for public use, in, on, under, over and across the Easement Area as such area, scope and use is more particularly described in the Grant of Right of Way attached hereto as Exhibit C the "**Easement**"), which Exhibits A and B attached hereto that define the Easement Area shall be made a part of.

1.2. Purchase Price. The purchase price ("**Purchase Price**") for the Easement and improvements shall be **Fourteen Thousand Three Hundred Seventy-One Dollars and Zero cents** (\$14,371) payable as cash at the Close of Escrow as defined and provided for herein.

## 2. ESCROW AND CLOSING.

2.1. Opening of Escrow. Within fourteen (14) business days after execution of this Agreement by the last of Seller or Buyer, Buyer shall open an escrow (the "**Escrow**") with Lawyers Title & Escrow, at the address set forth in Section 7.12 ("**Escrow Holder**"), by depositing with Escrow Holder this Agreement fully executed, or executed counterparts hereof. The date this fully executed Agreement is signed and accepted by Escrow Holder on the last page hereof shall be deemed the "**Opening of Escrow**" and Escrow Holder shall advise Buyer and Seller of such date in writing. The escrow instructions shall incorporate this Agreement as part thereof and shall contain such other standard and usual provisions as may be required by Escrow Holder, provided, however, that no escrow instructions shall modify or amend any provision of this Agreement, unless expressly set forth in writing by mutual consent of Buyer and Seller. In the event there is a conflict between any such standard or usual provisions and the provisions of this Agreement, the provisions of this Agreement shall control.

2.2. Escrow Fees and Other Charges. At the Close of Escrow, Buyer agrees to pay all of Seller's and Buyer's usual fees, charges and costs incidental to the conveyance of the Easement and Close of Escrow that may arise in this Escrow, including, but not limited to, any costs for the Standard Coverage Policy (defined below) or if elected, an ALTA Extended Coverage Owner's Policy.

2.3. Closing Date; Conditions Precedent to Close of Escrow. Provided all of the conditions set forth in this Section 2.3 have been satisfied (or are in a position to be satisfied concurrently with the Close of Escrow), the Close of Escrow shall occur on or before July 1, 2017 (the "**Closing Date**"), unless otherwise extended by mutual agreement. As used in this Agreement, the "**Close of Escrow**" shall mean the date a Grant Right of Way, as provided in Section 2.4.2(a) hereof ("**Right of Way**"), is recorded in the Official Records of the County.

2.3.1 Conditions of Buyer for Close of Escrow. The Close of Escrow and Buyer's obligation to purchase the Easement are subject to the satisfaction of the following conditions or Buyer's written waiver of such conditions, on or before the Closing Date. Buyer may waive in writing any or all of such conditions in its sole and absolute discretion.

(a) The Purchase Price shall have been adjusted in accordance with this Agreement and a closing statement duly executed by Seller setting forth the Purchase Price and any adjustments thereto; ;

(b) Seller shall have performed all obligations to be performed by Seller pursuant to this Agreement;

(c) No event or circumstance shall have occurred, which, in the sole opinion of Buyer, would make any of Seller's representations, warranties and covenants set forth herein untrue as of the Close of Escrow, including, but not limited to,

those warranties and representations of Seller set forth in Sections 3.4 and 4.1 of this Agreement;

(d) There shall have occurred no material adverse change in the physical condition of the Easement Area (such as those caused by natural disasters), which, in the sole opinion of Buyer, would render the Easement Area unsuitable for Buyer's intended use, materially increase the cost, or cause a material delay in the schedule for the development of the Easement Area;

(e) The Title Company shall be committed to issue to Buyer, as of the Closing Date, the Title Policy (defined below) covering the Easement Area, subject only to the Permitted Exceptions.

(f) Seller shall have executed and submitted to Escrow Holder the Affidavit of Non-Foreign Status By Transferor (Exhibit D)

(g) Seller shall have caused any lien or charge of any deed of trust that encumbers the Easement Area to be subordinated to the rights of Buyer under the terms of the Easement.

2.3.2 Conditions of Seller for Close of Escrow. The Close of Escrow and Seller's obligation to sell and convey the Easement are subject to the satisfaction of the following conditions or Seller's written waiver of such conditions on or before the Closing Date. Seller may waive in writing any or all of such conditions as a condition to the Close of Escrow in its sole and absolute discretion.

(a) The Purchase Price shall have been adjusted in accordance with this Agreement and a closing statement duly executed by Buyer setting forth the Purchase Price and any adjustments thereto;

(b) Buyer shall have performed all obligations to be performed by Buyer pursuant to this Agreement;

(c) No event or circumstance shall have occurred which would make any of Buyer's representations, warranties, and covenants set forth herein untrue as of the Close of Escrow including, but not limited to, those warranties and representations of Buyer set forth in Section 4.2 of this Agreement.

2.3.3 Waiver of a Condition Does Not Excuse Performance. If any condition precedent to the Close of Escrow is expressly waived, in writing, as a condition to the Close of Escrow by the party for whose benefit such condition exists, then, to the extent such condition is capable of being satisfied following the Close of Escrow, such condition shall become a condition subsequent to the Close of Escrow and shall be satisfied by the party whose performance is required to satisfy such condition as soon as reasonably possible following the Close of Escrow.

2.4. Closing Documents. The parties shall deposit the following with Escrow Holder prior to the Close of Escrow:

2.4.1 Buyer's Deposits. Buyer shall deposit:

(a) The Purchase Price together with Buyer's escrow and other cash charges; and

(b) A Certificate of Acceptance for the Grant of Right of Way executed by the City Clerk of the City of Palm Springs (See, Exhibit C).

2.4.2 Seller's Deposits. Seller shall deposit:

(a) The Grant of Right of Way in the form of Exhibit C attached hereto, appropriately executed to convey the Easement subject only to the Permitted Exceptions (defined below);

(b) Subject to Section 2.5.1 below, an executed Affidavit of Non-foreign Status in the form of Exhibit D attached hereto and such other documentation necessary to exempt Seller from the withholding requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder; and

(c) Subject to Section 2.5.1 below, a Withholding Exemption Certificate Form 593 as contemplated by California Revenue and Taxation Code §18662 (the "**Withholding Affidavit**") duly executed by Seller.

2.4.3 Deposits of Additional Instruments. Seller and Buyer shall each deposit such other instruments as are reasonably required by Escrow Holder or otherwise required to proceed to the Close of Escrow and consummate the grant of the Easement in accordance with the terms of this Agreement.

2.5. Closing.

2.5.1 Withholding. In the event that, pursuant to Section 2.4.2(b) above, Seller fails to deposit with Escrow Holder the executed Affidavit of Non-foreign Taxpayer Status which exempts Seller from the withholding requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder, Seller hereby authorizes Escrow Holder to withhold ten percent (10%) of the Purchase Price less any applicable closing costs and to report and transmit the withheld amount to the Internal Revenue Service. Additionally, in the event that, pursuant to Section 2.4.2(c) above, Seller fails to deposit with Escrow Holder any applicable tax document which exempts Buyer from California withholding requirements, if any, Seller hereby authorizes Escrow Holder to withhold such additional percentage of the Purchase Price of the Easement as is required by California law, and Escrow Holder shall report and transmit the withheld amount in the manner required by California law. By agreeing to act as Escrow Holder hereunder, Escrow Holder expressly agrees to undertake and be responsible for all withholding obligations imposed pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder and under any similar provisions of California law, and shall defend, indemnify and hold Buyer harmless in connection with such obligations.

2.5.2 Necessary Actions of Escrow Holder. On the Close of Escrow, Escrow Holder shall in the following order: (i) record the Grant of Right of Way and Certificate of Acceptance in the Office of the County Recorder of the County; (ii) pay any transfer taxes; (iii) instruct the County Recorder to return the Grant of Right of Way to Buyer; (iv) distribute

to Seller the Purchase Price; and (v) deliver to Buyer the Title Policy covering the Easement Area subject only to the Permitted Exceptions, the Affidavit of Non-foreign Status, and the applicable California withholding exemption form, if any.

2.5.3 Real Estate Taxes. Seller shall pay real property taxes at the Close of Escrow, paid through Escrow proceeds, based on the most current real property tax bill available, including any additional property taxes that may be assessed after the Close of Escrow but that relate to the period prior to the Close of Escrow, regardless of when notice of those taxes is received or who receives the notice. Seller may seek reimbursement from the Riverside County Tax Assessor's office for any property taxes that have been assessed for a period after the Close of Escrow as Buyer is a public agency exempt from payment of such taxes. Buyer further agrees to cooperate with Seller to provide any necessary information to the Assessor's office in connection with such request for refund.

## 2.6. Failure to Close; Termination.

2.6.1 Neither Party in Default. In the event that any condition set forth in Section 2.3 (and its subdivisions) is not satisfied or waived, in writing, and the Close of Escrow does not occur within the time required herein due to the failure of such condition or the Close of Escrow does not occur within the time frame required herein for any reason other than Seller's or Buyer's breach of or default of its respective obligations hereunder, or if this Agreement is terminated without default by either party as otherwise set forth herein, then Escrow Holder, with no further instructions from the parties hereto, shall return to the depositor thereof any funds, or other materials previously delivered to Escrow Holder, the Escrow shall be automatically terminated and of no force and effect, Buyer shall pay any Escrow termination fees, and except as otherwise provided herein the parties will have no further obligation to one another.

## 3. ACTIONS PENDING CLOSING.

### 3.1. Title Review.

3.1.1 Title Report. Within three (3) business days after the Opening of Escrow, Lawyers Title & Escrow (the "**Title Company**") will furnish Buyer with an updated Title Commitment on the Easement Area together with legible copies of all documents referenced therein as exceptions to title and a plot plan for the Easement Area showing all the locations of all easements referenced therein (collectively, the "**Title Commitment**").

3.1.2 Title Notices. Buyer shall have ten (10) business days after its actual receipt of the Title Commitment to deliver to Escrow Holder written notice (the "**Preliminary Title Notice**") of Buyer's approval, conditional approval, or disapproval of the title exceptions and other matters disclosed in the Title Commitment. All title exceptions not timely approved by Buyer will be deemed disapproved. All such exceptions and other matters disapproved by Buyer are referred to herein as "**Disapproved Exceptions**". It shall be the sole responsibility of Buyer to work with the Title Company to remove any Disapproved Exceptions, and if unsuccessful shall either purchase the Easement subject to the Disapproved Exceptions or terminate the Agreement.

3.1.3 Permitted Exceptions. "**Permitted Exceptions**" shall mean all exceptions appearing on the Title Commitment which are: (i) standard printed exceptions in

the Title Policy issued by Title Company; (ii) general and special real property taxes and assessments, a lien not yet due and payable; and (iii) any other liens, easements, encumbrances, covenants, conditions and restrictions of record approved, or expressly waived by Buyer pursuant to this Section 3.1.

3.2. Title Policy. Buyer's obligation to proceed to the Close of Escrow shall be conditioned upon the commitment by Title Company to issue an ALTA Standard Coverage Owner's Policy of Title Insurance (the "**Standard Coverage Policy**"), showing title to the Easement Area vested in Buyer with liability equal to the Purchase Price, subject only to the Permitted Exceptions. At Buyer's option, Buyer may require an ALTA Extended Coverage Owner's Policy instead of the Standard Coverage Policy provided that Buyer pays any additional premium on account thereof. The form of title policy selected by Buyer shall be referred to herein as the "**Title Policy**".

3.3. Possession and Use. It is mutually understood and agreed by and between the parties hereto that the right of exclusive possession and use of the Easement Area and Easement by the Buyer, including the right to remove and dispose of improvements, shall commence upon the close of escrow. The Purchase Price includes, but is not limited to, full payment for such improvements and exclusive possession and use of the Easement Area.

3.4. Seller's Covenant Not to Further Encumber the Easement Area. Seller shall not, directly or indirectly, alienate, encumber, transfer, option, lease, assign, sell, transfer or convey its interest or any portion of its interest in the Easement Area, or any portion thereof, or enter into any agreement to do so, so long as this Agreement is in force. Seller shall timely discharge, prior to the Closing, any and all obligations relating to work performed on or conducted at or materials delivered to or for the Easement Area from time to time by Seller, or at Seller's direction or on its behalf, in order to prevent the filing of any claim or mechanic's lien with respect to such work or materials.

#### 4. REPRESENTATIONS, WARRANTIES AND COVENANTS.

4.1. Seller's Representations, Warranties and Covenants. In addition to the representations, warranties, and covenants of Seller contained in other sections of this Agreement, Seller hereby represents, warrants and covenants to Buyer as follows, all of which shall survive the Close of Escrow:

4.1.1 Seller's Authority. Seller has the capacity and full power and authority to enter into and carry out the agreements contained in, and the transactions contemplated by, this Agreement, and that this Agreement has been duly authorized and executed by Seller, and upon delivery to and execution by Buyer, shall be a valid and binding agreement of Seller.

4.1.2 Leases. There are no leases, rental agreements, or other such contracts of any kind or nature affecting possession or occupancy of the Easement Area, and Seller shall not enter into any such contracts during the terms of this Agreement without the prior consent of Buyer.

4.1.3 No Liens and Subordination. Seller warrants that at the time of the Close of Escrow, Seller shall have caused any lien and charge of any deed of trust that

encumbers the Easement Area to be subordinated to the rights of Buyer under the terms of the Easement.

4.1.4 No Untrue Statements or Omissions of Fact. Each of the representations and warranties made by Seller in this Agreement, or in any exhibit, or on any document or instrument delivered pursuant hereto shall be continuing representations and warranties which shall be true and correct in all material respects on the date hereof, and shall be deemed to be made again as of the Close of Escrow and shall then be true and correct in all material respects. The truth and accuracy of each of the representations and warranties, and the performance of all covenants of Seller contained in this Agreement, are conditions precedent to the Close of Escrow. Seller shall immediately notify Buyer of any fact or circumstance which becomes known to Seller which would make any of the representations or warranties in this Agreement untrue.

4.2. Buyer's Representations and Warranties. Buyer represents and warrants to Seller as follows, all of which shall survive the Close of Escrow:

4.2.1 Buyer's Authority. Buyer has the capacity and full power and authority to enter into and carry out the agreements contained in, and the transactions contemplated by, this Agreement, and that this Agreement has been duly authorized and executed by Buyer and, upon delivery to and execution by Seller, shall be a valid and binding Agreement of Buyer.

4.2.2 No Untrue Statements or Omissions of Fact. Each of the representations and warranties made by Buyer in this Agreement, or in any exhibit or on any document or instrument delivered pursuant hereto, shall be continuing representations and warranties which shall be true and correct in all material respects on the date hereof, and shall be deemed to be made again as of the Close of Escrow, and shall then be true and correct in all material respects. The truth and accuracy of each of the representations and warranties, and the performance of all covenants of Buyer contained in this Agreement, are conditions precedent to the Close of Escrow. Buyer shall notify Seller immediately of any facts or circumstances which are contrary to the representations and warranties contained in this Agreement.

4.2.3 Future Access Rights. This Agreement incorporates herein by reference, that certain letter to Seller included herewith as Exhibit "E", regarding acknowledgement of existing and expectations for future access rights to Seller's property.

4.3. Mutual Indemnity. Seller and Buyer shall defend, indemnify, and hold free and harmless the other from and against any losses, damages, costs and expenses (including attorneys' fees) resulting from any inaccuracy in or breach of any representation or warranty of the indemnifying party or any breach or default by such indemnifying party under any of such indemnifying party's covenants or agreements contained in this Agreement and the City further agrees to indemnify and hold harmless Grantor from any liability arising out of City's operations under this Agreement and agrees to assume responsibility for any damages proximately caused by reason of City's operations under this Agreement and City will, at its option, either repair or pay for such damage.



5. CONDEMNATION. Seller and Buyer acknowledge that this transaction is a negotiated settlement *in lieu* of condemnation, and Seller hereby agrees and consents to the dismissal or abandonment of any eminent domain action in the Superior Court of the State of California in and for the City of Palm Springs, wherein the herein described Easement Area or Easement is included, in whole or in part, and also waives any and all claims to any money on deposit in the action and further waives all attorneys' fees, costs, disbursements, and expenses incurred in connection therewith. If, prior to the close of the execution of this transaction, Seller (or Seller's tenant) is served with a Summons and Complaint in Eminent Domain in which Seller (or Seller's tenant) is a named defendant, upon the Close of Escrow, Seller agrees and consents to Buyer taking a default in the action. Moreover, the total compensation to be paid by Buyer to Seller is for all of Seller's interest in the Easement Area or as described and set forth in the Easement and any rights which exist or may arise out of the acquisition of the Easement for public purposes, including without limitation, Seller's interest in the land and any improvements and fixtures and equipment located thereon, improvements pertaining to the realty (if any), severance damages, any alleged pre-condemnation damages, loss of business goodwill (if any), costs, interest, attorney's fees, and any claim whatsoever of Seller which might arise out of or relate in any respect to the acquisition of the Easement Area or Easement by the Buyer. The compensation paid under this Agreement does not reflect any consideration of or allowance for any relocation assistance and payments or other benefits which Seller may be entitled to receive, if any. Relocation assistance, if any, will be handled via separate Agreement.

6. BROKERS. Seller and Buyer each represents and warrants to the other that they have not dealt with or been represented by any brokers or finders in connection with the purchase and sale of the Easement and that no commissions or finder's fees are payable in connection with this transaction. Buyer and Seller each agree to indemnify and hold harmless the other against any loss, liability, damage, cost, claim or expense (including reasonable attorneys' fees) incurred by reason of breach of the foregoing representation by the indemnifying party. Notwithstanding anything to the contrary contained herein, the representations, warranties, indemnities and agreements contained in this Section 6 shall survive the Close of Escrow or earlier termination of this Agreement.

7. GENERAL PROVISIONS.

7.1. Counterparts; Facsimile Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument and any executed counterpart may be delivered by facsimile transmission with the same effect as if an originally executed counterpart had been delivered.

7.2. Further Assurances. Each of the parties agree to execute and deliver such other instruments and perform such acts, in addition to the matters herein specified, as may be appropriate or necessary to effectuate the agreements of the parties, whether the same occurs before or after the Close of Escrow.

7.3. Entire Agreement. This Agreement, together with all exhibits hereto and documents referred to herein, if any, constitute the entire agreement among the parties

hereto with respect to the subject matter hereof, and supersede all prior understandings or agreements. This Agreement may be modified only by a writing signed by both parties. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement whether or not actually attached.

7.4. Headings. Headings used in this Agreement are for convenience of reference only and are not intended to govern, limit, or aid in the construction of any term or provision hereof.

7.5. Choice of Law. This Agreement and each and every related document are to be governed by, and construed in accordance with, the laws of the State of California.

7.6. Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction or rendered by the adoption of a statute by the State of California or the United States invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby; provided that the invalidity or unenforceability of such provision does not materially adversely affect the benefits accruing to, or the obligations imposed upon, any party hereunder, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

7.7. Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The exercise of any remedy provided in this Agreement shall not be a waiver of any other remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other remedies unless they are expressly excluded.

7.8. Legal Advice and Construction. Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question. There shall be no presumption in the interpretation of this Agreement that any ambiguity is to be resolved against any party hereto. The parties waive expressly each and all provisions of California Civil Code Section 1654, which provides: "IN CASES OF UNCERTAINTY NOT REMOVED BY THE PRECEDING RULES, THE LANGUAGE OF A CONTRACT SHOULD BE INTERPRETED MOST STRONGLY AGAINST THE PARTY WHO CAUSED THE UNCERTAINTY TO EXIST."

7.9. Relationship of Parties. The parties agree that their relationship is that of Seller and Buyer, and that nothing contained herein shall constitute either party, the agent or legal representative of the other for any purpose whatsoever, nor shall this

Agreement be deemed to create any form of business organization between the parties hereto, nor is either party granted the right or authority to assume or create any obligation or responsibility on behalf of the other party, nor shall either party be in any way liable for any debt of the other.

7.10. Attorneys' Fees. In the event that any party hereto institutes an action or proceeding for a declaration of the rights of the parties under this Agreement, for injunctive relief, for an alleged breach or default of, or any other action arising out of, this Agreement, or the transactions contemplated hereby, or in the event any party is in default of its obligations pursuant thereto, whether or not suit is filed or prosecuted to final judgment, the non-defaulting party or prevailing party shall be entitled to its actual attorneys' fees and to any court costs incurred, in addition to any other damages or relief awarded.

7.11. Assignment. Neither Seller nor Buyer shall assign its rights or delegate its obligations hereunder without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties to this Agreement.

7.12. Notices. No notice, request, demand, instruction, or other document to be given hereunder to any Party shall be effective for any purpose unless personally delivered to the person at the appropriate address set forth below (in which event such notice shall be deemed effective only upon such delivery), delivered by air courier next-day delivery (e.g. Federal Express), delivered by mail, sent by registered or certified mail, return receipt requested, or sent via telecopier, as follows:

If to Buyer, to:                               City Manager & City Clerk  
City of Palm Springs  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262  
Facsimile No.: (760) 323-8204  
Telephone No.: (760) 323-8332

With a copy to:                               City Attorney  
c/o Woodruff, Spradlin & Smart  
555 Anton Boulevard, Suite 1200  
Costa Mesa, CA 92626  
Facsimile No.: (714) 835-7787  
Telephone No.: (714) 558-7000

If to Seller, to:                               Robert W. Miner, Jr, Successor Trustee of the  
Robert Wilson Miner Trust, dated April 13,  
1998  
PO Box 190266  
Anchorage, AK 99519

If to Escrow Holder, to: Kimberly Rogers  
Lawyers Title & Escrow  
777 E. Tahquitz Canyon Way  
Palm Springs, CA 92262  
Facsimile No.: (866) 350-3317  
Telephone No.: (760) 327-6523

Notices delivered by air courier shall be deemed to have been given the next business day after deposit with the courier and notices mailed shall be deemed to have been given on the second business day following deposit of same in any United States Post Office mailbox in the state to which the notice is addressed or on the third business day following deposit in any such post office box other than in the state to which the notice is addressed, postage prepaid, addressed as set forth above. Notices sent via telecopy shall be deemed delivered the same business day transmitted if done so before 4:00 p.m., otherwise delivery shall be considered to be on the next business day. The addresses, addressees, and telecopy numbers for the purpose of this Paragraph, may be changed by giving written notice of such change in the manner herein provided for giving notice. Unless and until such written notice of change is received, the last address, addressee, and telecopy number stated by written notice, or provided herein if no such written notice of change has been received, shall be deemed to continue in effect for all purposes hereunder.

7.13. Survivability. All covenants of Buyer or Seller which are intended hereunder to be performed in whole or in part after Close of Escrow and all representations, warranties, and indemnities by either Party to the other, shall survive Close of Escrow and delivery of the Right of Way, and be binding upon and inure to the benefit of the respective Parties.

7.14. Release. The total compensation to be paid by Buyer for the Easement is the Purchase Price, which consideration covers any and all land and improvements, attached or detached furniture, fixtures and equipment, loss of business goodwill, and is the full and complete acquisition cost of the Easement. Buyer shall have no obligation to Seller under the California Relocation Assistance and Real Property Acquisition statutes and guidelines. Except for any breach of terms or conditions contained in this Agreement, Seller waives and forever releases Buyer, including its successors, officers, employees, attorneys, agents, representatives and anyone else acting on Buyer's behalf, of and from any and all claims, demands, actions or causes of action, obligations, liabilities, or claims for further compensation, known or unknown, based upon or relating to the facts or allegations and circumstances arising from Buyer's acquisition of the Easement. By such release, Seller expressly waives its rights, if any, under California Civil Code Section 1542 which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HIS SETTLEMENT WITH THE DEBTOR."

7.15 City Council Approval of Agreement. This Agreement is subject to the approval of the Buyer's City Council. If this Agreement remains unapproved by the Buyer's City Council then the parties will have no further obligation under this Agreement. If Buyer's City Council approves this Agreement within less than thirty (30) days of the Closing Date set forth herein, the parties agree to extend the Closing Date for an additional thirty (30) days.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement, which shall only become effective as of the day and year the last of the parties set forth below signs this Agreement.

BUYER

SELLER

CITY OF PALM SPRINGS, a California  
charter city and municipal corporation,

Robert W. Miner, Jr., as Sole Successor  
Trustee of the Robert Wilson Miner Trust  
dated April 13, 1998

\_\_\_\_\_  
David H. Ready  
City Manager  
Dated:

By: \_\_\_\_\_  
Robert W. Miner, Jr., as Sole  
Successor Trustee

Attest:

\_\_\_\_\_  
James Thompson  
City Clerk  
Dated:

Approved as to form by:

WOODRUFF, SPRADLIN & SMART

\_\_\_\_\_  
Douglas C. Holland, Esq.  
City Attorney

Dated:

**Exhibit List**

Exhibit A -- Legal Description of the Right of Way

Exhibit B -- Depiction of the Right of Way

Exhibit C -- Form of Grant of Right of Way

Exhibit D -- Affidavit of Non-foreign Taxpayer Status

**ACCEPTANCE BY ESCROW HOLDER:**

          LAWYERS TITLE & ESCROW           hereby acknowledges that it has received a fully executed counterpart of the foregoing Right-of-Way Agreement for Acquisition of Real Property and Escrow Instructions and agrees to act as Escrow Holder thereunder and to be bound by and perform the terms thereof as such terms apply to Escrow Holder.

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

          LAWYERS TITLE & ESCROW            
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Exhibit "A" to the Right of Way**

**LEGAL DESCRIPTION OF THE RIGHT OF WAY**



EXHIBIT "A"  
RIGHT-OF-WAY EASEMENT  
APN 669-060-022

THAT PORTION OF LOT "B" OF LOT LINE ADJUSTMENT NO. 98-01, RECORDED JUNE 22, 1998 AS DOCUMENT NO. 254046 OF OFFICIAL RECORDS, SAID LAND BEING A PORTION OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY UNITED STATES GOVERNMENT SURVEY APPROVED FEBRUARY 29, 1856, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE INTERSECTION OF THE CENTER LINE OF SOUTHERN PACIFIC RAILROAD WITH THE CENTER LINE OF INDIAN CANYON DRIVE (FORMERLY INDIAN AVENUE) AS SHOWN ON RECORD OF SURVEY FILED IN BOOK 18 OF RECORDS OF SURVEY AT PAGE 2 ON AUGUST 20, 1951; THENCE ALONG THE CENTER LINE OF SAID INDIAN CANYON DRIVE NORTH 00°19'08" EAST 1136.57 FEET TO AN ANGLE POINT THEREIN, SAID POINT BEING THE ONE-SIXTEENTH SECTION CORNER OF SAID SECTION; THENCE CONTINUING ALONG SAID CENTER LINE NORTH 00°19'24" EAST 610.27 FEET TO THE NORTHERLY LINE OF THAT CERTAIN RIGHT OF WAY CONVEYED FROM DAVID MARGOLIUS, ET UX, TO SOUTHERN CALIFORNIA GAS COMPANY AND SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA, BY DEED RECORDED MAY 10, 1947 IN BOOK 825 PAGE 555 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY; THENCE LEAVING SAID CENTER LINE ALONG SAID NORTHERLY LINE NORTH 86°28'57" WEST 50.08 FEET TO THE SOUTHEAST CORNER OF SAID LOT "B" BEING A POINT ON A LINE PARALLEL WITH AND DISTANT 50.00 FEET WESTERLY OF THE EASTERLY LINE OF SAID NORTHEAST QUARTER OF SECTION 22, SAID EASTERLY LINE ALSO BEING THE CENTER LINE OF SAID INDIAN CANYON DRIVE, SAID POINT BEING THE **TRUE POINT OF BEGINNING**;

1. THENCE ALONG THE EASTERLY LINE OF SAID LOT "B" NORTH 00°19'24" EAST 312.34 FEET TO THE NORTHEAST CORNER OF SAID LOT "B";
2. THENCE ALONG THE NORTHERLY LINE OF SAID LOT NORTH 76°08'20" WEST 6.17 FEET;
3. THENCE LEAVING SAID NORTHERLY LINE SOUTH 00°19'24" WEST 77.41 FEET;
4. THENCE NORTH 89°44'58" WEST 3.00 FEET;
5. THENCE SOUTH 00°19'24" WEST 3.00 FEET;
6. THENCE SOUTH 89°44'58" EAST 3.00 FEET;
7. THENCE SOUTH 00°19'24" WEST 233.04 FEET TO THE SOUTHERLY LINE OF SAID LOT "B";
8. THENCE ALONG SAID SOUTHERLY LINE SOUTH 86°28'57" EAST 6.01 FEET TO THE **TRUE POINT OF BEGINNING**.

AREA = 1,886 SQUARE FEET, MORE OR LESS

SEE EXHIBIT "B" ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF.

EXHIBIT "A"  
RIGHT-OF-WAY EASEMENT  
APN 669-060-022

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE  
BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. MULTIPLY  
DISTANCES SHOWN BY 1.00002570 TO OBTAIN GROUND DISTANCES.

SIGNATURE Michael A. Havener 11-30-2015  
MICHAEL A. HAVENER DATE  
PLS 7354



**Exhibit "B" to the Right of Way**

**DEPICTION OF THE RIGHT OF WAY**

# EXHIBIT "B"

LOT "B"  
 L.L.A. 98-01  
 INST. NO. 254046 O.R.  
 APN 669-060-022  
 POR. NE 1/4  
 SEC. 22  
 T. 3 S., R. 4 E.  
 S.B.M.

SEE SHEET 3

**APN 669-060-022 NON-PLOTTABLE EASEMENTS**  
 RIGHT-OF-WAY FOR DITCHES OR CANALS  
 CONSTRUCTED BY THE AUTHORITY OF THE UNITED  
 STATES AND RESERVING UNTO THE UNITED STATES,  
 ITS PERMITTEES OR LICENSEES, THE RIGHT TO  
 OCCUPY AND USE ANY PART OF SECTION 22 LYING  
 WITHIN FIFTY FEET OF THE CENTER LINE OF THE  
 TRANSMISSION LINE RIGHT-OF-WAY OF THE  
 COACHELLA VALLEY ICE AND ELECTRIC COMPANY  
 REC. 11/23/1921 IN BK. 8, PG. 204 OF PATENTS.  
 A POLE LINE EASEMENT IN FAVOR OF THE  
 SOUTHERN CALIFORNIA TELEPHONE CO. REC.  
 7/10/1933 IN BK. 131, PG. 119 O.R.

A UTILITY EASEMENT IN FAVOR  
 OF THE SOUTHERN CALIFORNIA  
 GAS CO. REC. 5/10/1947 IN  
 BK. 825, PG. 555 O.R.

## LEGEND



RIGHT-OF-WAY EASEMENT  
 AREA = 1,886 SQ. FT., MORE OR LESS

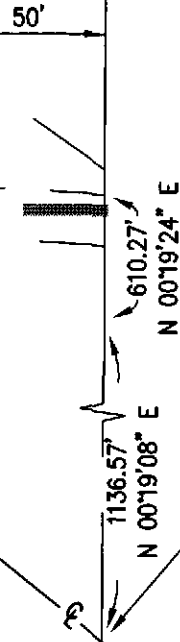
P.O.C. POINT OF COMMENCEMENT

INDIAN CANYON DR.  
 (INDIAN AVE.)

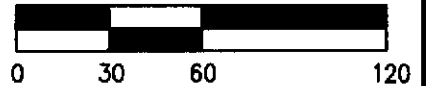
INDIAN AVE.

SEC. 22  
 SEC. 23

SEE SHEET 2



MULTIPLY DISTANCE BY 1.00002570  
 TO OBTAIN GROUND DISTANCES



P.O.C.  
 INT. OF THE CENTER LINE OF  
 INDIAN CANYON DR. (INDIAN AVE.)  
 AND SOUTHERN PACIFIC RAILROAD  
 AS SHOWN ON ROS 18/2

SHEET 1 OF 3 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 60'
DRAWN BY: KA	DATE: 4-27-15		DOC. NO.
CHECKED BY: MH	DATE: 11-30-15	INDIAN CANYON DRIVE WIDENING APN 669-060-022 ROBERT WILSON MINER TRUST, DATED 4/13/1998	DWG. NO.
APPROVED BY:	DATE:		

SEE SHEET 3

LOT "B"  
L.L.A. 98-01  
INST. NO. 254046 O.R.

APN 669-060-022

POR. NE 1/4  
SEC. 22

T. 3 S., R. 4 E.  
S.B.M.

A UTILITY EASEMENT IN FAVOR  
OF THE SOUTHERN CALIFORNIA  
GAS CO. REC. 5/10/1947 IN  
BK. 825, PG. 555 O.R.

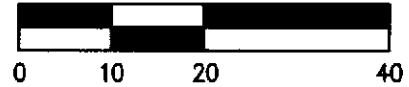
A POLE LINE EASEMENT IN FAVOR  
OF CALIFORNIA ELECTRIC POWER  
CO. REC. 6/02/1947 IN BK. 839,  
PG. 119 O.R. NO WIDTH GIVEN.

**LEGEND**



RIGHT-OF-WAY EASEMENT  
AREA = 1,886 SQ. FT., MORE OR LESS

T.P.O.B. TRUE POINT OF BEGINNING



INDIAN CANYON DR.  
(INDIAN AVE.)

SEC. 22  
SEC. 23



233.04'

312.34'

S 00°19'24" W

N 00°19'24" E

50'

T.P.O.B.

N 86°28'57" W 50.08'

610.27'  
N 00°19'24" E

S 86°28'57" E 6.01'

SHEET 2 OF 3 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 20'
DRAWN BY: KA	DATE: 4-27-15		DOC. NO.
CHECKED BY: MH	DATE: 11-30-15	INDIAN CANYON DRIVE WIDENING APN 669-060-022 ROBERT WILSON MINER TRUST, DATED 4/13/1998	DWG. NO.
APPROVED BY:	DATE:		

LOT "A"

RECIPROCAL ACCESS EASEMENT  
IN FAVOR OF FOODMAKER, INC.  
AND ROBERT MINER REC.  
6/22/1998 AS DOC. NO.  
1998-254053 O.R.



LOT "B"  
L.L.A. 98-01  
INST. NO. 254046 O.R.

APN 669-060-022

POR. NE 1/4

SEC. 22

T. 3 S., R. 4 E.

S.B.M.

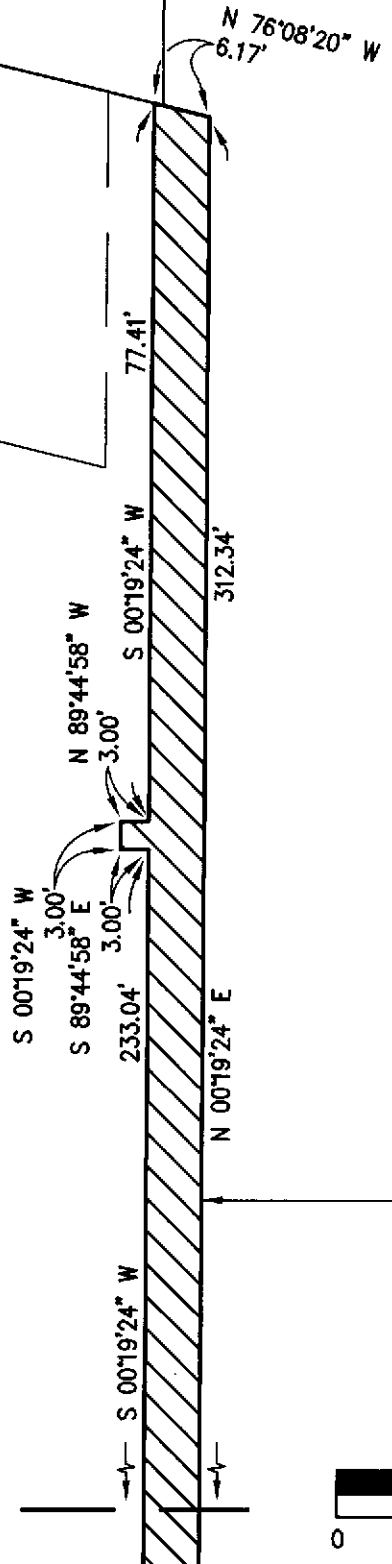
**LEGEND**



RIGHT-OF-WAY EASEMENT  
AREA = 1,886 SQ. FT.,  
MORE OR LESS

T.P.O.B. TRUE POINT OF BEGINNING

SEE SHEET 2



INDIAN CANYON DR.  
(INDIAN AVE.)

SEC. 22  
SEC. 23



SHEET 3 OF 3 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 20'
DRAWN BY: KA	DATE: 4-27-15		DOC. NO.
CHECKED BY: MH	DATE: 11-30-15	INDIAN CANYON DRIVE WIDENING APN 669-060-022 ROBERT WILSON MINER TRUST, DATED 4/13/1998	DWG. NO.
APPROVED BY:	DATE:		

**EXHIBIT C**

**RECORDING REQUESTED BY**  
City of Palm Springs

**WHEN RECORDED RETURN TO:**

City Clerk  
City of Palm Springs  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262

SPACE ABOVE THIS LINE FOR RECORDER'S USE  
Exempt from recording fees under Government Code §6103

**GRANT OF RIGHT-OF-WAY  
(INDIAN CANYON DRIVE)**

**APN #669-060-022**

For a valuable consideration, receipt of which is hereby acknowledged, **Robert W. Miner, Jr., as Sole Successor Trustee of the Robert Wilson Miner Trust dated April 13, 1998**, (hereinafter "Grantor"), hereby GRANTS to the **CITY OF PALM SPRINGS, a California charter city and municipal corporation**, (hereinafter "Grantee"), right-of-way for streets, highways, sanitary sewer lines, domestic water lines, public utilities, and other appurtenant uses, together with the right to construct, maintain, repair, operate, use, dedicate or declare the same for public use, in, on, under, over and across the real property in the City of Palm Springs, Riverside County, California, more particularly described on **Exhibit "A"** and shown on **Exhibit "B"** attached hereto and incorporated herein by this reference.

**GRANTOR:**

**Robert W. Miner, Jr., as Sole Successor  
Trustee of the Robert Wilson Miner  
Trust dated April 13, 1998**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Robert W. Miner, Jr., Sole Successor  
Trustee





**EXHIBIT D**

DO NOT RECORD.  
DO NOT SEND  
TO IRS.

TRANSFeree (BUYER)  
MUST RETAIN FOR  
SIX YEARS AFTER  
THE TRANSACTION.

**CERTIFICATION OF NON-FOREIGN  
STATUS BY TRANSFEROR**

1. Section 1445 of the Internal Revenue Code provides that a transferee (Buyer) of a U. S. real property interest must withhold tax if the transferor (Seller) is a foreign person.

2. In order to inform each transferee that withholding of tax is not required upon disposition of a U. S. real property interest by \_\_\_\_\_ (hereinafter referred to as "the Transferor"), the undersigned hereby certifies, and declares by means of this certification, the following on behalf of the Transferor:

A. The one item marked below is true and correct:

\_\_\_\_\_ (I) The Transferor is not a foreign individual, foreign corporation, foreign partnership, foreign trust, or foreign estate (as these terms are defined in the Internal Revenue Code and Income Tax Regulations).

\_\_\_\_\_ (II) The Transferor is a corporation incorporated under the laws of a foreign jurisdiction but has elected to be treated as a U. S. corporation under Section 897(i) of the Internal Revenue Code, AND HAS ATTACHED TO THIS CERTIFICATE A TRUE AND GENUINE COPY OF THE ACKNOWLEDGMENT OF SUCH ELECTION ISSUED BY THE IRS.

B. The Transferor's social security number is \_\_\_\_\_.

C. The Transferor's address is \_\_\_\_\_.

3. The Transferor understands that this certificate may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained in this certification may be punished by fine or imprisonment (or both).

4. The Transferor understands that each transferee is relying on this certificate in determining whether withholding is required and each transferee may face liabilities if any statement in this certificate is false.

5. The Transferor hereby indemnifies each transferee, and agrees to defend and hold each transferee harmless, from any liability, cost, damage, or expense which such transferee may incur as a result of:

A. the Transferor's failure to pay any U. S. Federal income tax which the Transferor is required to pay under applicable U. S. law, or

B. any false or misleading statement contained herein.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete; I further declare that I have authority to sign this document on behalf of the Transferor.

EXECUTED in \_\_\_\_\_ County, State of \_\_\_\_\_

on \_\_\_\_\_.

Transferor: \_\_\_\_\_

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

Title: \_\_\_\_\_

**EXHIBIT E**

**FUTURE ACCESS RIGHTS**

The following letter dated November 23, 2016, from Buyer to Seller regarding acknowledgement of existing and expectations for future access rights to Seller's property is made a part hereof this Agreement.

## EXHIBIT "E"



# City of Palm Springs

## Public Works & Engineering Department

3200 East Tahquitz Canyon Way • Palm Springs, California 92262  
Tel: (760) 322-8380 • Fax: (760) 323-8207 • Web: [www.palmspringsca.gov](http://www.palmspringsca.gov)

November 23, 2016

Robert W. Miner, Jr.  
PO Box 190266  
Anchorage, AK 99519

**RE: Access Rights to Garnet Avenue and Indian Canyon Drive**

Dear Mr. Miner,

This letter is provided to confirm discussions with you related to the Indian Canyon Drive Widening and Bridge Replacement @ UPRR Project, City Project No. 01-11, (hereafter the "Project"), and its impact on access rights to your properties identified by Assessor Parcel Numbers (APN) 669-060-026, 669-070-004, and 669-060-022 (hereafter the "Property"). Dokken Engineering, acting on behalf of the City of Palm Springs as its Right of Way Agent, has previously submitted to you an offer to acquire various rights-of-way and temporary construction easements from the Property, as necessary to construct the Project.

Your existing access rights can be described as follows:

**Garnet Avenue:** The Property has direct access to Garnet Avenue, excluding a length of approximately 270 feet adjacent to the eastbound on/off ramps where access rights were previously acquired from you as part of the Indian Canyon Drive / Interstate 10 Interchange Project.

**Indian Canyon Drive:** The Property has direct access to Indian Canyon Drive, without any restrictions with the exception of those certain understandings expressed to you in a letter dated January 29, 2009, included herewith as Attachment 1, and as otherwise superseded by this letter.

Your future rights can be described as follows:

**Garnet Avenue:** You will retain full access rights to Garnet Avenue outside of the existing Caltrans restricted access previously acquired from you. At the time the Property is developed, the City will require minor widening of Garnet Avenue, which will also include re-striping Garnet Avenue with the necessary turn lane(s) into the Property at the access points approved with your development. Provided the access points proposed as part of any future development coordinate with existing driveways to adjacent properties on Garnet Avenue, full access rights will be provided.

Robert Miner  
November 23, 2016  
Page 2

**Indian Canyon Drive:**

The Project proposes to widen Indian Canyon Drive to a 6-lane divided roadway (with a raised landscaped median). The Project will change your existing access rights from full access, to limited access (right in / right out only).

At the time the Property is developed, the City will require modification of Indian Canyon Drive to provide a full, signalized access point into the Property, which will include modifying the planned raised median to include a break for a northbound left turn lane into the Property, and an eastbound left turn exit from the Property. At that time, the Property will be provided with full access at a centralized location along Indian Canyon Drive, approved by the City. The Property is designated as "Regional Business Center" (RSC), a higher density land use created in the 2007 General Plan Update. Given this land use designation, the City anticipates the Property will be developed with higher intensity industrial, office and commercial uses that relate to the close proximity with Interstate 10. These land uses will likely generate significant volumes of traffic, and as such, the City acknowledges that if developed consistent with the RSC land use designation, full signalized access from Indian Canyon Drive will be required. The exact location of the signalized access is yet to be determined.

The City has no written policy on the spacing of signalized intersections, however it is generally accepted that the minimum spacing between traffic signals should be one-eighth (1/8) mile (660 feet). It would be possible to locate a signalized intersection to the Property at 1/8 mile or more south of Garnet Avenue, provided you (or a future property owner) are successful in acquiring the UPRR surplus land (identified by APN 669-060-012). Absent acquisition of the UPRR property, development of the Property will be challenging and the location of a signalized intersection may have to occur closer to Garnet Avenue than the 1/8 mile minimum guideline.


As there are no development plans for the Property, it is impossible for me to guarantee you a specific location on Indian Canyon Drive for a full, signalized access point. However, the point being made here is that one will be necessary to ensure development of the Property is possible to its full potential under the RBC land use designation.

At the time a development is proposed on the Property, a full analysis of the proposed access points to Garnet Avenue and Indian Canyon Drive, layout of internal streets and/or parking lots, and traffic impacts generated by the development will occur. It is during the City's entitlement process where the Property will be granted specific rights, consistent with the proposed development and the traffic analysis that justifies the required access. Those access rights will be granted consistent with those generally identified in this letter: full access to Garnet Avenue consistent with existing access points / driveways along Garnet Avenue; and (1) signalized access point on Indian Canyon Drive.

Robert Miner  
November 23, 2016  
Page 3

If you have any questions, please feel free to contact me at (760) 322-8380, or by e-mail at [Marcus.Fuller@palmspringsca.gov](mailto:Marcus.Fuller@palmspringsca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Marcus Fuller". The signature is fluid and cursive, with the first name "Marcus" written in a larger, more prominent script than the last name "Fuller".

Marcus L. Fuller, MPA, PE, PLS  
Assistant City Manager/City Engineer

cc: *Jamie Formico*  
*file*

**ATTACHMENT 1**



# City of Palm Springs

Department of Public Works and Engineering

3200 E. Tahquitz Canyon Way • Palm Springs, California 92262  
Tel: (760) 323-8253 • Fax: (760) 322-8360 • Web: [www.ci.palm-springs.ca.us](http://www.ci.palm-springs.ca.us)

January 29, 2009

Mr. Robert Miner  
611 S. Palm Canyon Dr., Suite #7-456  
Palm Springs, CA 92264

Re: **Access Rights to Garnet Avenue and Indian Canyon Drive**

Dear Mr. Miner:

This letter memorializes a meeting held on January 15, 2009, to discuss the Indian Canyon Drive / Interstate 10 Interchange Project and its impact on access rights to your property identified by Assessor's Parcel Number (APN) 666-330-008, 669-060-004, 669-060-005, 669-060-018, and 669-093-011. Riverside County, acting on behalf of the City of Palm Springs as its Right of Way Agent, has previously submitted to you an offer to acquire right-of-way and temporary construction easements from your property, as necessary to implement the planned Indian Canyon Drive / Interstate 10 Interchange improvements. Our meeting was held at your request, and in response to the City's offer to acquire right-of-way from you, with the primary purpose to discuss existing and future access rights to your property.

Your existing access rights can be described as follows:

**Garnet Avenue:** Your property has direct access to Garnet Avenue, without any restrictions.

**Indian Canyon Drive:** Your property has direct access to Indian Canyon Drive, without any restrictions.

Your future access rights, as a result of the planned Interchange improvements, can be described as follows:

**Garnet Avenue:** Caltrans is requiring restricted access rights across from the planned eastbound on-ramp and off-ramp located on Garnet Avenue. The restricted access rights will extend 138.28 meters (453.67 feet) along your Garnet Avenue frontage opposite the new eastbound ramps. You will retain full access rights to Garnet Avenue outside of the Caltrans restricted access to be acquired from you.

As we discussed, Caltrans and the Federal Highway Administration (FHWA) have restrictions with providing local access (public or private) to any intersection with Interstate Highway ramps; therefore, although the City would prefer your property to have full signalized access at the new signalized intersection on Garnet Avenue with the eastbound I-10 ramps, Caltrans and FHWA regulations restrict such access. Full signalized access to your property from Garnet Avenue, if warranted and required, will have to be located outside of the Caltrans access control, at a location that makes appropriate sense given the proximity to the existing traffic signal at Indian Canyon Drive and other existing driveways to the adjacent properties.



Sheets PD-3 and PD-7 indicate the proposed traffic striping to be implemented as part of the planned Interchange improvements. These plans show that Garnet Avenue will become a 4-lane, divided roadway (divided with a painted median). At the time your property is developed, it will include minor widening of Garnet Avenue (beyond what we are proposing as part of the planned Interchange improvements), which will also include re-striping Garnet Avenue with the necessary turn lane(s) into your property at the access points approved with your development. Provided the access points proposed as part of any future development coordinate with existing driveways to adjacent properties on Garnet Avenue, full access rights shall be provided.

### **Indian Canyon Drive:**

Sheet PD-7 indicates the proposed traffic striping to be implemented as part of the planned Interchange improvements. This plan shows that Indian Canyon Drive will become a 4-lane, divided roadway (divided with a painted median) transitioning to match the existing 2-lane divided roadway to the south of your property. As we discussed, I have directed our design engineer to revise Sheet PD-7 to remove the standard striped left-turn bay pocket and to indicate what is called a "Two Way Left Turn Lane" (TWLTL) which allows cars to pull into the painted median and turn left into your property. Likewise, vehicles are permitted to turn left out of your property into the TWLTL and pull into northbound traffic (when safe to do so). This will maintain the existing full access to your driveways on Indian Canyon Drive. Additionally, I have directed our design engineer to ensure that the northbound U-Turn movement at Garnet Avenue is allowed.

As we discussed, the City has a separate federally funded project that will widen Indian Canyon Drive to its full width extending south over the Union Pacific Railroad (UPRR). This project will widen Indian Canyon Drive to a 6-lane divided roadway (divided with a painted median), transitioning to match the existing 2-lane divided roadway south of the UPRR bridge. A third separate federally funded project will extend the widening of Indian Canyon Drive, to its ultimate 4-lane divided roadway width, through the Whitewater River south into Palm Springs.

At the time your property is developed, it will require modification of Indian Canyon Drive to provide a full, signalized access point into your property. Your property is designated as "Regional Business Center" (RBC), a higher density land use created in the 2007 General Plan Update. Given this land use designation, the City anticipates your property will be developed with higher intensity industrial, office and commercial uses that relate to the close proximity with Interstate 10. These land uses will likely generate significant volumes of traffic, and as such, the City acknowledges that if developed consistent with the RBC land use designation, full signalized access from Indian Canyon Drive will be required. The location of the signalized access is to be determined.

The City has no written policy on the spacing of signalized intersections, however it is generally accepted that the minimum spacing between traffic signals should be one-eighth ( $\frac{1}{8}$ ) mile (660 feet). It would be possible to locate a signalized intersection to your property at  $\frac{1}{8}$  mile or more south of Garnet Avenue, provided you (or a future property owner) are successful in acquiring the UPRR surplus land (identified by APN 669-060-012)<sup>1</sup>. Absent acquisition of the UPRR property, development of your property will be challenging and the location of a signalized intersection may have to occur closer to Garnet Avenue than the  $\frac{1}{8}$  mile minimum guideline.

---

<sup>1</sup> Note that I have initiated an inquiry with UPRR staff to determine who at UPRR is responsible for coordinating sale of surplus UPRR property, by e-mail dated January 29, 2009, to which you were copied.

Mr. Robert Miner  
January 29, 2009  
Page 3

As there are no development plans for your property, it is impossible for me to guarantee you a specific location on Indian Canyon Drive for a full, signalized access point. However, the point being made here is that one will be necessary to ensure development of your property to its full potential under the RBC land use designation is possible.

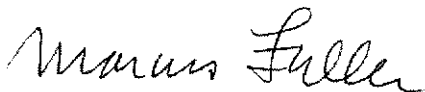
At the time a development is proposed on your property, a full analysis of the proposed access points to Garnet Avenue and Indian Canyon Drive, layout of internal streets and/or parking lots, and traffic impacts generated by the development will occur. It is during the City's entitlement process where your property will be granted specific rights, consistent with the proposed development and the traffic analysis that justifies the required access. Those access rights will be granted consistent with those generally identified in this letter: full access to Garnet Avenue consistent with existing access points / driveways along Garnet Avenue; and (1) signalized access point on Indian Canyon Drive.

As requested, I have enclosed copies of the latest plans for the planned Interchange improvements that affect your property.

As I recall from our discussion of January 15, 2009, you have tentatively agreed to the City's offer to acquire the rights-of-way and temporary construction easements, subject to receipt of this letter outlining the City's expectation of access rights to be afforded your property. With this understanding, I have asked Riverside County to forward to you the formal acquisition package for your approval. I am available to meet with you during your next visit to Palm Springs, February 7 - 14; please contact me so I might arrange a meeting date and time.

If you have any questions, I can be reached at (760) 323-8253, extension 8744, or by e-mail at [Marcus.Fuller@palmsprings-ca.gov](mailto:Marcus.Fuller@palmsprings-ca.gov).

Sincerely,



Marcus L. Fuller, P.E., P.L.S.  
Assistant Director of Public Works/  
Assistant City Engineer

cc: file

# **ATTACHMENT 2**

**TEMPORARY CONSTRUCTION EASEMENT AGREEMENT**

PROJECT: Indian Canyon Drive Widening and  
Bridge Replacement @ UPRR  
Federal Project No. BRLO-5282(017)  
City Project No. 01-11

APN(s): 669-060-022

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT, (the "Agreement"), is hereby made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the **City of Palm Springs, a California charter city and municipal corporation**, organized and existing in the County of Riverside, under and by virtue of the laws of the State of California, hereinafter designated as the "City" and/or "Grantee", **Robert W. Miner, Jr., as Sole Successor Trustee of the Robert Wilson Miner Trust dated April 13, 1998**, hereinafter designated as the "Grantor". City/Grantee and Grantor are individually referred to as "Party" and are collectively referred to as the "Parties".

**RECITALS**

A. Grantor is the owner of certain real property located in the City of Palm Springs, (the "City"), the County of Riverside, (the "County"), State of California, (the "State"), which is identified by Assessor Parcel Number(s) **669-060-022**, (referred to as the "Property").

B. Grantee desires to obtain from Grantor a temporary construction easement over a portion of the Property, and Grantor hereby agrees to authorize Grantee and its assignees, including its contractor(s), to enter, for a limited duration and term subject to the conditions herein this Agreement, a portion of the Property as described on the attached legal description, referenced as Exhibit "A", and shown on the attached map, referenced as Exhibit "B", (the "**Easement Area**"), which are attached hereto and incorporated herein by reference.

C. The Parties desire by this Agreement to provide the terms and conditions for the Grantee's acquisition from Grantor of a Temporary Construction Easement, as defined below, over the Easement Area.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of performance by the Parties of the promises, covenants, and conditions herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Grantor hereby grants to City and its assignees, including its contractor(s), the right to enter upon and use Grantor's Property in the City of Palm Springs, Riverside County, State of California, described as Assessor's Parcel Number(s)

**669-060-022** for all purposes necessary to facilitate and accomplish the construction and installation of various public street improvements ("**Temporary Construction Easement**") associated with the **Indian Canyon Drive Widening and Bridge Replacement @ UPRR, Federal Project No. BRLO-5282 (017), City Project No. 01-11 ("Project")**.

2. The Temporary Construction Easement, used during construction of the Project consists of approximately **6,899** square feet as described on the attached legal description, referenced as Exhibit "A", and shown on the attached map, referenced as Exhibit "B" (hereinafter the "**Easement Area**").
3. It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this Agreement, the right of possession and use of the Easement Area by the Grantee, including the right to remove and dispose of improvements, shall commence upon the close of escrow controlling this transaction, and the amount shown in Section 13 herein includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date. The rental period of Temporary Construction Easement will begin on **July 1, 2017** and will expire on **July 1, 2022**. Upon the City's recordation of a Notice of Completion for the Project with the Riverside County Recorder's Office, the Temporary Construction Easement granted herein shall be automatically surrendered by Grantee, and Grantee's interests thereto shall be automatically reverted to Grantor as if quitclaimed by Grantee, and shall no longer represent any title interest of or to Grantor's Property. Nevertheless, if requested by Grantor following such termination, City will execute a quitclaim deed confirming such termination.
4. The rights granted herein include the right to enter upon and to pass and repass over and along the Easement Area, and to deposit tools, implements and other materials thereon by City, or its successors and assigns, its officers, agents and employees, and by persons or entities under contract with City, its successors and assigns, wherever and whenever necessary for the purpose of completing the Project in accordance with applicable laws. The City's activities may involve surveying, staking, excavation, grading, and other related uses that are reasonably required to construct the Project. City agrees not to damage Grantor's property in the process of performing such activities. At all times during the term of this Agreement (and during construction of the Project), Grantor's property will remain accessible for Grantor's ingress and egress.
5. At the termination of the period of use of Grantor's land by City, but before its relinquishment to Grantor, debris generated by City's use will be removed and the surface will be graded and left in a neat condition, as close to the condition of Grantor's land that existed as of the time of the execution. The City will not commit or permit the commission by others of any waste within the Temporary Construction Easement area, and the City will not maintain, commit, or permit the maintenance or commission of any nuisance as defined by California Civil Code § 3479, within said area.

6. Any notice to be given or other document or documents to be delivered to either Party by the other hereunder may be delivered in person or may be deposited in the United States Mail in the State of California, duly registered or certified, with postage prepaid, and addressed as follows:

If to Grantee, to:

Attn: City Clerk  
City of Palm Springs  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262  
Facsimile No.: (760) 322-8332  
Telephone No.: (760) 323-8204

If to Grantor, to:

Robert W. Miner Jr.  
PO Box 190266  
Anchorage, AK 99519

7. City hereby agrees to indemnify and hold harmless the Grantor, its successors and assigns, from any loss damage, and/or liability either resulting from and/or arising out of the City's, City's employees, agents and/or contractors possession, use, and/or activities performed in or about the Temporary Construction Easement area.

City shall indemnify, defend, protect, and hold harmless, the Grantor and its successors and assigns, from any and all claims, demands, judgments, penalties, fines, costs, liabilities, damages, losses, or expenses including, without limitation, site repair, restoration and/or remediation costs following or as a part of environmental response actions, any request by any governmental agency to remediate contamination of any portion of the Temporary Construction Easement area, the soil, and/or ground water or other property, damages for the loss or restriction on the use of the Temporary Construction Easement area, settlement of claims, attorneys' fees, consultant fees, expert fees, which arise either during or after the expiration of the Temporary Construction Easement from or in connection with an actual deposit, release, or discharge by the City, its agents, employees, contractors, or invitees, of any chemicals or hydrocarbons in or about the Temporary Construction Easement area and/or the City's removal and disposition of any property from the Temporary Construction Easement area.

At all times during the term of the Agreement the City will keep and maintain at its own expense, adequate commercial general public liability and property damage insurance coverage, naming the Grantor as an "additional insured" with

public liability limits not less than Five Million Dollars (\$5,000,000). The City will maintain Workers Compensation Insurance and Employer's Liability Insurance for itself and its employees, and will require coverage for its agents, contractors, and invitees who may enter upon, possess and/or use any portion of the Temporary Construction Easement area where said entrance, possession and/or use is at the specific direction of the City.

8. Grantor hereby warrants that they are the owners of the Property described above and that they have the right to grant City, its successors or assigns, permission to enter upon and use the Easement Area.
9. This Agreement is the result of negotiations between the Parties hereto. This Agreement is intended by the Parties as a final expression of their understanding with respect to the matters herein, and is a complete and exclusive statement of the terms and conditions thereof.
10. This Agreement shall not be changed, modified, or amended except upon the written consent of the Parties hereto.
11. This Agreement supersedes any and all other prior agreements or understandings, oral or written, in connection therewith.
12. Grantor, its assigns and successors in interest, shall be bound by all the terms and conditions contained in this Agreement, and all the Parties thereto shall be jointly and severally liable thereunder in accordance with Civil Code Section 1468.
13. City shall pay to Grantor the total sum of **Twenty-Five Thousand Twenty-Nine Dollars and Zero cents (\$25,029)**, (the "Rental Price"), for the right to enter upon and use Grantor's land in accordance with the terms hereof. Grantor hereby expressly and unconditionally waives any and all claims for damages, relocation assistance benefits, severance damages, interest, loss of goodwill, claims for inverse condemnation or unreasonable pre-condemnation conduct, or any other compensation or benefits, other than for payment of the Rental Price, it being understood that the Rental Price constitutes complete and full settlement of all acquisition claims, liabilities, or benefits of any type or nature whatsoever, whether known or unknown as of the date of this Agreement, relating to or in connection with the Temporary Construction Easement or any other rights granted under this Agreement. Payment shall be made within thirty (30) days after execution of this Agreement, or pursuant to the terms of and through the close of escrow if acquisition of the Temporary Construction Easement is associated with the City's acquisition from Grantor of permanent right-of-way over a portion of the Property.

Grantor hereby acknowledges that it has been advised by its attorney and is familiar with the provisions of California Civil Code section 1542, which provides as follows:

"A general release does not extend to claims which the Creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

By signing below, Grantor acknowledges that it may have sustained damage, loss, costs or expenses which are presently unknown and unsuspected, and such damage, loss, costs or expenses which may have been sustained, may give rise to additional damage, loss, costs or expenses in the future. Nevertheless, Grantor hereby acknowledges that this Agreement has been negotiated and agreed upon in light of that situation, and hereby expressly waives any and all rights which it may have under California Civil Code section 1542, or under any statute or common law or equitable principal of similar effect, except as set forth in this Section 13.

***[SIGNATURE PAGE FOLLOWS]***



**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date and year first above written.

**GRANTEE:**

**CITY OF PALM SPRINGS, a California charter city and municipal corporation**

By: \_\_\_\_\_  
David H. Ready, City Manager

**ATTEST:**

By: \_\_\_\_\_  
James Thompson, City Clerk

**APPROVED AS TO FORM:**

**WOODRUFF, SPRADLIN & SMART**

By: \_\_\_\_\_  
Douglas C. Holland, Esq., City Attorney

**GRANTOR:**

**Robert W. Miner, Jr., as Sole Successor Trustee of the Robert Wilson Miner Trust dated April 13, 1998**

By: \_\_\_\_\_  
Robert W. Miner, Jr., Sole Successor Trustee

**Exhibit List**

- Exhibit A -- Legal Description of the Easement Area
- Exhibit B -- Depiction of Easement Area

**Exhibit "A"**

**LEGAL DESCRIPTION OF THE EASEMENT AREA**

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 \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature

My Commission Expires: \_\_\_\_\_ This area for official notarial seal

EXHIBIT "A"  
TEMPORARY CONSTRUCTION EASEMENT  
APN 669-060-022

THAT PORTION OF LOT "B" OF LOT LINE ADJUSTMENT NO. 98-01, RECORDED JUNE 22, 1998 AS DOCUMENT NO. 254046 OF OFFICIAL RECORDS, SAID LAND BEING A PORTION OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY UNITED STATES GOVERNMENT SURVEY APPROVED FEBRUARY 29, 1856, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE INTERSECTION OF THE CENTER LINE OF SOUTHERN PACIFIC RAILROAD WITH THE CENTER LINE OF INDIAN CANYON DRIVE (FORMERLY INDIAN AVENUE) AS SHOWN ON RECORD OF SURVEY FILED IN BOOK 18 OF RECORDS OF SURVEY AT PAGE 2 ON AUGUST 20, 1951; THENCE ALONG THE CENTER LINE OF SAID INDIAN CANYON DRIVE NORTH 00°19'08" EAST 1136.57 FEET TO AN ANGLE POINT THEREIN, SAID POINT BEING THE ONE-SIXTEENTH SECTION CORNER OF SAID SECTION; THENCE CONTINUING ALONG SAID CENTER LINE NORTH 00°19'24" EAST 610.27 FEET TO THE NORTHERLY LINE OF THAT CERTAIN RIGHT OF WAY CONVEYED FROM DAVID MARGOLIUS, ET UX, TO SOUTHERN CALIFORNIA GAS COMPANY AND SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA, BY DEED RECORDED MAY 10, 1947 IN BOOK 825 PAGE 555 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY; THENCE LEAVING SAID CENTER LINE ALONG SAID NORTHERLY LINE NORTH 86°28'57" WEST 50.08 FEET TO THE SOUTHEAST CORNER OF SAID LOT "B" BEING A POINT ON A LINE PARALLEL WITH AND DISTANT 50.00 FEET WESTERLY OF THE EASTERLY LINE OF SAID NORTHEAST QUARTER OF SECTION 22, SAID EASTERLY LINE ALSO BEING THE CENTER LINE OF SAID INDIAN CANYON DRIVE; THENCE ALONG THE EASTERLY LINE OF SAID LOT NORTH 00°19'24" EAST 312.34 FEET TO THE NORTHEAST CORNER OF SAID LOT; THENCE ALONG THE NORTHERLY LINE OF SAID LOT NORTH 76°08'20" WEST 6.17 FEET TO THE **TRUE POINT OF BEGINNING**;

1. THENCE LEAVING SAID NORTHERLY LINE SOUTH 00°19'24" WEST 77.41 FEET;
2. THENCE NORTH 89°44'58" WEST 3.00 FEET;
3. THENCE SOUTH 00°19'24" WEST 3.00 FEET
4. THENCE SOUTH 89°44'58" EAST 3.00 FEET;
5. THENCE SOUTH 00°19'24" WEST 233.04 FEET TO THE SOUTHERLY LINE OF SAID LOT;
6. THENCE ALONG SAID SOUTHERLY LINE NORTH 86°28'57" WEST 25.66 FEET;
7. THENCE LEAVING SAID SOUTHERLY LINE NORTH 00°19'10" EAST 170.88 FEET;
8. THENCE SOUTH 89°40'50" EAST 10.00 FEET;
9. THENCE NORTH 00°19'10" EAST 94.18 FEET;
10. THENCE NORTH 89°40'50" WEST 5.36 FEET;
11. THENCE NORTH 00°19'24" EAST 52.02 FEET TO SAID NORTHERLY LINE OF SAID LOT "B";
12. THENCE ALONG SAID NORTHERLY LINE SOUTH 76°08'20" EAST 21.60 FEET TO THE **TRUE POINT OF BEGINNING**.

EXHIBIT "A"  
TEMPORARY CONSTRUCTION EASEMENT  
APN 669-060-022

AREA = 6,899 SQUARE FEET, MORE OR LESS

SEE EXHIBIT "B" ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE  
BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. MULTIPLY  
DISTANCES SHOWN BY 1.00002570 TO OBTAIN GROUND DISTANCES.

SIGNATURE Michael A Havener 11-30-2015  
MICHAEL A. HAVENER DATE  
PLS 7354



**Exhibit "B"**

DEPICTION OF THE EASEMENT AREA

# EXHIBIT "B"

LOT "B"  
 L.L.A. 98-01  
 INST. NO. 254046 O.R.  
 APN 669-060-022  
 POR. NE 1/4  
 SEC. 22  
 T. 3 S., R. 4 E.  
 S.B.M.

SEE SHEET 3

**APN 669-060-022 NON-PLOTTABLE EASEMENTS**  
 RIGHT-OF-WAY FOR DITCHES OR CANALS  
 CONSTRUCTED BY THE AUTHORITY OF THE UNITED  
 STATES AND RESERVING UNTO THE UNITED STATES,  
 ITS PERMITTEES OR LICENSEES, THE RIGHT TO  
 OCCUPY AND USE ANY PART OF SECTION 22 LYING  
 WITHIN FIFTY FEET OF THE CENTER LINE OF THE  
 TRANSMISSION LINE RIGHT-OF-WAY OF THE  
 COACHELLA VALLEY ICE AND ELECTRIC COMPANY  
 REC. 11/23/1921 IN BK. 8, PG. 204 OF PATENTS.  
 A POLE LINE EASEMENT IN FAVOR OF THE  
 SOUTHERN CALIFORNIA TELEPHONE CO. REC.  
 7/10/1933 IN BK. 131, PG. 119 O.R.

A UTILITY EASEMENT IN FAVOR  
 OF THE SOUTHERN CALIFORNIA  
 GAS CO. REC. 5/10/1947 IN  
 BK. 825, PG. 555 O.R.

## LEGEND



TEMPORARY CONSTRUCTION EASEMENT (TCE)  
 AREA = 6,899 SQ. FT., MORE OR LESS

P.O.C. POINT OF COMMENCEMENT

INDIAN CANYON DR.  
 (INDIAN AVE.)

SEC. 22  
 SEC. 23

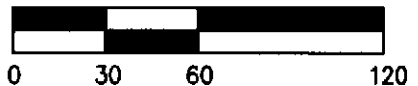
SEE SHEET 2

50'

610.27'  
 N 00°19'24" E

1136.57'  
 N 00°19'08" E

MULTIPLY DISTANCE BY 1.00002570  
 TO OBTAIN GROUND DISTANCES



P.O.C.  
 INT. OF THE CENTER LINE OF  
 INDIAN CANYON DR. (INDIAN AVE.)  
 AND SOUTHERN PACIFIC RAILROAD  
 AS SHOWN ON ROS 18/2

SHEET 1 OF 3 SHEETS



REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 60'
DRAWN BY: KA	DATE: 4-27-15		DOC. NO.
CHECKED BY: MH	DATE: 11-30-15	INDIAN CANYON DRIVE WIDENING APN 669-060-022 ROBERT WILSON MINER TRUST, DATED 4/13/1998	DWG. NO.
APPROVED BY:	DATE:		

SEE SHEET 3

LOT "B"  
L.L.A. 98-01  
INST. NO. 254048 O.R.

APN 669-060-022

POR. NE 1/4

SEC. 22

T. 3 S., R. 4 E.

S.B.M.

A UTILITY EASEMENT IN FAVOR  
OF THE SOUTHERN CALIFORNIA  
GAS CO. REC. 5/10/1947 IN  
BK. 825, PG. 555 O.R.

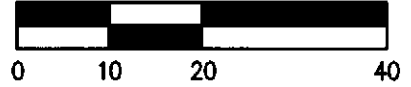
A POLE LINE EASEMENT IN FAVOR  
OF CALIFORNIA ELECTRIC POWER  
CO. REC. 6/02/1947 IN BK. 839,  
PG. 119 O.R. NO WIDTH GIVEN.

**LEGEND**



TEMPORARY CONSTRUCTION EASEMENT (TCE)  
AREA = 6,899 SQ. FT., MORE OR LESS

T.P.O.B. TRUE POINT OF BEGINNING



INDIAN CANYON DR.  
(INDIAN AVE.)

SEC. 22  
SEC. 23



170.88'

233.04'

312.34'

N 00°19'10" E

S 00°19'24" W

N 00°19'24" E

N 86°28'57" W  
25.66'

S 86°28'57" E

6.01'

N 86°28'57" W 50.08'

610.27'  
N 00°19'24" E

SHEET 2 OF 3 SHEETS

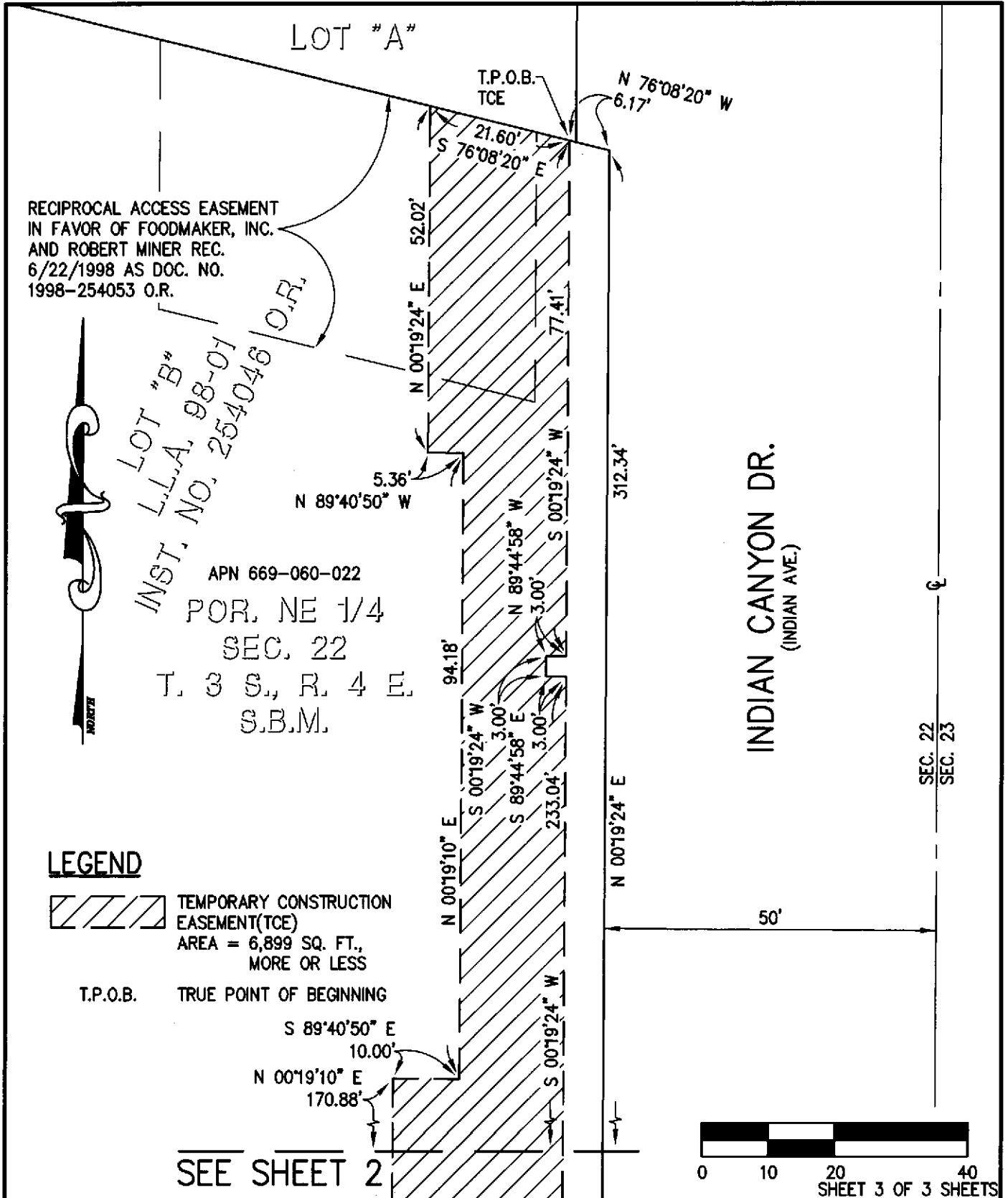
REVISED BY:	DATE:
DRAWN BY: KA	DATE: 4-27-15
CHECKED BY: MH	DATE: 11-30-15
APPROVED BY:	DATE:

**CITY OF PALM SPRINGS**

INDIAN CANYON DRIVE WIDENING  
APN 669-060-022  
ROBERT WILSON MINER TRUST, DATED 4/13/1998

SCALE 1" = 20'
DOC. NO.
DWG. NO.





RECIPROCAL ACCESS EASEMENT  
 IN FAVOR OF FOODMAKER, INC.  
 AND ROBERT MINER REC.  
 6/22/1998 AS DOC. NO.  
 1998-254053 O.R.



LOT "B"  
 L.L.A. 98-01  
 INST. NO. 254046 O.R.

APN 669-060-022  
 POR. NE 1/4  
 SEC. 22  
 T. 3 S., R. 4 E  
 S.B.M.

**LEGEND**

- TEMPORARY CONSTRUCTION EASEMENT(TCE)  
 AREA = 6,899 SQ. FT., MORE OR LESS
- T.P.O.B. TRUE POINT OF BEGINNING

SEE SHEET 2



REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 20'
DRAWN BY: KA	DATE: 4-27-15		DOC. NO.
CHECKED BY: MH	DATE: 11-30-15	INDIAN CANYON DRIVE WIDENING APN 669-060-022 ROBERT WILSON MINER TRUST, DATED 4/13/1998	DWG. NO.
APPROVED BY:	DATE:		

# **ATTACHMENT 3**

Project: Indian Cyn. Drive Widening and Bridge Replacement @ UPRR  
Project No.: Federal Project No. BRLO 5282 (017), City Project No. 01-11  
APN: 669-060-026, 669-070-004

## RIGHT OF WAY AGREEMENT FOR CONVEYANCE OF REAL PROPERTY AND ESCROW INSTRUCTIONS

THIS AGREEMENT FOR CONVEYANCE OF REAL PROPERTY AND ESCROW INSTRUCTIONS, (the "Agreement"), is made and entered into as of \_\_\_\_\_, 20\_\_, by and between the **CITY OF PALM SPRINGS**, a California charter City and municipal corporation, ("Buyer"), and **Robert W. Miner, Jr., as Sole Successor Trustee of the Robert Wilson Miner Trust, dated April 13, 1998,** ("Seller"), with references to the following facts. Buyer and Seller are individually referred to as "Party," and collectively referred to as the "Parties".

### RECITALS

A. Seller is the owner of certain real property located in the City of Palm Springs, (the "City"), the County of Riverside, (the "County"), State of California, (the "State"), which is identified by Assessor Parcel Number(s) **669-060-026, 669-070-004**, (referred to as the "Property").

B. Buyer desires to acquire from Seller a portion of the Property, more particularly described and depicted on **Exhibits A-1, A-2, A-3, A-4, A-5 and A-6, and B-1, B-2, B-3, B-4, B-5 and B-6** attached hereto, (collectively referred to as the "Rights-of-Way"), for various public purposes including street rights-of-way and public utilities.

C. Seller desires to convey to Buyer, and Buyer desires to acquire from Seller the Rights-of-Way in accordance with the terms and conditions contained in this Agreement.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by Seller, Buyer and Seller hereby agree as follows:

### AGREEMENT

#### 1. PURCHASE AND SALE.

1.1 Agreement to Buy and Sell. Subject to the terms and conditions set forth herein, Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to acquire and purchase from Seller, the Rights-of-Way. As used herein the "Rights-of-Way" shall include the real property legally described on **Exhibits A-1, A-2, A-3, A-4, A-5 and A-6** and depicted on **Exhibit B-1, B-2, B-3, B-4, B-5 and B-6** and all of Seller's right, title and

interest in and to any and all entitlements, tenements, hereditaments, easements, easement rights, rights to half-widths of all adjacent public streets and public rights of way, mineral rights, oil and gas rights, water, water rights, air rights, development rights and privileges appurtenant thereto and all improvements located thereon.

1.2 Purchase Price. The purchase price, ("**Purchase Price**"), for the Rights-of-Way shall be **Sixty-Eight Thousand Five Hundred Twenty-Four Dollars and Zero Cents (\$68,524)** payable as cash at closing, plus applicable escrow, associated fees, and other charges.

1.3 Full and Complete Settlement. Seller hereby acknowledges that the compensation paid to Seller through this Agreement constitutes the full and complete settlement of any and all claims against Buyer, by reason of Buyer's acquisition of the Rights-of-Way, specifically including, but not limited to, any and all rights or claims that Seller has, may have or may in the future have under Article 1, Section 19 of the California Constitution, the Eminent Domain Law, or any other law or regulation, except as provided herein Seller, on behalf of itself and its successors and assigns, hereby expressly and unconditionally waives and releases and discharges Buyer and any and all of Buyer's employees, agents, officers, servants, representatives, contractors, attorneys, partner agencies and assigns from liability in regard to any and all claims for damages, severance damages, interest, loss of goodwill, lost profits, lost rents, damages to or loss of improvements pertaining to the realty, machinery, fixtures, inventory, equipment and/or personal property, claims for inverse condemnation, pre-condemnation damages, any right to challenge Buyer's adoption of a resolution of necessity, any right to receive notices pursuant to Code of Civil Procedure section 1245.235, any right to enforce any obligation placed upon Buyer pursuant to the Eminent Domain Law, any other rights conferred upon Seller pursuant to the Eminent Domain Law, any claims for litigation expenses, attorney's fees, statutory interest and/or costs or any other compensation or benefits, other than for payment of the Purchase Price, it being understood that the Purchase Price constitutes complete and full settlement of all acquisition claims, liabilities, or benefits of any type or nature whatsoever, whether known or unknown as of the date of this Agreement, relating to or in connection with the Rights-of-Way or any other rights granted under this Agreement.

## 2. ESCROW AND CLOSING.

2.1 Opening of Escrow. Within fourteen (14) business days after execution of this Agreement by the last of Seller or Buyer, Buyer shall open an escrow, (the "**Escrow**"), with Lawyers Title & Escrow, at the address set forth in Section 7.12, ("**Escrow Holder**"), by depositing with Escrow Holder this Agreement fully executed, or executed counterparts hereof. The date this fully executed Agreement is signed and accepted by Escrow Holder on the last page hereof shall be deemed the "**Opening of Escrow**" and Escrow Holder shall advise Buyer and Seller of such date in writing. The escrow instructions shall incorporate this Agreement as part thereof and shall contain such other standard and usual provisions as may be required by Escrow Holder, provided, however, that no escrow instructions shall modify or amend any provision of this Agreement, unless expressly set

forth in writing by mutual consent of Buyer and Seller. In the event there is a conflict between any such standard or usual provisions and the provisions of this Agreement, the provisions of this Agreement shall control.

2.2 Escrow Fees and Other Charges. At the Close of Escrow, Buyer agrees to pay all of Seller's and Buyer's escrow fees, charges and costs incurred in this transaction.

2.3 Closing Date; Conditions Precedent to Close of Escrow. Provided all of the conditions precedent set forth in this Section 2.3 have been satisfied (or are in a position to be satisfied concurrently with the Close of Escrow), the Close of Escrow shall occur on or before July 1, 2017 (the "**Closing Date**"), unless otherwise extended by mutual agreement. As used in this Agreement, the "**Close of Escrow**" shall mean the date a Grant Deed, Right-of-Way Easement, Slope Easement, Drainage Easement, City Access Easement, and Southern California Gas Access Easement as provided in Section 2.4.2(a) hereof ("**Grant Deed, Right-of-Way Easement, Slope Easement, Drainage Easement, City Access Easement, Southern California Gas Access Easement**"), is recorded in the Official Records of the County.

2.3.1 Conditions to Buyer's Obligations. The Close of Escrow and Buyer's obligation to purchase the Rights-of-Way are subject to the satisfaction of the following conditions or Buyer's written waiver of such conditions on or before the Closing Date. Buyer may waive in writing any or all of such conditions in its sole and absolute discretion.

(a) The Purchase Price shall have been determined in accordance with Section 1.2; and

(b) Seller shall have performed all obligations to be performed by Seller pursuant to this Agreement; and

(c) No event or circumstance shall have occurred which would make any of Seller's representations, warranties and covenants set forth herein untrue as of the Close of Escrow; and

(d) There shall have occurred no material adverse change in the physical condition of the Property (such as those caused by natural disasters) which would render the Rights-of-Way unsuitable for Buyer's intended use or which would materially increase the cost or cause a material delay in the schedule for Buyer's planned improvements of the Rights-of-Way; and

(e) The Title Company shall be committed to issue to Buyer, as of the Closing Date, the Title Policy (defined below) covering the Rights-of-Way, subject only to the Permitted Exceptions; and

(f) All monetary encumbrances, if any, shall have been reconveyed and title shall be conveyed free of all monetary encumbrances. Title to the Rights-of-Way shall be conveyed to Buyer free and clear of all recorded and unrecorded

liens, encumbrances, assessments, easements, leases and taxes except for any non-delinquent taxes for the fiscal year in which this transaction closes which shall be cleared and paid in the manner required by Section 4986 of the Revenue and Taxation Code, if unpaid at the close of this transaction.

2.3.2 Conditions to Seller's Obligations. The Close of Escrow and Seller's obligation to sell and convey the Rights-of-Way are subject to the satisfaction of the following conditions or Seller's written waiver of such conditions on or before the Closing Date. Seller may waive in writing any or all of such conditions as a condition to the Close of Escrow in its sole and absolute discretion.

(a) The Purchase Price shall have been determined in accordance with Section 1.2;

(b) Buyer shall have performed all obligations to be performed by Buyer pursuant to this Agreement; and

(c) No event or circumstance shall have occurred which would make any of Buyer's representations, warranties and covenants set forth herein untrue as of the Close of Escrow.

2.3.3 Waiver of a Condition Does Not Excuse Performance. If any condition precedent to the Close of Escrow is expressly waived, in writing, as a condition to the Close of Escrow by the Party for whose benefit such condition exists, then, to the extent such condition is capable of being satisfied following the Close of Escrow, such condition shall become a condition subsequent to the Close of Escrow and shall be satisfied by the party whose performance is required to satisfy such condition as soon as reasonably possible following the Close of Escrow.

2.4 Closing Documents. The parties shall deposit the following with Escrow Holder prior to the Close of Escrow:

2.4.1 Buyer's Deposits. Buyer shall deposit:

(a) The Purchase Price together with Buyer's escrow and other cash charges; and

(b) A Certificate of Acceptance for the Grant Deed, Right-of-Way Easement, Slope Easement, Drainage Easement, City Access Easement, Southern California Gas Access Easement in a legally sufficient form typically used by Buyer.

2.4.2 Seller's Deposits. Seller shall deposit:

(a) The Grant Deed, Right-of-Way Easement, Slope Easement, Drainage Easement, City Access Easement, and Southern California Gas Access Easement in the form of Exhibit C-1, C-2, C-3, C-4, C-5 and C-6 attached hereto; and

(b) Subject to Section 2.5.1 below, an executed Affidavit of Non-foreign Status in the form of Exhibit D attached hereto and such other documentation necessary to exempt Seller from the withholding requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder; and

(c) Subject to Section 2.5.1 below, a Withholding Exemption Certificate Form 593 as contemplated by California Revenue and Taxation Code §18662 (the "**Withholding Affidavit**") duly executed by Seller.

2.4.3 Deposits of Additional Instruments. Seller and Buyer shall each deposit such other instruments as are reasonably required by Escrow Holder or otherwise required to proceed to the Close of Escrow and consummate the conveyance of the Rights-of-way from Seller to Buyer in accordance with the terms of this Agreement.

## 2.5 Closing.

2.5.1 Withholding. In the event that, pursuant to Section 2.4.2(b) above, Seller fails to deposit with Escrow Holder the executed Affidavit of Non-foreign Taxpayer Status which exempts Seller from the withholding requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder, Seller hereby authorizes Escrow Holder to withhold ten percent (10%) of the Purchase Price of the Rights-of-Way less any applicable closing costs and to report and transmit the withheld amount to the Internal Revenue Service. Additionally, in the event that, pursuant to Section 2.4.2(c) above, Seller fails to deposit with Escrow Holder any applicable tax document which exempts Buyer from California withholding requirements, if any, Seller hereby authorizes Escrow Holder to withhold such additional percentage of the Purchase Price of the Rights-of-Way as is required by California law, and Escrow Holder shall report and transmit the withheld amount in the manner required by California law. By agreeing to act as Escrow Holder hereunder, Escrow Holder expressly agrees to undertake and be responsible for all withholding obligations imposed pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder and under any similar provisions of California law, and shall defend, indemnify and hold Buyer harmless in connection with such obligations.

2.5.2 Necessary Actions of Escrow Holder. On the Close of Escrow, Escrow Holder shall: (i) record the Grant Deed, Right-of-Way Easement, Slope Easement, Drainage Easement, City Access Easement, Southern California Gas Access Easement in the Office of the County Recorder of the County, (ii) pay any transfer taxes, (iii) instruct the County Recorder to return the Grant Deed, Right-of-Way Easement, Slope Easement, Drainage Easement, City Access Easement, and Southern California Gas Access Easement to Buyer, (iv) distribute to Seller the Purchase Price, and (v) deliver to Buyer the Title Policy covering the Rights-of-Way subject only to the Permitted Exceptions, the Affidavit of Non-foreign Status and the applicable California withholding exemption form, if any.

2.5.3 Taxes and Assessments. Real property taxes and assessments shall be prorated as of the Close of Escrow on the basis of the most recent tax information and such proration shall be final. Said prorations shall be based on a three hundred sixty-five (365) day year.

2.5.4 Title and Possession. Upon the Close of Escrow, title to and exclusive possession of the Property shall be conveyed to Buyer, subject only to the Permitted Exceptions.

### 3. ACTIONS PENDING CLOSING.

#### 3.1. Title Review.

3.1.1 Title Report. Within three (3) business days after the Opening of Escrow, Lawyers Title & Escrow (the "**Title Company**") will furnish Buyer and Seller with an updated Title Commitment on the Property together with legible copies of all documents referenced therein as exceptions to title and a plot plan for the Property showing all the locations of all easements referenced therein (collectively, the "**Title Commitment**").

3.1.2 Title Notices. Buyer shall have ten (10) business days after its actual receipt of the Title Commitment to deliver to Escrow Holder written notice (the "**Preliminary Title Notice**") of Buyer's approval, conditional approval or disapproval of the title matters disclosed in the Title Commitment. All matters not timely approved by Buyer will be deemed disapproved. All such exceptions disapproved by Buyer are referred to herein as "**Disapproved Exceptions**". All monetary encumbrances are hereby deemed Disapproved Exceptions and shall be removed and satisfied at the Close of Escrow.

3.1.3 Permitted Exceptions. "**Permitted Exceptions**" shall mean all exceptions appearing on the Title Commitment which are: (i) standard printed exceptions in the Title Policy issued by Title Company; (ii) general and special real property taxes and assessments, a lien not yet due and payable; and (iii) any other liens, easements, encumbrances, covenants, conditions and restrictions of record approved, or expressly waived by Buyer pursuant to this Section 3.1.

3.2. Title Policy. Buyer's obligation to proceed to the Close of Escrow shall be conditioned upon the commitment by Title Company to issue an ALTA Standard Coverage Owner's Policy of Title Insurance (the "**Standard Coverage Policy**"), showing title to the Property vested in Buyer with liability equal to the Purchase Price, subject only to the Permitted Exceptions. At Buyer's option, Buyer may require an ALTA Extended Coverage Owner's Policy instead of the Standard Coverage Policy provided that Buyer pays any additional premium on account thereof. The form of title policy selected by Buyer shall be referred to herein as the "**Title Policy**".

3.3. Possession and Use. It is mutually understood and agreed by and between the parties hereto that the right of possession and use of the Property by the Buyer, including the right to remove and dispose of improvements, shall commence upon the



close of escrow. The Purchase Price includes, but is not limited to, full payment for such possession and use.

3.4. Seller's Covenant Not to Further Encumber the Property. Seller shall not, directly or indirectly, alienate, encumber, transfer, option, lease, assign, sell, transfer or convey its interest or any portion of its interest in the Property, or any portion thereof, or enter into any agreement to do so, so long as this Agreement is in force. Seller shall timely discharge, prior to the Closing, any and all obligations relating to work performed on or conducted at or materials delivered to or for the Property from time to time by Seller, or at Seller's direction or on its behalf, in order to prevent the filing of any claim or mechanic's lien with respect to such work or materials.

3.5. Loss or Damage to Improvements. Loss or damage to the Property, including any improvements existing thereon as of the date of this Agreement, by fire or other casualty, occurring prior to the recordation of the Grant Deed, Right-of-Way Easement, Slope Easement, Drainage Easement, City Access Easement, Southern California Gas Access Easement shall be at the risk of Seller. In the event that loss or damage to the Property, or any such improvements thereon, by fire or other casualty, occurs prior to the recordation of the Grant Deed, Right-of-Way Easement, Slope Easement, Drainage Easement, City Access Easement, and Southern California Gas Access Easement Buyer may elect to require that the Seller pay to Buyer the proceeds of any insurance policy or policies which may become payable to Seller by reason thereof, or to permit such proceeds to be used for the restoration of the damage done, or to reduce the Purchase Price by an amount equal to the diminution in value of the Property by reason of such loss or damage or the amount of insurance payable to Seller, whichever is greater.

#### 4. REPRESENTATIONS, WARRANTIES AND COVENANTS.

4.1. Seller's Representations, Warranties and Covenants. In addition to the representations, warranties and covenants of Seller contained in other sections of this Agreement, Seller hereby represents, warrants and covenants to Buyer as follows, all of which shall survive the Close of Escrow:

4.1.1 Seller's Authority. Seller is the sole owner in fee simple absolute of the Property and has the full right, capacity, power and authority to enter into and carry out the terms of this Agreement. Seller has not alienated, encumbered, transferred, leased, assigned or otherwise conveyed its interest in the Property or any portion thereof except as set forth in the Title Commitment, nor entered into any Agreement to do so, nor shall Seller do so during the term of this Agreement. The entering into and performance by Seller of the transactions contemplated by this Agreement will not violate or breach any other agreement, covenant or obligation binding on Seller, and there is no consent required from any third party before the Property may be conveyed to Buyer. This Agreement has been duly authorized and executed by Seller, and upon delivery to and execution by Buyer shall be a valid and binding agreement of Seller.

4.1.2 Hazardous Substances. Neither Seller nor any third party has used, generated, manufactured, stored or disposed any Hazardous Substances in, at, on, under or about the Property or transported any Hazardous Substance to or from the Property. Additionally, (a) the Property is not in violation, nor has been or is currently under investigation for violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene, worker health and safety, or to the environmental conditions in, at, on, under or about the Property including, but not limited to, soil or groundwater conditions; (b) the Property has not been subject to, and is not within 2,000 feet of, a deposit of any Hazardous Substance; (c) there has been no discharge, migration or release of any Hazardous Substance from, into, on, under or about the Property; (d) there is not now, nor has there ever been on or in the Property underground storage tanks or surface impoundments, any asbestos-containing materials or any polychlorinated biphenyls used in hydraulic oils, electrical transformers or other equipment, and (e) there is not now, nor has there ever been, debris or refuse buried in or under the Property which would adversely affect the development of the Property. Seller hereby assigns to Buyer as of the Close of Escrow all claims, counterclaims, defenses or actions, whether at common law, or pursuant to any other applicable federal or state or other laws which Seller may have against any third parties relating to the existence of any Hazardous Substance in, at, on, under or about the Property. As used in this Agreement, the term "**Hazardous Substances**" shall have the meaning set forth on Exhibit E attached hereto. At any time prior to the Close of Escrow, Buyer shall have the right to conduct appropriate tests of water and soil to ascertain the presence of any Hazardous Substances on, in, under and about the Property.

To the best of Seller's knowledge the Property complies with all applicable laws and governmental regulations including, without limitation, all applicable federal, state, and local laws pertaining to air and water quality, hazardous waste, waste disposal, and other environmental matters, including, but not limited to, the Clean Water, Clean Air, Federal Water Pollution Control, Solid Waste Disposal, Resource Conservation Recovery and Comprehensive Environmental Response Compensation and Liability Acts, and the California Environment Quality Act, and the rules, regulations, and ordinances of the City, the California Department of Health Services, the Regional Water Quality Control Board, the State Water Resources Control Board, the Environmental Protection Agency, and all applicable federal, state, and local agencies and bureaus.

Seller agrees to indemnify, defend and hold Buyer harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage, or disposal of any Hazardous Material on, under, in or about, or the transportation of any such materials to or from the Property, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment, or license relating to the use, generation, release, discharge, storage, disposal, or transportation of Hazardous Materials on, under, in, or about, to or from the Property. This indemnity shall include, without limitation, any damage, liability, fine, penalty, punitive damage, cost, or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease, or death, tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the

environment, nuisance, pollution, contamination, leak, spill, release, or other adverse effect on the environment).

4.1.3 Endangered Species. To Seller's knowledge, there are no endangered species or protected natural habitat, flora or fauna located on the Property, nor is any portion of the Property located in what is or may be designated as a wetland.

4.1.4 Mechanic's Liens. There are no mechanics', material men's or other claims or liens presently claimed or which will be claimed against the Property for work performed or commenced prior to the date of this Agreement or relating to the environmental condition of the Property. Seller agrees to hold Buyer harmless from all costs, expenses, liabilities, losses, charges and fees, including without limitation attorneys' fees, arising from or relating to any such lien or any similar lien claimed against the Property and arising from work performed or commenced prior to the Close of Escrow, unless performed by or at the request of Buyer.

4.1.5 Leases/Easements. There are no leases, rental agreements or other such contracts of any kind or nature affecting possession or occupancy of the Property, and Seller shall not enter into any such contracts during the term of this Agreement without the prior consent of Buyer.

4.1.6 Other Facts and Circumstances. There are no other facts or circumstances known to Seller that would preclude, prevent or impair the development of the Property.

4.1.7 No Untrue Statements or Omissions of Fact. Neither this Agreement, nor any of the exhibits hereto, nor any document, certificate, or statement referred to herein or furnished to Buyer in connection with the transaction contemplated herein (whether delivered prior to, simultaneously with, or subsequent to the execution of this Agreement) contains any untrue statement of material fact or, omits to state a material fact in any way concerning the Property, or otherwise affecting or concerning the transaction contemplated hereby.

Each of the representations and warranties made by Seller in this Agreement, or in any exhibit, or on any document or instrument delivered pursuant hereto shall be continuing representations and warranties which shall be true and correct in all material respects on the date hereof, and shall be deemed to be made again as of the Close of Escrow and shall then be true and correct in all material respects. The truth and accuracy of each of the representations and warranties, and the performance of all covenants of Seller contained in this Agreement, are conditions precedent to the Close of Escrow. Seller shall immediately notify Buyer of any fact or circumstance which becomes known to Seller which would make any of the foregoing representations or warranties untrue.

4.2. Buyer's Representations and Warranties. Buyer represents and warrants to Seller as follows, all of which shall survive the Close of Escrow:

4.2.1 Buyer's Authority. Buyer has the capacity and full power and authority to enter into and carry out the agreements contained in, and the transactions contemplated by, this Agreement, and that this Agreement has been duly authorized and executed by Buyer and, upon delivery to and execution by Seller, shall be a valid and binding Agreement of Buyer.

4.2.2 No Untrue Statements or Omissions of Fact. Neither this Agreement, nor any of the exhibits hereto, nor any document, certificate, or statement referred to herein or furnished to Seller in connection with the transaction contemplated herein (whether delivered prior to, simultaneously with, or subsequent to the execution of this Agreement) contains any untrue statement of material fact or, omits to state a material fact in any way concerning the Property, or otherwise affecting or concerning the transaction contemplated hereby.

4.2.3 Future Access Rights. This Agreement incorporates herein by reference, that certain letter to Seller included herewith as Exhibit "F", regarding acknowledgement of existing and expectations for future access rights to Seller's property.

Each of the representations and warranties made by Buyer in this Agreement, or in any exhibit or on any document or instrument delivered pursuant hereto, shall be continuing representations and warranties which shall be true and correct in all material respects on the date hereof, and shall be deemed to be made again as of the Close of Escrow, and shall then be true and correct in all material respects. The truth and accuracy of each of the representations and warranties, and the performance of all covenants of Buyer contained in this Agreement, are conditions precedent to the Close of Escrow. Buyer shall notify Seller immediately of any facts or circumstances which are contrary to the foregoing representations and warranties contained in this Section 4.2.

4.3. Mutual Indemnity. Seller and Buyer shall defend, indemnify and hold free and harmless the other from and against any losses, damages, costs and expenses (including attorneys' fees) resulting from any inaccuracy in or breach of any representation or warranty of the indemnifying party or any breach or default by such indemnifying party under any of such indemnifying party's covenants or agreements contained in this Agreement.

5. CONDEMNATION. Seller and Buyer acknowledge that this transaction is a negotiated settlement in lieu of condemnation, and Seller hereby agrees and consents to the dismissal or abandonment of any eminent domain action in the Superior Court of the State of California in and for the County of Riverside, wherein the herein described property is included and also waives any and all claims to any money on deposit in the action and further waives all attorneys' fees, costs, disbursements, and expenses incurred in connection therewith. If, prior to the close of the execution of this transaction, Seller (or Seller's Tenant) is served with a Summons and Complaint in Eminent Domain in which Seller (or Seller's Tenant) is a named defendant, upon the close of escrow, Seller agrees and consents to Buyer taking a default in the action. Moreover, the total compensation to be paid by Buyer to Seller is for all of Seller's interest in the Property and any rights which

exist or may arise out of the acquisition of the Property for public purposes, including without limitation, Seller's interest in the land and any improvements and fixtures and equipment located thereon, improvements pertaining to the realty (if any), severance damages, any alleged pre-condemnation damages, loss of business goodwill (if any), costs, interest, attorney's fees, and any claim whatsoever of Seller which might arise out of or relate in any respect to the acquisition of the Property by the Buyer. The compensation paid under this Agreement does not reflect any consideration of or allowance for any relocation assistance and payments or other benefits which Seller may be entitled to receive, if any. Relocation assistance, if any, will be handled via separate Agreement.

6. **BROKERS.** Seller and Buyer each represents and warrants to the other that they have not dealt with or been represented by any brokers or finders in connection with the purchase and sale of the Property and that no commissions or finder's fees are payable in connection with this transaction. Buyer and Seller each agree to indemnify and hold harmless the other against any loss, liability, damage, cost, claim or expense (including reasonable attorneys' fees) incurred by reason of breach of the foregoing representation by the indemnifying party. Notwithstanding anything to the contrary contained herein, the representations, warranties, indemnities and agreements contained in this Section 6 shall survive the Close of Escrow or earlier termination of this Agreement.

## 7. GENERAL PROVISIONS.

7.1. **Counterparts; Facsimile Signatures.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument and any executed counterpart may be delivered by facsimile transmission with the same effect as if an originally executed counterpart had been delivered.

7.2. **Further Assurances.** Each of the parties agrees to execute and deliver such other instruments and perform such acts, in addition to the matters herein specified, as may be appropriate or necessary to effectuate the agreements of the parties, whether the same occurs before or after the Close of Escrow.

7.3. **Entire Agreement.** This Agreement, together with all exhibits hereto and documents referred to herein, if any, constitute the entire agreement among the parties hereto with respect to the subject matter hereof, and supersede all prior understandings or agreements. This Agreement may be modified only by a writing signed by both parties. All exhibits to which reference is made in this Agreement are deemed incorporated into this Agreement whether or not actually attached.

7.4. **Headings.** Headings used in this Agreement are for convenience of reference only and are not intended to govern, limit, or aide in the construction of any term or provision hereof.

7.5. **Choice of Law.** This Agreement and each and every related document are to be governed by, and construed in accordance with, the laws of the State of California.

7.6. Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction or rendered by the adoption of a statute by the State of California or the United States invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby; provided that the invalidity or unenforceability of such provision does not materially adversely affect the benefits accruing to, or the obligations imposed upon, any party hereunder, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

7.7. Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The exercise of any remedy provided in this Agreement shall not be a waiver of any other remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other remedies unless they are expressly excluded.

7.8. Legal Advice. Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

7.9. Relationship of Parties. The parties agree that their relationship is that of Seller and Buyer, and that nothing contained herein shall constitute either party, the agent or legal representative of the other for any purpose whatsoever, nor shall this Agreement be deemed to create any form of business organization between the parties hereto, nor is either party granted the right or authority to assume or create any obligation or responsibility on behalf of the other party, nor shall either party be in any way liable for any debt of the other.

7.10. Attorneys' Fees. In the event that any party hereto institutes an action or proceeding for a declaration of the rights of the parties under this Agreement, for injunctive relief, for an alleged breach or default of, or any other action arising out of, this Agreement, or the transactions contemplated hereby, or in the event any party is in default of its obligations pursuant thereto, whether or not suit is filed or prosecuted to final judgment, the non-defaulting party or prevailing party shall be entitled to its actual attorneys' fees and to any court costs incurred, in addition to any other damages or relief awarded.

7.11. Assignment. Neither Seller nor Buyer shall assign its rights or delegate its obligations hereunder without the prior written consent of the other, which consent shall not

be unreasonably withheld or delayed. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties to this Agreement.

7.12. Notices. No notice, request, demand, instruction, or other document to be given hereunder to any Party shall be effective for any purpose unless personally delivered to the person at the appropriate address set forth below (in which event such notice shall be deemed effective only upon such delivery), delivered by air courier next-day delivery (e.g. Federal Express), delivered by mail, sent by registered or certified mail, return receipt requested, or sent via telecopier, as follows:

If to Buyer, to:                   Attn: City Clerk  
City of Palm Springs  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262  
Facsimile No.: (760) 322-8332  
Telephone No.: (760) 323-8204

If to Seller, to:                   Robert W. Miner, Jr., as Sole Successor Trustee of the Robert  
Wilson Miner Trust, dated April 13, 1998  
PO Box 190266  
Anchorage, AK 99519

If to Escrow Holder, to:       Kimberly Rogers  
Lawyers Title & Escrow  
777 E. Tahquitz Canyon Way  
Palm Springs, CA 92262  
Facsimile No.: (866) 350-3317  
Telephone No.: (760) 327-6523

Notices delivered by air courier shall be deemed to have been given the next business day after deposit with the courier and notices mailed shall be deemed to have been given on the second day following deposit of same in any United States Post Office mailbox in the state to which the notice is addressed or on the third day following deposit in any such post office box other than in the state to which the notice is addressed, postage prepaid, addressed as set forth above. Notices sent via telecopy shall be deemed delivered the same business day transmitted. The addresses, addressees, and telecopy numbers for the purpose of this Paragraph, may be changed by giving written notice of such change in the manner herein provided for giving notice. Unless and until such written notice of change is received, the last address, addressee, and telecopy number stated by written notice, or provided herein if no such written notice of change has been received, shall be deemed to continue in effect for all purposes hereunder. Delivery of a copy of a notice as set forth above is as an accommodation only and is not required to effectuate notice hereunder.

7.13. Survivability. All covenants of Buyer or Seller which are intended hereunder to be performed in whole or in part after Close of Escrow and all representations, warranties, and indemnities by either Party to the other, shall survive Close of Escrow and delivery of the Deed, and be binding upon and inure to the benefit of the respective Parties.

7.14. Release. The total compensation to be paid by Buyer for the Property is the Purchase Price, which consideration covers all land and improvements, attached or detached furniture, fixtures and equipment, loss of business goodwill, and is the full and complete acquisition cost of the Property. Buyer is in compliance with the California Relocation Assistance and Real Property Acquisition statutes and guidelines and the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs. Except for any breach of terms or conditions contained in this Agreement, Seller waives and forever releases Buyer, including its successors, officers, employees, attorneys, agents, representatives and anyone else acting on Buyer's behalf, of and from any and all claims, demands, actions or causes of action, obligations, liabilities, or claims for further compensation, known or unknown, based upon or relating to the facts or allegations and circumstances arising from Buyer's acquisition of the Property. By such release, Seller expressly waives its rights, if any, under California Civil Code Section 1542 which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HIS SETTLEMENT WITH THE DEBTOR."

\_\_\_\_\_  
Seller's Initials

7.15 City Council Approval of Agreement. This Agreement is subject to the approval of the Buyer's City Council. If this Agreement remains unapproved by the Buyer's City Council then the parties will have no further obligation under this Agreement.

7.16 Recording. Neither party shall have the right to record this Agreement in the Recorder's Office for Riverside County.

***[SIGNATURES ON NEXT PAGE]***



**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date and year first above written.

**BUYER:**

**SELLER:**

**CITY OF PALM SPRINGS, a California charter city and municipal corporation**

**Robert W. Miner, Jr., as Sole Successor Trustee of the Robert Wilson Miner Trust, dated April 13, 1998**

By: \_\_\_\_\_  
David H. Ready, City Manager

By: \_\_\_\_\_  
Robert W. Miner, Jr., Sole Successor Trustee

**ATTEST:**

By: \_\_\_\_\_  
James Thompson, City Clerk

**APPROVED AS TO FORM:**

**WOODRUFF, SPRADLIN & SMART**

By: \_\_\_\_\_  
Douglas C. Holland, Esq., City Attorney

**Exhibit List**

- Exhibit A-1 -- Legal Description of the Fee Acquisition
- Exhibit A-2 -- Legal Description of the Right-of-Way
- Exhibit A-3 -- Legal Description of the Slope Easement
- Exhibit A-4 -- Legal Description of the Drainage Easement
- Exhibit A-5 -- Legal Description of the City Access Easement
- Exhibit A-6 -- Legal Description of the Southern California Gas Access Easement
- Exhibit B-1 -- Depiction of Fee Acquisition
- Exhibit B-2 -- Depiction of the Right-of-Way
- Exhibit B-3 -- Depiction of Slope Easement
- Exhibit B-4 -- Depiction of Drainage Easement
- Exhibit B-5 -- Depiction of the City Access Easement
- Exhibit B-6 -- Depiction of the Southern California Gas Access Easement
- Exhibit C-1 -- Form of Grant Deed
- Exhibit C-2 -- Form of Right of Way
- Exhibit C-3 -- Form of Slope Easement
- Exhibit C-4 -- Form of Drainage Easement
- Exhibit C-5 -- Form of City Access Easement
- Exhibit C-6 -- Form of Southern California Gas Access Easement
- Exhibit D -- Affidavit of Non-foreign Taxpayer Status
- Exhibit E -- Definition of Hazardous Substances
- Exhibit F -- Letter Regarding Future Access Rights

**ALL-PURPOSE ACKNOWLEDGMENT**

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

State of \_\_\_\_\_  
County of \_\_\_\_\_  
On \_\_\_\_\_ before me, \_\_\_\_\_  
Date Name, Title of Officer  
personally appeared \_\_\_\_\_  
NAME(S) OF SIGNER(S)  
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 signatures(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 identified herein, that the foregoing paragraph is true and correct.  
Witness my hand and official seal.  
\_\_\_\_\_  
Signature of Notary

**ATTENTION NOTARY:** Although the information requested below is **OPTIONAL**, it could prevent fraudulent attachment of this certificate to unauthorized document.

THIS CERTIFICATE Title or Type of Document \_\_\_\_\_  
MUST BE ATTACHED  
TO THE DOCUMENT Number of Pages \_\_\_\_\_ DATE of DOCUMENT \_\_\_\_\_  
DESCRIBED AT RIGHT:  
Signer(s) Other Than Named Above \_\_\_\_\_

**ACCEPTANCE BY ESCROW HOLDER:**

LAWYERS TITLE & ESCROW hereby acknowledges that it has received a fully executed counterpart of the foregoing Agreement for Acquisition of Real Property and Escrow Instructions and agrees to act as Escrow Holder thereunder and to be bound by and perform the terms thereof as such terms apply to Escrow Holder. By agreeing to act as Escrow Holder hereunder, Escrow Holder expressly agrees to undertake and be responsible for all withholding obligations imposed pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended and the regulations thereunder and California Revenue and Taxation Code §18662 and shall defend, indemnify and hold Buyer harmless in connection with such obligations.

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

LAWYERS TITLE & ESCROW

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Exhibit "A-1", "A-2", "A-3", "A-4", "A-5" and "A-6" to the Grant Deed, Right-of-Way,  
Slope Easement, Drainage Easement, City Access Easement, and Southern  
California Gas Access Easement**

**LEGAL DESCRIPTION OF THE RIGHT OF WAY, SLOPE EASEMENT, DRAINAGE  
EASEMENT, CITY ACCESS EASEMENT, AND SOUTHERN CALIFORNIA GAS  
ACCESS EASEMENT**

EXHIBIT "A-1"  
FEE ACQUISITION  
APN 669-060-026

THAT PORTION OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY UNITED STATES GOVERNMENT SURVEY APPROVED FEBRUARY 29, 1856, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE INTERSECTION OF THE SOUTHERLY LINE OF THAT CERTAIN RIGHT OF WAY CONVEYED FROM DAVID MARGOLIUS, ET UX, TO SOUTHERN CALIFORNIA GAS COMPANY AND SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA, BY DEED RECORDED MAY 10, 1947 IN BOOK 825 PAGE 555 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, WITH THE WEST LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN PARCEL 1 IN DEED FROM DAVID MARGOLIUS AND BEULAH E. MARGOLIUS TO THE COUNTY OF RIVERSIDE, RECORDED JULY 13, 1950 IN BOOK 1188 PAGE 493 OF OFFICIAL RECORDS OF SAID RIVERSIDE COUNTY, THENCE ALONG SAID SOUTHERLY LINE NORTH 86°28'57" WEST (RECORD NORTH 85°29'05" WEST) 50.00 FEET TO **THE TRUE POINT OF BEGINNING**;

1. THENCE LEAVING SAID SOUTHERLY LINE PARALLEL WITH THE EAST LINE OF SAID NORTH HALF SOUTH 0°19'24" WEST 72.00 FEET;
2. THENCE PARALLEL WITH SAID SOUTHERLY LINE NORTH 86°28'57" WEST 6.01 FEET;
3. THENCE PARALLEL WITH THE EAST LINE OF SAID NORTH HALF NORTH 0°19'24" EAST 72.00 FEET TO SAID SOUTHERLY LINE;
4. THENCE ALONG SAID SOUTHERLY LINE SOUTH 86°28'57" EAST 6.01 FEET TO **THE TRUE POINT OF BEGINNING**.

AREA = 432 SQUARE FEET, MORE OR LESS

SEE EXHIBIT "B" ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. MULTIPLY DISTANCES SHOWN BY 1.00002570 TO OBTAIN GROUND DISTANCES.

SIGNATURE Michael A Havener 12-14-2015  
MICHAEL A. HAVENER DATE  
PLS 7354



EXHIBIT "A-2"  
RIGHT-OF-WAY EASEMENT  
APN 669-060-026

THOSE PORTIONS OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY UNITED STATES GOVERNMENT SURVEY APPROVED FEBRUARY 29, 1856, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

SOUTHERLY RIGHT-OF-WAY EASEMENT

**COMMENCING** AT THE INTERSECTION OF THE CENTER LINE OF SOUTHERN PACIFIC RAILROAD WITH THE CENTER LINE OF INDIAN CANYON DRIVE (FORMERLY INDIAN AVENUE) AS SHOWN ON RECORD OF SURVEY FILED IN BOOK 18 OF RECORDS OF SURVEY AT PAGE 2 ON AUGUST 20, 1951; THENCE ALONG THE CENTER LINE OF SAID INDIAN CANYON DRIVE NORTH 00°19'08" EAST 1136.57 FEET TO AN ANGLE POINT THEREIN, SAID POINT BEING THE ONE-SIXTEENTH SECTION CORNER OF SAID SECTION; THENCE ALONG THE SOUTHERLY LINE OF SAID NORTH HALF NORTH 89°22'22" WEST 50.00 FEET TO THE WESTERLY LINE OF INDIAN CANYON DRIVE (INDIAN AVENUE) AS SHOWN ON SAID RECORD OF SURVEY, SAID POINT BEING THE **TRUE POINT OF BEGINNING**;

1. THENCE ALONG SAID WESTERLY LINE NORTH 00°19'24" EAST 524.27 FEET TO A POINT THAT BEARS SOUTH 00°19'24" WEST 72.00 FEET FROM THE INTERSECTION OF THE SOUTHERLY LINE OF THAT CERTAIN RIGHT OF WAY CONVEYED FROM DAVID MARGOLIUS, ET UX, TO SOUTHERN CALIFORNIA GAS COMPANY AND SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA, BY DEED RECORDED MAY 10, 1947 IN BOOK 825 PAGE 555 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, WITH THE WEST LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN PARCEL 1 IN DEED FROM DAVID MARGOLIUS AND BEULAH E. MARGOLIUS TO THE COUNTY OF RIVERSIDE, RECORDED JULY 13, 1950 IN BOOK 1188 PAGE 493 OF OFFICIAL RECORDS OF SAID RIVERSIDE COUNTY, HEREIN DESIGNATED POINT "A";
2. THENCE LEAVING SAID WESTERLY LINE PARALLEL WITH SAID SOUTHERLY LINE OF THAT CERTAIN RIGHT OF WAY NORTH 86°28'57" WEST 6.01 FEET;
3. THENCE LEAVING SAID PARALLEL LINE SOUTH 00°19'24" WEST 524.57 FEET TO THE SOUTHERLY LINE OF SAID NORTH HALF;
4. THENCE ALONG SAID SOUTHERLY LINE SOUTH 89°22'22" EAST 6.00 FEET TO THE **TRUE POINT OF BEGINNING**.

NORTHERLY RIGHT-OF-WAY EASEMENT

**BEGINNING** AT SAID POINT "A"; THENCE ALONG SAID WEST LINE OF THAT SAID PARCEL OF LAND DESCRIBED IN PARCEL 1 NORTH 0°19'24" EAST 72.00 FEET TO SAID SOUTHERLY LINE OF THAT CERTAIN RIGHT OF WAY AND THE **TRUE POINT OF BEGINNING**;

1. THENCE LEAVING SAID WEST LINE ALONG SAID SOUTHERLY LINE NORTH 86°28'57" WEST 6.01 FEET;

EXHIBIT "A-2"  
RIGHT-OF-WAY EASEMENT  
APN 669-060-026

2. THENCE NORTH 0°19'24" EAST 16.53 FEET TO THE NORTHERLY LINE OF THAT CERTAIN RIGHT OF WAY;
3. THENCE ALONG SAID NORTHERLY LINE SOUTH 86°28'57" EAST 6.01 FEET TO SAID WEST LINE OF SAID PARCEL OF LAND;
4. THENCE ALONG SAID WEST LINE SOUTH 0°19'24" WEST 16.53 FEET TO THE TRUE POINT OF BEGINNING.

AREA = 3,246 SQUARE FEET, MORE OR LESS

SEE EXHIBIT "B" ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. MULTIPLY DISTANCES SHOWN BY 1.00002570 TO OBTAIN GROUND DISTANCES.

SIGNATURE Michael A. Havener 11-30-2015  
MICHAEL A. HAVENER DATE  
PLS 7354



EXHIBIT "A-3"  
SLOPE EASEMENT  
APN 669-060-026 & 669-070-004

THAT PORTION OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, AS SHOWN BY UNITED STATES GOVERNMENT SURVEY APPROVED FEBRUARY 29, 1856, TOGETHER WITH, THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, LYING NORTHERLY AND NORTHEASTERLY OF THE NORTHERLY LINE OF PARCEL 1 AS SHOWN ON RECORD OF SURVEY FILED IN BOOK 33 OF RECORDS OF SURVEY AT PAGE 45 ON MARCH 2, 1961, ALL IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE INTERSECTION OF THE CENTER LINE OF SOUTHERN PACIFIC RAILROAD WITH THE CENTER LINE OF INDIAN CANYON DRIVE (FORMERLY INDIAN AVENUE) AS SHOWN ON RECORD OF SURVEY FILED IN BOOK 18 OF RECORDS OF SURVEY AT PAGE 2 ON AUGUST 20, 1951; THENCE ALONG THE CENTER LINE OF SAID INDIAN CANYON DRIVE NORTH 00°19'08" EAST 1136.57 FEET TO AN ANGLE POINT THEREIN, SAID POINT BEING THE ONE-SIXTEENTH SECTION CORNER OF SAID SECTION; THENCE ALONG THE SOUTHERLY LINE OF SAID NORTH HALF NORTH 89°22'22" WEST 50.00 FEET TO THE WESTERLY LINE OF INDIAN CANYON DRIVE (INDIAN AVENUE) AS SHOWN ON SAID RECORD OF SURVEY; THENCE ALONG SAID WESTERLY LINE NORTH 00°19'24" EAST 524.27 FEET TO A POINT THAT BEARS SOUTH 00°19'24" WEST 72.00 FEET FROM THE INTERSECTION OF THE SOUTHERLY LINE OF THAT CERTAIN RIGHT OF WAY CONVEYED FROM DAVID MARGOLIUS, ET UX, TO SOUTHERN CALIFORNIA GAS COMPANY AND SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA, BY DEED RECORDED MAY 10, 1947 IN BOOK 825 PAGE 555 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, WITH THE WEST LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN PARCEL 1 IN DEED FROM DAVID MARGOLIUS AND BEULAH E. MARGOLIUS TO THE COUNTY OF RIVERSIDE, RECORDED JULY 13, 1950 IN BOOK 1188 PAGE 493 OF OFFICIAL RECORDS OF SAID RIVERSIDE COUNTY, THENCE LEAVING SAID WESTERLY LINE PARALLEL WITH SAID SOUTHERLY LINE OF THAT CERTAIN RIGHT OF WAY NORTH 86°28'57" WEST 6.01 FEET TO THE **TRUE POINT OF BEGINNING**;

1. THENCE CONTINUING ALONG SAID PARALLEL LINE NORTH 86°28'57" WEST 8.67 FEET;
2. THENCE LEAVING SAID PARALLEL LINE SOUTH 2°47'20" WEST 470.73 FEET;
3. THENCE SOUTH 0°19'10" WEST 234.74 FEET TO THE NORTHERLY LINE OF SAID PARCEL 1;
4. THENCE ALONG SAID NORTHERLY LINE SOUTH 89°22'22" EAST 9.91 FEET TO THE WESTERLY LINE OF INDIAN CANYON DRIVE;
5. THENCE ALONG SAID WESTERLY LINE NORTH 0°19'08" EAST 180.13 FEET TO SAID SOUTHERLY LINE OF THE NORTH HALF;
6. THENCE ALONG SAID SOUTHERLY LINE SOUTH 89°22'22" EAST 19.00 FEET;
7. THENCE LEAVING SAID SOUTHERLY LINE NORTH 0°19'24" EAST 524.57 FEET TO THE **TRUE POINT OF BEGINNING**.

AREA = 12,197 SQUARE FEET, MORE OR LESS



EXHIBIT "A-3"  
SLOPE EASEMENT  
APN 669-060-026 & 669-070-004

SEE EXHIBIT "B" ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE  
BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. MULTIPLY  
DISTANCES SHOWN BY 1.00002570 TO OBTAIN GROUND DISTANCES.

SIGNATURE Michael A. Havener 6-10-2016  
MICHAEL A. HAVENER DATE  
PLS 7354



EXHIBIT "A-4"  
DRAINAGE EASEMENT  
APN 669-060-026

THAT PORTION OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY UNITED STATES GOVERNMENT SURVEY APPROVED FEBRUARY 29, 1856, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE INTERSECTION OF THE CENTER LINE OF SOUTHERN PACIFIC RAILROAD WITH THE CENTER LINE OF INDIAN CANYON DRIVE (FORMERLY INDIAN AVENUE) AS SHOWN ON RECORD OF SURVEY FILED IN BOOK 18 OF RECORDS OF SURVEY AT PAGE 2 ON AUGUST 20, 1951; THENCE ALONG THE CENTER LINE OF SAID INDIAN CANYON DRIVE NORTH 00°19'08" EAST 1136.57 FEET TO AN ANGLE POINT THEREIN, SAID POINT BEING THE ONE-SIXTEENTH SECTION CORNER OF SAID SECTION; THENCE ALONG THE SOUTHERLY LINE OF SAID NORTH HALF NORTH 89°22'22" WEST 56.00 FEET; THENCE NORTH 0°19'24" EAST 270.08 FEET TO THE **TRUE POINT OF BEGINNING**;

1. THENCE NORTH 89°38'35" WEST 69.04 FEET;
2. THENCE NORTH 0°19'24" EAST 126.69 FEET;
3. THENCE SOUTH 89°38'35" EAST 69.04 FEET;
4. THENCE SOUTH 0°19'24" WEST 126.69 FEET TO THE **TRUE POINT OF BEGINNING**.

AREA = 8,746 SQUARE FEET, MORE OR LESS

SEE EXHIBIT "B" ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. MULTIPLY DISTANCES SHOWN BY 1.00002570 TO OBTAIN GROUND DISTANCES.

SIGNATURE Michael A. Havener 8-11-2016  
MICHAEL A. HAVENER DATE  
PLS 7354



EXHIBIT "A-5"  
CITY ACCESS EASEMENT  
APN 669-060-026

THAT PORTION OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY UNITED STATES GOVERNMENT SURVEY APPROVED FEBRUARY 29, 1856, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE INTERSECTION OF THE CENTER LINE OF SOUTHERN PACIFIC RAILROAD WITH THE CENTER LINE OF INDIAN CANYON DRIVE (FORMERLY INDIAN AVENUE) AS SHOWN ON RECORD OF SURVEY FILED IN BOOK 18 OF RECORDS OF SURVEY AT PAGE 2 ON AUGUST 20, 1951; THENCE ALONG THE CENTER LINE OF SAID INDIAN CANYON DRIVE NORTH 00°19'08" EAST 1136.57 FEET TO AN ANGLE POINT THEREIN, SAID POINT BEING THE ONE-SIXTEENTH SECTION CORNER OF SAID SECTION; THENCE ALONG THE SOUTHERLY LINE OF SAID NORTH HALF NORTH 89°22'22" WEST 50.00 FEET TO THE WESTERLY LINE OF INDIAN CANYON DRIVE (INDIAN AVENUE) AS SHOWN ON SAID RECORD OF SURVEY; THENCE ALONG SAID WESTERLY LINE NORTH 00°19'24" EAST 596.27 FEET TO THE INTERSECTION OF THE SOUTHERLY LINE OF THAT CERTAIN RIGHT OF WAY CONVEYED FROM DAVID MARGOLIUS, ET UX, TO SOUTHERN CALIFORNIA GAS COMPANY AND SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA, BY DEED RECORDED MAY 10, 1947 IN BOOK 825 PAGE 555 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, WITH THE WEST LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN PARCEL 1 IN DEED FROM DAVID MARGOLIUS AND BEULAH E. MARGOLIUS TO THE COUNTY OF RIVERSIDE, RECORDED JULY 13, 1950 IN BOOK 1188 PAGE 493 OF OFFICIAL RECORDS OF SAID RIVERSIDE COUNTY; THENCE LEAVING SAID WESTERLY LINE ALONG SAID SOUTHERLY LINE OF THAT CERTAIN RIGHT OF WAY NORTH 86°28'57" WEST 6.01 FEET TO THE **TRUE POINT OF BEGINNING**;

1. THENCE CONTINUING ALONG SAID SOUTHERLY LINE NORTH 86°28'57" WEST 50.00 FEET;
2. THENCE LEAVING SAID SOUTHERLY LINE SOUTH 00°19'24" WEST 202.56 FEET;
3. THENCE NORTH 89°38'35" WEST 20.00 FEET;
4. THENCE NORTH 00°19'24" EAST 220.19 FEET TO THE NORTHERLY LINE OF THAT CERTAIN RIGHT OF WAY;
5. THENCE ALONG SAID NORTHERLY LINE SOUTH 86°28'57" EAST 70.03 FEET;
6. THENCE LEAVING SAID NORTHERLY LINE SOUTH 00°19'24" WEST 16.53 FEET TO THE **TRUE POINT OF BEGINNING**.

AREA = 5,218 SQUARE FEET, MORE OR LESS

SEE EXHIBIT "B" ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. MULTIPLY DISTANCES SHOWN BY 1.00002570 TO OBTAIN GROUND DISTANCES.

EXHIBIT "A-5"  
CITY ACCESS EASEMENT  
APN 669-060-026

SIGNATURE Michael A. Havener 8-11-2016  
MICHAEL A. HAVENER DATE  
PLS 7354



EXHIBIT "A-6"  
SOUTHERN CALIFORNIA GAS CO. ACCESS EASEMENT  
APN 669-060-026

THAT PORTION OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY UNITED STATES GOVERNMENT SURVEY APPROVED FEBRUARY 29, 1856, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE INTERSECTION OF THE CENTER LINE OF SOUTHERN PACIFIC RAILROAD WITH THE CENTER LINE OF INDIAN CANYON DRIVE (FORMERLY INDIAN AVENUE) AS SHOWN ON RECORD OF SURVEY FILED IN BOOK 18 OF RECORDS OF SURVEY AT PAGE 2 ON AUGUST 20, 1951; THENCE ALONG THE CENTER LINE OF SAID INDIAN CANYON DRIVE NORTH 00°19'08" EAST 1136.57 FEET TO AN ANGLE POINT THEREIN, SAID POINT BEING THE ONE-SIXTEENTH SECTION CORNER OF SAID SECTION; THENCE ALONG THE SOUTHERLY LINE OF SAID NORTH HALF NORTH 89°22'22" WEST 50.00 FEET TO THE WESTERLY LINE OF INDIAN CANYON DRIVE (INDIAN AVENUE) AS SHOWN ON SAID RECORD OF SURVEY; THENCE ALONG SAID WESTERLY LINE NORTH 00°19'24" EAST 596.27 FEET TO THE INTERSECTION OF THE SOUTHERLY LINE OF THAT CERTAIN RIGHT OF WAY CONVEYED FROM DAVID MARGOLIUS, ET UX, TO SOUTHERN CALIFORNIA GAS COMPANY AND SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA, BY DEED RECORDED MAY 10, 1947 IN BOOK 825 PAGE 555 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, WITH THE WEST LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN PARCEL 1 IN DEED FROM DAVID MARGOLIUS AND BEULAH E. MARGOLIUS TO THE COUNTY OF RIVERSIDE, RECORDED JULY 13, 1950 IN BOOK 1188 PAGE 493 OF OFFICIAL RECORDS OF SAID RIVERSIDE COUNTY; THENCE LEAVING SAID WESTERLY LINE ALONG SAID SOUTHERLY LINE OF THAT CERTAIN RIGHT OF WAY NORTH 86°28'57" WEST 6.01 FEET TO THE **TRUE POINT OF BEGINNING**;

1. THENCE CONTINUING ALONG SAID SOUTHERLY LINE NORTH 86°28'57" WEST 50.00 FEET;
2. THENCE LEAVING SAID SOUTHERLY LINE NORTH 00°19'10" EAST 16.53 FEET TO THE NORTHERLY LINE OF THAT CERTAIN RIGHT OF WAY;
3. THENCE ALONG SAID NORTHERLY LINE SOUTH 86°28'57" EAST 50.00 FEET;
4. THENCE LEAVING SAID NORTHERLY LINE SOUTH 00°19'24" WEST 16.53 FEET TO THE **TRUE POINT OF BEGINNING**.

AREA = 825 SQUARE FEET, MORE OR LESS

SEE EXHIBIT "B" ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. MULTIPLY DISTANCES SHOWN BY 1.00002570 TO OBTAIN GROUND DISTANCES.

EXHIBIT "A-6"  
SOUTHERN CALIFORNIA GAS CO. ACCESS EASEMENT  
APN 669-060-026

SIGNATURE Michael A Havener 6-10-2016  
MICHAEL A. HAVENER DATE  
PLS 7354



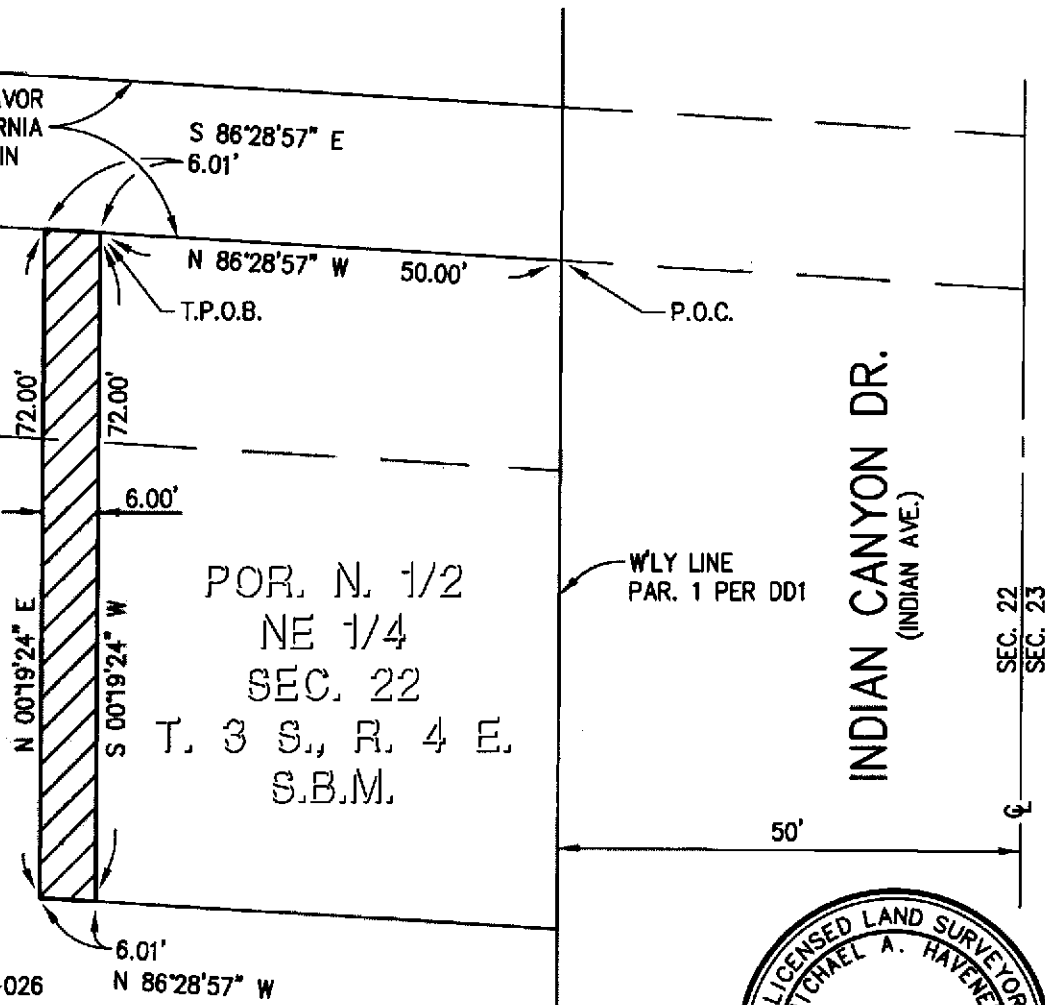
**Exhibit "B-1", "B-2", "B-3", "B-4", "B-5" and "B-6" to the Grant Deed, Right-of-Way, Slope Easement, Drainage Easement, City Access Easement, and Southern California Gas Access Easement**

DEPICTION OF THE RIGHT OF WAY, SLOPE EASEMENT, DRAINAGE EASEMENT, CITY ACCESS EASEMENT, AND SOUTHERN CALIFORNIA GAS ACCESS EASEMENT

# EXHIBIT "B-1"

A UTILITY EASEMENT IN FAVOR OF THE SOUTHERN CALIFORNIA GAS CO. REC. 5/10/1947 IN BK. 825, PG. 555 O.R.

A UTILITY EASEMENT IN FAVOR OF THE SOUTHERN CALIFORNIA GAS CO. REC. 12/15/1952 IN BK. 1424, PG. 279 O.R.



POR. N. 1/2  
NE 1/4  
SEC. 22  
T. 3 S., R. 4 E.  
S.B.M.

INDIAN CANYON DR.  
(INDIAN AVE.)

APN 669-060-026

N 86°28'57" W

WLY LINE  
PAR. 1 PER DD1

SEC. 22  
SEC. 23



## LEGEND



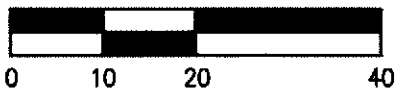
FEE ACQUISITION  
AREA = 432 SQ. FT., MORE OR LESS

T.P.O.B. TRUE POINT OF BEGINNING

P.O.C. POINT OF COMMENCEMENT

DD1 DEED FROM DAVID MARGOLIUS AND BEULAH E. MARGOLIUS TO THE COUNTY OF RIVERSIDE REC. 7/13/1950 IN BK. 1188 PG. 493 O.R.

MULTIPLY DISTANCE BY 1.00002570  
TO OBTAIN GROUND DISTANCES

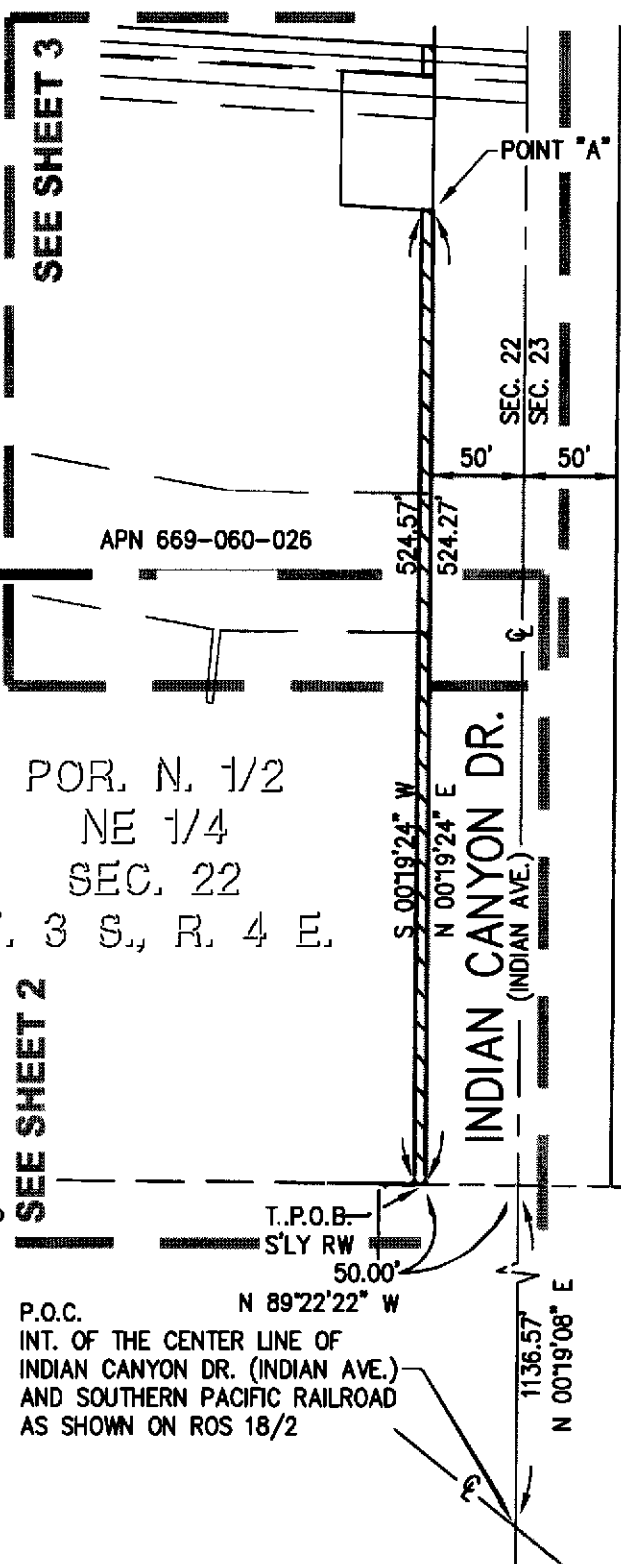


SHEET 1 OF 1 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 20'
DRAWN BY: KA	DATE: 12-14-15		DOC. NO.
CHECKED BY: MH	DATE: 12-14-15	INDIAN CANYON DRIVE WIDENING APN 669-060-026 THE ROBERT WILSON MINER TRUST DATED 4/13/1998	DWG. NO.
APPROVED BY:	DATE:		



# EXHIBIT "B-2"



MULTIPLY DISTANCE BY 1.00002570  
TO OBTAIN GROUND DISTANCES



**APN 669-060-026 NON-PLOTTABLE EASEMENTS**  
 RIGHT-OF-WAY FOR DITCHES OR CANALS  
 CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES AND RESERVING UNTO THE UNITED STATES, ITS PERMITTEES OR LICENSEES, THE RIGHT TO OCCUPY AND USE ANY PART OF SECTION 22 LYING WITHIN FIFTY FEET OF THE CENTER LINE OF THE TRANSMISSION LINE RIGHT-OF-WAY OF THE COACHELLA VALLEY ICE AND ELECTRIC COMPANY REC. 11/23/1921 IN BK. 8, PG. 204 OF PATENTS.  
 A POLE LINE EASEMENT IN FAVOR OF THE SOUTHERN CALIFORNIA TELEPHONE CO. REC. 7/10/1933 IN BK. 131, PG. 119 O.R.  
 A RIGHT OF ACCESS AND TO INSTALL UTILITIES IN FAVOR OF SMSA LIMITED PARTNERSHIP REC. 7/08/2003 AS INST. NO. 2003-506376 O.R.  
 A PERMANENT TELECOMMUNICATIONS EASEMENT IN FAVOR OF VARIOUS REC. 8/29/2013 AS DOC. NO. 2013-0423943 O.R.



## LEGEND

- RIGHT-OF-WAY EASEMENT (RW)  
AREA = 3,246 SQ. FT., MORE OR LESS
- T.P.O.B. TRUE POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT

SHEET 1 OF 3 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 100'	
DRAWN BY: KA	DATE: 4-23-15		INDIAN CANYON DRIVE WIDENING APN 669-060-026	DOC. NO.
CHECKED BY: MH	DATE: 11-30-15		THE ROBERT WILSON MINER TRUST DATED 4/13/1998	DWG. NO.
APPROVED BY:	DATE:			

SEE SHEET 3

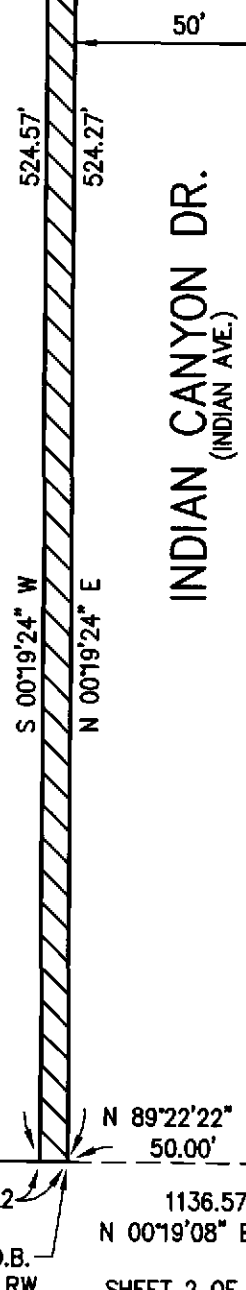
POLE LINE EASEMENT IN FAVOR  
OF SOUTHERN CALIFORNIA EDISON  
CO. REC. 1/12/1973 AS INST.  
NO. 5042 O.R.

SEC. 22  
SEC. 23



LINE TABLE		
LINE	BEARING	LENGTH
L1	N 86°28'57" W	6.01'
L2	S 89°22'22" E	6.00'
L3	N 86°28'57" W	6.01'
L4	N 00°19'24" E	16.53'
L5	S 86°28'57" E	6.01'
L6	S 00°19'24" W	16.53'

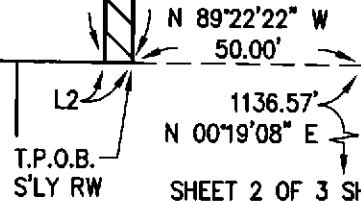
POR. N. 1/2  
NE 1/4  
SEC. 22  
T. 3 S., R. 4 E.  
APN 669-060-026



**LEGEND**

RIGHT-OF-WAY EASEMENT (RW)  
AREA = 3,246 SQ. FT., MORE OR LESS

T.P.O.B. TRUE POINT OF BEGINNING



SHEET 2 OF 3 SHEETS


REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 40'
DRAWN BY: KA	DATE: 4-23-15		DOC. NO.
CHECKED BY: MH	DATE: 11-30-15	INDIAN CANYON DRIVE WIDENING APN 669-060-026 THE ROBERT WILSON MINER TRUST DATED 4/13/1998	DWG. NO.
APPROVED BY:	DATE:		

A UTILITY EASEMENT IN FAVOR OF THE SOUTHERN CALIFORNIA GAS CO. REC. 5/10/1947 IN BK. 825, PG. 555 O.R.

A UTILITY EASEMENT IN FAVOR OF THE SOUTHERN CALIFORNIA GAS CO. REC. 12/15/1952 IN BK. 1424, PG. 279 O.R.

NOTE: SEE SHEET 2 FOR TABULATED LINE DATA.

**LEGEND**

 RIGHT-OF-WAY EASEMENT (RW)  
AREA = 3,246 SQ. FT., MORE OR LESS

T.P.O.B. TRUE POINT OF BEGINNING

P.O.B. POINT OF BEGINNING

POR. N. 1/2

NE 1/4

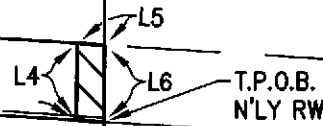
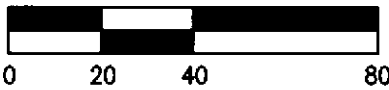
SEC. 22

T. 3 S., R. 4 E.

APN 669-060-026

POLE LINE EASEMENT IN FAVOR OF SOUTHERN CALIFORNIA EDISON CO. REC. 1/12/1973 AS INST. NO. 5042 O.R.

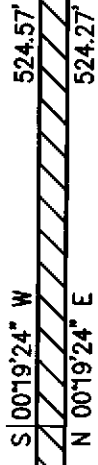
SEE SHEET 2



T.P.O.B. N'LY RW

72.00' N 00°19'24" E  
WEST LINE PAR. 1 PER DEED REC. 7/13/50 IN BK. 1188, PG. 493 O.R.

POINT "A" P.O.B.



INDIAN CANYON DR. (INDIAN AVE.)

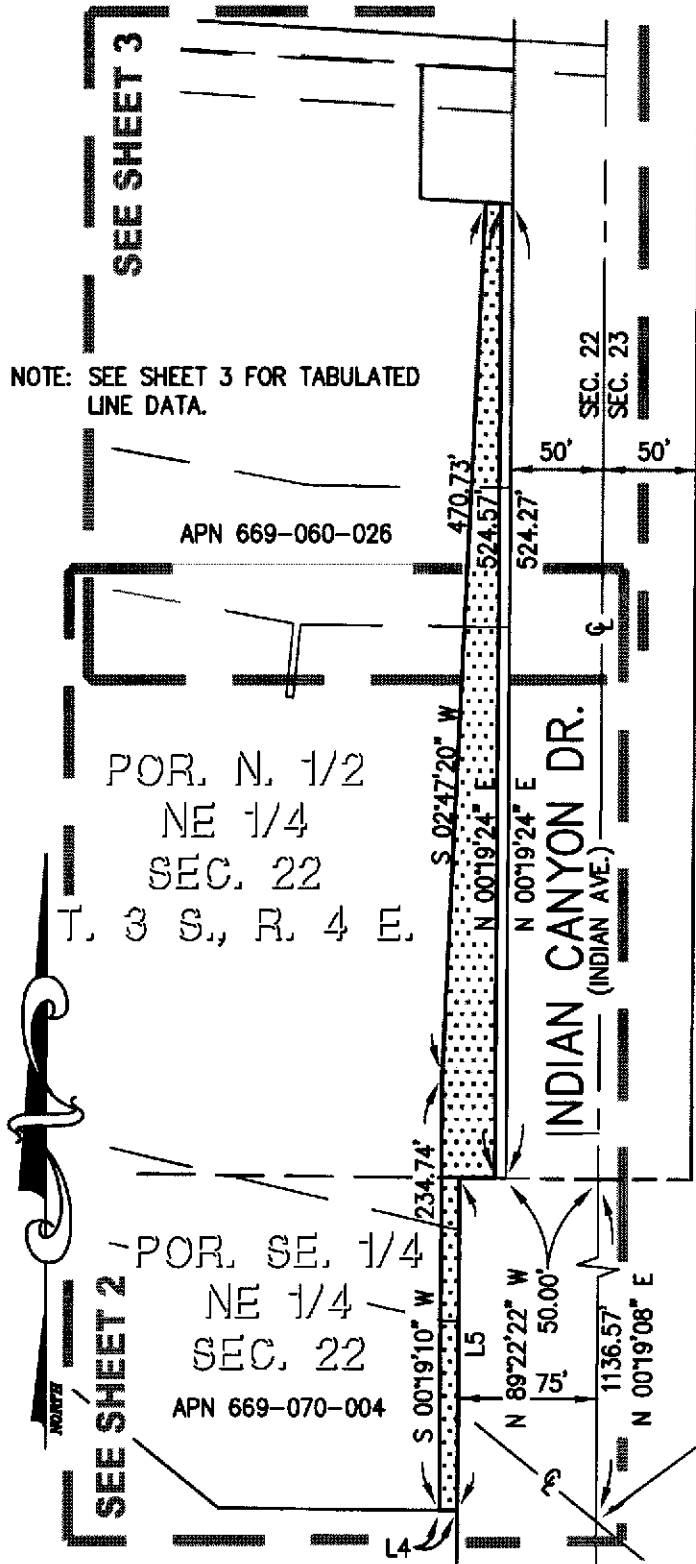
SEC. 22  
SEC. 23



SHEET 3 OF 3 SHEETS

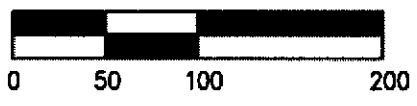
REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 40'
DRAWN BY: KA	DATE: 4-23-15		DOC. NO.
CHECKED BY: MH	DATE: 11-30-15	INDIAN CANYON DRIVE WIDENING APN 669-060-026 THE ROBERT WILSON MINER TRUST DATED 4/13/1998	DWG. NO.
APPROVED BY:	DATE:		

# EXHIBIT "B-3"



NOTE: SEE SHEET 3 FOR TABULATED LINE DATA.

MULTIPLY DISTANCE BY 1.00002570 TO OBTAIN GROUND DISTANCES



**APN 669-060-026 NON-PLOTTABLE EASEMENTS**  
 \*RIGHT-OF-WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES AND RESERVING UNTO THE UNITED STATES, ITS PERMITTEES OR LICENSEES, THE RIGHT TO OCCUPY AND USE ANY PART OF SECTION 22 LYING WITHIN FIFTY FEET OF THE CENTER LINE OF THE TRANSMISSION LINE RIGHT-OF-WAY OF THE COACHELLA VALLEY ICE AND ELECTRIC COMPANY REC. 11/23/1921 IN BK. 8, PG. 204 OF PATENTS.  
 A POLE LINE EASEMENT IN FAVOR OF THE SOUTHERN CALIFORNIA TELEPHONE CO. REC. 7/10/1933 IN BK. 131, PG. 119 O.R.  
 A RIGHT OF ACCESS AND TO INSTALL UTILITIES IN FAVOR OF SMSA LIMITED PARTNERSHIP REC. 7/08/2003 AS INST. NO. 2003-506376 O.R.  
 A PERMANENT TELECOMMUNICATIONS EASEMENT IN FAVOR OF VARIOUS REC. 8/29/2013 AS DOC. NO. 2013-0423943 O.R.

\*ALSO NON-PLOTTABLE EASEMENT FOR APN 669-070-004



### LEGEND

- SLOPE EASEMENT (SLOPE) AREA = 12,197 SQ. FT., MORE OR LESS
- T.P.O.B. TRUE POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT
- P.O.C. INT. OF THE CENTER LINE OF INDIAN CANYON DR. (INDIAN AVE.) AND SOUTHERN PACIFIC RAILROAD AS SHOWN ON ROS 18/2

SHEET 1 OF 3 SHEETS

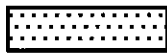
REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 100'
DRAWN BY: KA	DATE: 4-23-15		DOC. NO.
CHECKED BY: MH	DATE: 6-10-16	INDIAN CANYON DRIVE WIDENING APN 669-060-026 & 669-070-004 THE ROBERT WILSON MINER TRUST DATED 4/13/1998	DWG. NO.
APPROVED BY:	DATE:		

SEE SHEET 3

NOTE: SEE SHEET 3 FOR TABULATED LINE DATA.

POLE LINE EASEMENT IN FAVOR OF SOUTHERN CALIFORNIA EDISON CO. REC. 1/12/1973 AS INST. NO. 5042 O.R.

**LEGEND**

 SLOPE EASEMENT (SLOPE)  
AREA = 12,197 SQ. FT., MORE OR LESS



POR. N. 1/2  
NE 1/4  
SEC. 22  
T. 3 S., R. 4 E.  
APN 669-060-026

MATCH LINE  
THIS SHEET

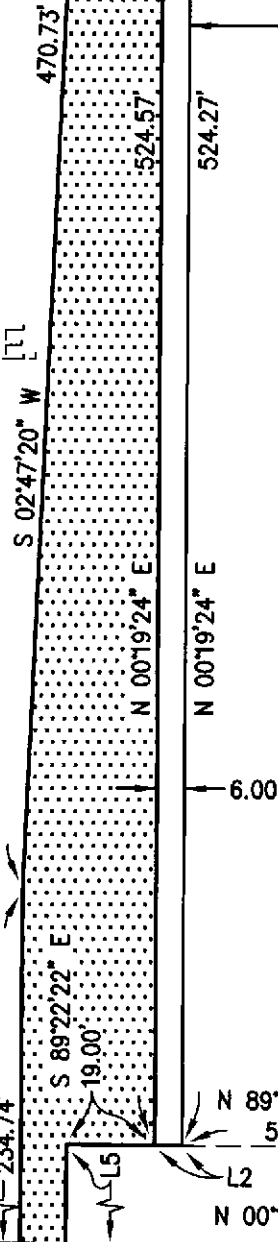
A UTILITY EASEMENT IN FAVOR OF SOUTHERN CALIFORNIA GAS CO. REC. 6/17/1968 AS INST. NO. 56471 O.R.

POR. SE 1/4  
NE 1/4  
SEC. 22  
T. 3 S., R. 4 E.  
APN 669-070-004

NORTH LINE PARCEL 1  
AS SHOWN ON RS 33/45

INDIAN CANYON DR.  
(INDIAN AVE.)

SEC. 22  
SEC. 23



MATCH LINE  
THIS SHEET

SHEET 2 OF 3 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 40'
DRAWN BY: KA	DATE: 4-23-15		DOC. NO.
CHECKED BY: MH	DATE: 6-10-16	INDIAN CANYON DRIVE WIDENING APN 669-060-026 & 669-070-004 THE ROBERT WILSON MINER TRUST DATED 4/13/1998	DWG. NO.
APPROVED BY:	DATE:		

A UTILITY EASEMENT IN FAVOR OF THE SOUTHERN CALIFORNIA GAS CO. REC. 5/10/1947 IN BK. 825, PG. 555 O.R.

A UTILITY EASEMENT IN FAVOR OF THE SOUTHERN CALIFORNIA GAS CO. REC. 12/15/1952 IN BK. 1424, PG. 279 O.R.

LINE TABLE		
LINE	BEARING	LENGTH
L1	N 86°28'57" W	6.01'
L2	S 89°22'22" E	6.00'
L3	N 86°28'57" W	8.67'
L4	S 89°22'22" E	9.91'
L5	N 00°19'08" E	180.13'

**LEGEND**



SLOPE EASEMENT (SLOPE)  
AREA = 12,197 SQ. FT., MORE OR LESS

T.P.O.B. TRUE POINT OF BEGINNING

POR. N. 1/2  
NE 1/4  
SEC. 22  
T. 3 S., R. 4 E.  
APN 669-060-026

POLE LINE EASEMENT IN FAVOR OF SOUTHERN CALIFORNIA EDISON CO. REC. 1/12/1973 AS INST. NO. 5042 O.R.

SEE SHEET 2



T.P.O.B. SLOPE

72.00'

N 00°19'24" E

WEST LINE PAR. 1 PER DEED REC. 7/13/50 IN BK. 1188, PG. 493 O.R.

470.73'

524.57'

524.27'

S 02°47'20" W

N 00°19'24" E

N 00°19'24" E

50'

6.00'

INDIAN CANYON DR.  
(INDIAN AVE.)

SEC. 22  
SEC. 23

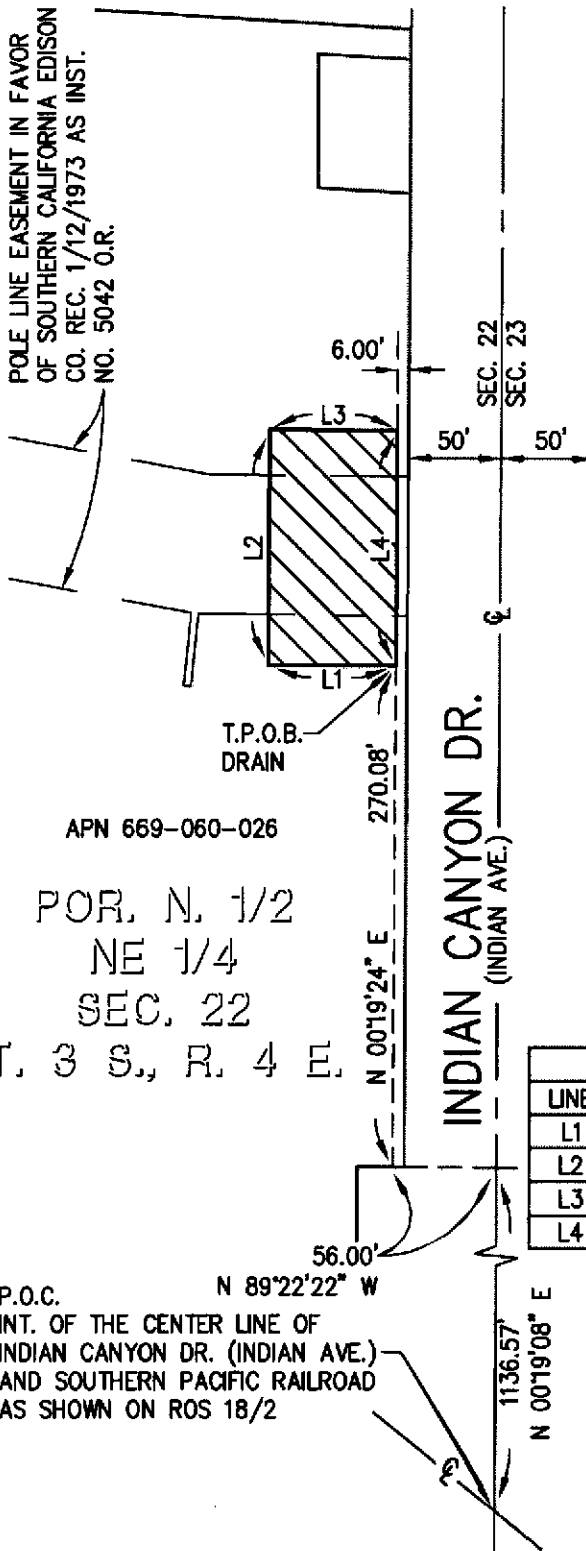


SHEET 3 OF 3 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 40'
DRAWN BY: KA	DATE: 4-23-15		DOC. NO.
CHECKED BY: MH	DATE: 6-10-16	INDIAN CANYON DRIVE WIDENING APN 669-060-026 & 669-070-004 THE ROBERT WILSON MINER TRUST DATED 4/13/1998	DWG. NO.
APPROVED BY:	DATE:		

# EXHIBIT "B-4"

POLE LINE EASEMENT IN FAVOR  
OF SOUTHERN CALIFORNIA EDISON  
CO. REC. 1/12/1973 AS INST.  
NO. 5042 O.R.



APN 669-060-026

POR. N. 1/2  
NE 1/4  
SEC. 22  
T. 3 S., R. 4 E.

P.O.C.  
INT. OF THE CENTER LINE OF  
INDIAN CANYON DR. (INDIAN AVE.)  
AND SOUTHERN PACIFIC RAILROAD  
AS SHOWN ON ROS 18/2

MULTIPLY DISTANCE BY 1.00002570  
TO OBTAIN GROUND DISTANCES



APN 669-060-026 NON-PLOTTABLE EASEMENTS  
RIGHT-OF-WAY FOR DITCHES OR CANALS  
CONSTRUCTED BY THE AUTHORITY OF THE UNITED  
STATES AND RESERVING UNTO THE UNITED STATES,  
IT'S PERMITTEES OR LICENSEES, THE RIGHT TO  
OCCUPY AND USE ANY PART OF SECTION 22 LYING  
WITHIN FIFTY FEET OF THE CENTER LINE OF THE  
TRANSMISSION LINE RIGHT-OF-WAY OF THE  
COACHELLA VALLEY ICE AND ELECTRIC COMPANY  
REC. 11/23/1921 IN BK. 8, PG. 204 OF PATENTS.  
A POLE LINE EASEMENT IN FAVOR OF THE  
SOUTHERN CALIFORNIA TELEPHONE CO. REC.  
7/10/1933 IN BK. 131, PG. 119 O.R.  
A RIGHT OF ACCESS AND TO INSTALL  
UTILITIES IN FAVOR OF SMSA LIMITED PARTNERSHIP  
REC. 7/08/2003 AS INST. NO. 2003-506376 O.R.  
A PERMANENT TELECOMMUNICATIONS  
EASEMENT IN FAVOR OF VARIOUS REC.  
8/29/2013 AS DOC. NO. 2013-0423943 O.R.



LINE TABLE		
LINE	BEARING	LENGTH
L1	N 89°38'35" W	69.04'
L2	N 00°19'24" E	126.69'
L3	S 89°38'35" E	69.04'
L4	S 00°19'24" W	126.69'

## LEGEND

DRAINAGE EASEMENT (DRAIN)  
AREA = 8,746 SQ. FT., MORE OR LESS

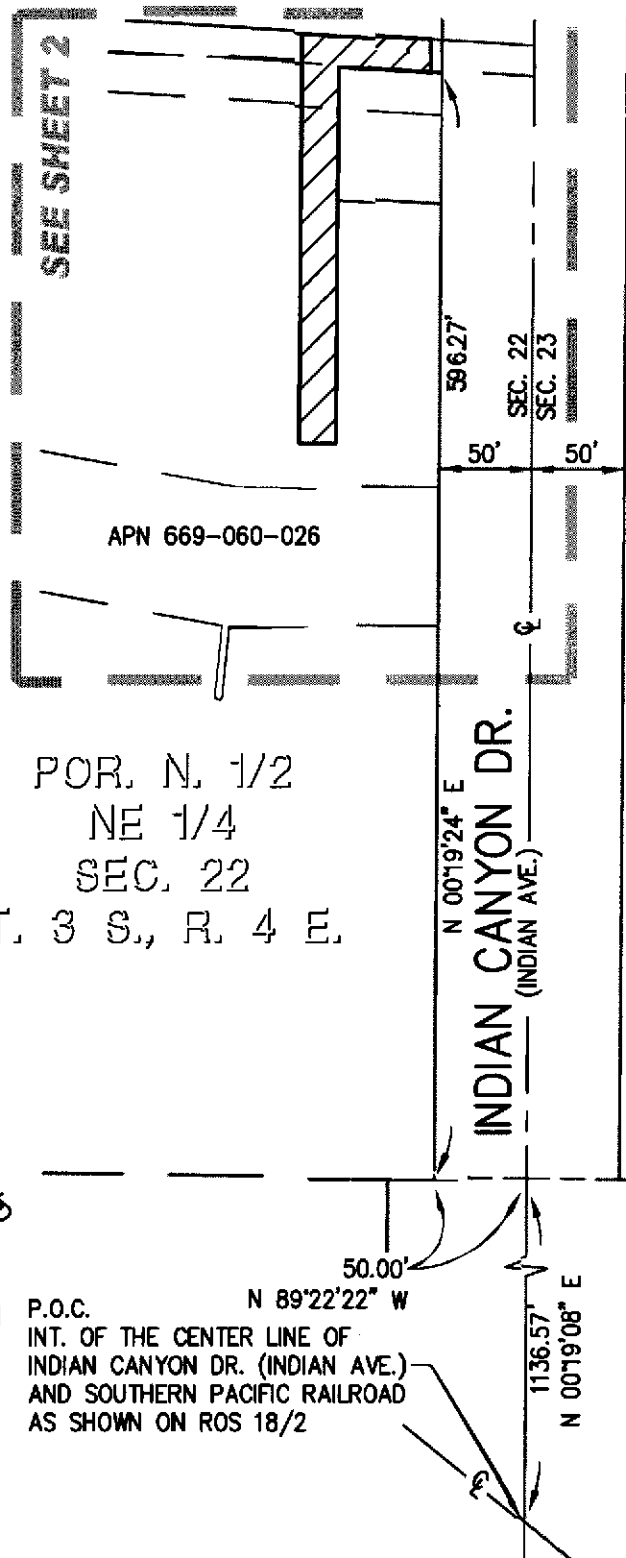
T.P.O.B. TRUE POINT OF BEGINNING

P.O.C. POINT OF COMMENCEMENT

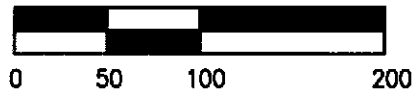
SHEET 1 OF 1 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 100'
DRAWN BY: KA	DATE: 5-20-16		DOC. NO.
CHECKED BY: MH	DATE: 8-11-16	INDIAN CANYON DRIVE WIDENING APN 669-060-026 THE ROBERT WILSON MINER TRUST DATED 4/13/1998	DWG. NO.
APPROVED BY:	DATE:		

# EXHIBIT "B-5"



MULTIPLY DISTANCE BY 1.00002570  
TO OBTAIN GROUND DISTANCES



**APN 669-060-026 NON-PLOTTABLE EASEMENTS**  
 RIGHT-OF-WAY FOR DITCHES OR CANALS  
 CONSTRUCTED BY THE AUTHORITY OF THE UNITED  
 STATES AND RESERVING UNTO THE UNITED STATES,  
 ITS PERMITTEES OR LICENSEES, THE RIGHT TO  
 OCCUPY AND USE ANY PART OF SECTION 22 LYING  
 WITHIN FIFTY FEET OF THE CENTER LINE OF THE  
 TRANSMISSION LINE RIGHT-OF-WAY OF THE  
 COACHELLA VALLEY ICE AND ELECTRIC COMPANY  
 REC. 11/23/1921 IN BK. 8, PG. 204 OF PATENTS.  
 A POLE LINE EASEMENT IN FAVOR OF THE  
 SOUTHERN CALIFORNIA TELEPHONE CO. REC.  
 7/10/1933 IN BK. 131, PG. 119 O.R.  
 A RIGHT OF ACCESS AND TO INSTALL  
 UTILITIES IN FAVOR OF SMSA LIMITED PARTNERSHIP  
 REC. 7/08/2003 AS INST. NO. 2003-506376 O.R.  
 A PERMANENT TELECOMMUNICATIONS  
 EASEMENT IN FAVOR OF VARIOUS REC.  
 8/29/2013 AS DOC. NO. 2013-0423943 O.R.



## LEGEND

CITY ACCESS EASEMENT (ACCESS)  
AREA = 5,218 SQ. FT., MORE OR LESS

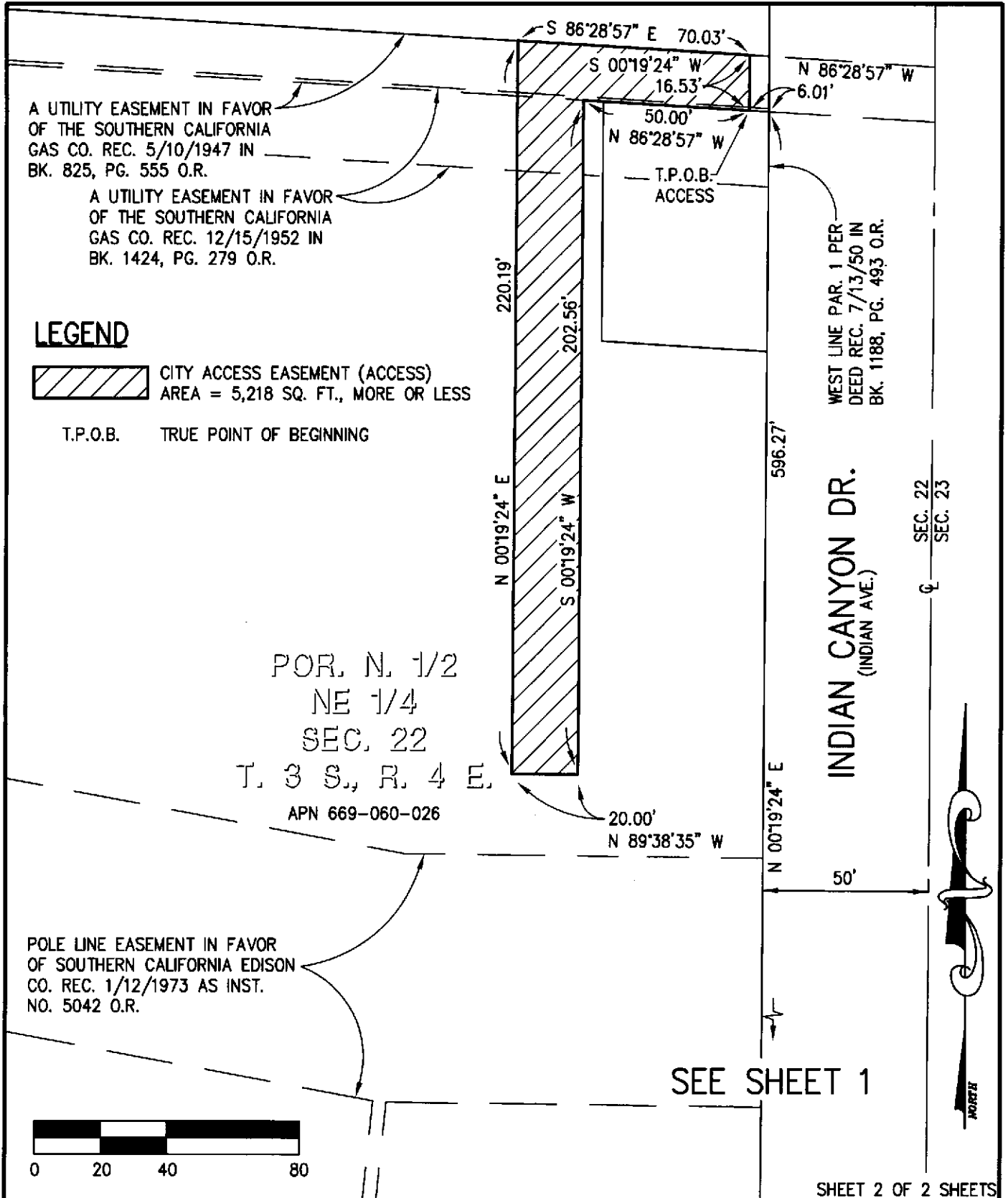
T.P.O.B. TRUE POINT OF BEGINNING

P.O.C. POINT OF COMMENCEMENT

SHEET 1 OF 2 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 100'
DRAWN BY: KA	DATE: 5-20-16		DOC. NO.
CHECKED BY: MH	DATE: 8-11-16	INDIAN CANYON DRIVE WIDENING APN 669-060-026 THE ROBERT WILSON MINER TRUST DATED 4/13/1998	DWG. NO.
APPROVED BY:	DATE:		

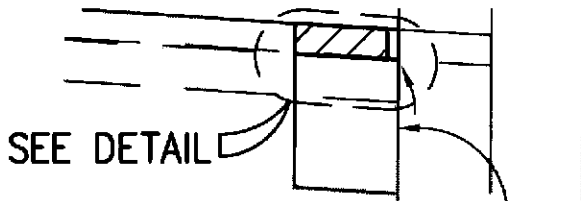




SHEET 2 OF 2 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE
DRAWN BY: KA	DATE: 5-20-16		1" = 40'
CHECKED BY: MH	DATE: 8-11-16	INDIAN CANYON DRIVE WIDENING	DOC. NO.
APPROVED BY:	DATE:	APN 669-060-026	DWG. NO.
		THE ROBERT WILSON MINER TRUST DATED 4/13/1998	

# EXHIBIT "B-6"



## EASEMENT LEGEND

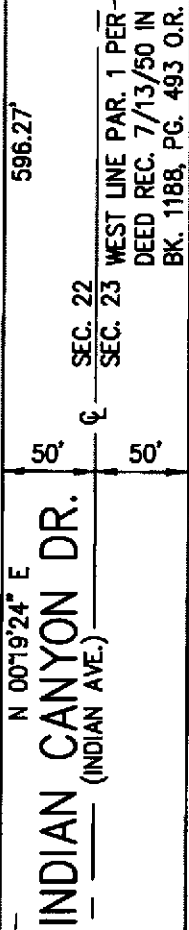
- E1 A UTILITY EASEMENT IN FAVOR OF THE SOUTHERN CALIFORNIA GAS CO. REC. 5/10/1947 IN BK. 825, PG. 555 O.R.
- E2 A UTILITY EASEMENT IN FAVOR OF THE SOUTHERN CALIFORNIA GAS CO. REC. 12/15/1952 IN BK. 1424, PG. 279 O.R.

APN 669-060-026

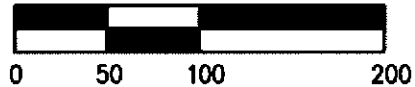
POR. N. 1/2  
NE 1/4  
SEC. 22  
T. 3 S., R. 4 E.



P.O.C.  
N 89°22'22" W  
INT. OF THE CENTER LINE OF  
INDIAN CANYON DR. (INDIAN AVE.)  
AND SOUTHERN PACIFIC RAILROAD  
AS SHOWN ON ROS 18/2

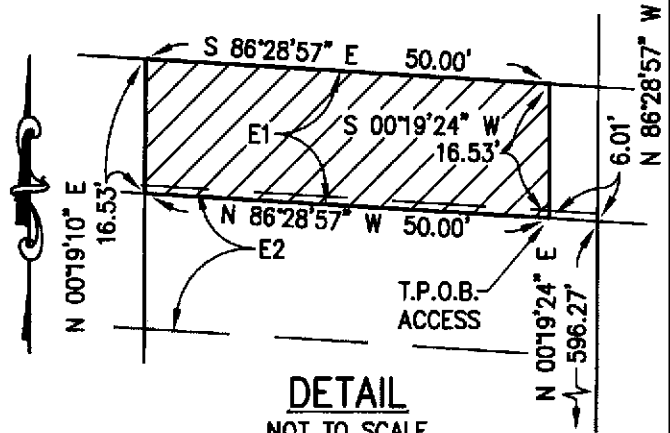


MULTIPLY DISTANCE BY 1.00002570  
TO OBTAIN GROUND DISTANCES



## APN 669-060-026 NON-PLOTTABLE EASEMENTS

RIGHT-OF-WAY FOR DITCHES OR CANALS  
CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES AND RESERVING UNTO THE UNITED STATES, ITS PERMITTEES OR LICENSEES, THE RIGHT TO OCCUPY AND USE ANY PART OF SECTION 22 LYING WITHIN FIFTY FEET OF THE CENTER LINE OF THE TRANSMISSION LINE RIGHT-OF-WAY OF THE COACHELLA VALLEY ICE AND ELECTRIC COMPANY REC. 11/23/1921 IN BK. 8, PG. 204 OF PATENTS.  
A POLE LINE EASEMENT IN FAVOR OF THE SOUTHERN CALIFORNIA TELEPHONE CO. REC. 7/10/1933 IN BK. 131, PG. 119 O.R.  
A RIGHT OF ACCESS AND TO INSTALL UTILITIES IN FAVOR OF SMSA LIMITED PARTNERSHIP REC. 7/08/2003 AS INST. NO. 2003-506376 O.R.  
A PERMANENT TELECOMMUNICATIONS EASEMENT IN FAVOR OF VARIOUS REC. 8/29/2013 AS DOC. NO. 2013-0423943 O.R.



## LEGEND

SO CAL GAS ACCESS EASEMENT (ACCESS) AREA = 825 SQ. FT., MORE OR LESS

T.P.O.B. TRUE POINT OF BEGINNING

P.O.C. POINT OF COMMENCEMENT

SHEET 1 OF 1 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 100'
DRAWN BY: KA	DATE: 5-20-16		INDIAN CANYON DRIVE WIDENING APN 669-060-026
CHECKED BY: MH	DATE: 6-10-16	THE ROBERT WILSON MINER TRUST DATED 4/13/1998	DWG. NO.
APPROVED BY:	DATE:		

**EXHIBIT "C-1", "C-2", "C-3", "C-4", "C-5" and "C-6"**

**FORM OF GRANT DEED, GRANT OF RIGHT OF WAY, SLOPE EASEMENT,  
DRAINAGE EASEMENT, CITY ACCESS EASEMENT, AND SOUTHERN CALIFORNIA  
GAS ACCESS EASEMENT**

(Exhibit "C-1", "C-2", "C-3", "C-4", "C-5" and "C-6" follows this page).

**EXHIBIT "C-1"**

**RECORDING REQUESTED BY**

City of Palm Springs

**WHEN RECORDED RETURN TO:**

City Clerk  
City of Palm Springs  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262

SPACE ABOVE THIS LINE FOR RECORDER'S USE  
Exempt from recording fees under Government Code §6103

**GRANT DEED  
(INDIAN CANYON DRIVE)**

**APN #669-060-026**

For a valuable consideration, receipt of which is hereby acknowledged, **Robert W. Miner, Jr., as Sole Successor Trustee of the Robert Wilson Miner Trust, dated April 13, 1998**, (hereinafter "Grantor"), hereby GRANTS to the **CITY OF PALM SPRINGS, a California charter city and municipal corporation**, (hereinafter "Grantee"), all rights, title and interest in the following described property for streets, highways, sanitary sewer lines, domestic water lines, public utilities, and other appurtenant uses, together with the right to construct, maintain, repair, operate, use, dedicate or declare the same for public use, in, on, under, over and across the real property in the City of Palm Springs, Riverside County, California, more particularly described on **Exhibit "A"** and shown on **Exhibit "B"** attached hereto and incorporated herein by this reference.

**GRANTOR:**

**Robert W. Miner, Jr., as Sole Successor  
Trustee of the Robert Wilson Miner  
Trust, dated April 13, 1998**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Robert W. Miner, Jr., Sole Successor  
Trustee

**EXHIBIT "C-2"**

**RECORDING REQUESTED BY**

City of Palm Springs

**WHEN RECORDED RETURN TO:**

City Clerk  
City of Palm Springs  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262

SPACE ABOVE THIS LINE FOR RECORDER'S USE  
Exempt from recording fees under Government Code §6103

**GRANT OF RIGHT-OF-WAY  
(INDIAN CANYON DRIVE)**

**APN #669-060-026**

For a valuable consideration, receipt of which is hereby acknowledged, **Robert W. Miner, Jr., as Sole Successor Trustee of the Robert Wilson Miner Trust, dated April 13, 1998,** (hereinafter "**Grantor**"), hereby GRANTS to the **CITY OF PALM SPRINGS, a California charter city and municipal corporation,** (hereinafter "**Grantee**"), a right-of-way for streets, highways, sanitary sewer lines, domestic water lines, public utilities, and other appurtenant uses, together with the right to construct, maintain, repair, operate, use, dedicate or declare the same for public use, in, on, under, over and across the real property in the City of Palm Springs, Riverside County, California, more particularly described on **Exhibit "A"** and shown on **Exhibit "B"** attached hereto and incorporated herein by this reference.

**GRANTOR:**

**Robert W. Miner, Jr., as Sole Successor  
Trustee of the Robert Wilson Miner  
Trust, dated April 13, 1998**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Robert W. Miner, Jr., Sole Successor  
Trustee

**EXHIBIT "C-3"**

**RECORDING REQUESTED BY**  
City of Palm Springs

**WHEN RECORDED RETURN TO:**

City Clerk  
City of Palm Springs  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262

SPACE ABOVE THIS LINE FOR RECORDER'S USE  
Exempt from recording fees under Government Code §6103

**GRANT DEED - SLOPE EASEMENT**

**APN #669-060-026, 669-070-004**

For a valuable consideration, receipt of which is hereby acknowledged, Robert W. Miner, Jr., as Sole Successor Trustee of the Robert Wilson Miner Trust dated April 13, 1998, (hereinafter "Grantor"), hereby GRANTS to the CITY OF PALM SPRINGS, a California charter city and municipal corporation, (hereinafter "Grantee"), an easement and right-of-way for earth embankment slopes, together with the right to construct and maintain such slopes and embankments and facilities incidental thereto, over, under, along and across all that real property situated in the City of Palm Springs, County of Riverside, State of California, described as follows:

See exhibit "A" attached hereto and exhibit "B" attached for illustration purposes

Reserving unto the Grantor herein, heirs and assigns the continued use of the above described parcel of land subject to the following conditions: The erecting of buildings, masonry walls, and other permanent structures; the planting of trees; the changing of the surface grade; and the installation of privately owned pipe lines shall be prohibited except by Encroachment Agreement issued by the City Engineer.

**GRANTOR:**

**Robert W. Miner, Jr., as Sole Successor  
Trustee of the Robert Wilson Miner  
Trust, dated April 13, 1998**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Robert W. Miner, Jr., Sole Successor  
Trustee

**EXHIBIT "C-4"**

**RECORDING REQUESTED BY**

Lawyers Title Company

**WHEN RECORDED RETURN TO:**

City Clerk  
CITY OF PALM SPRINGS  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262

SPACE ABOVE THIS LINE FOR RECORDER'S USE  
Exempt from recording fees under Government Code §6103

**EASEMENT DEED**

**APN: 669-060-026**

This transfer is exempt from Documentary Transfer Tax pursuant to Revenue & Taxation Code § 11922.

THE UNDERSIGNED SELLER DECLARES:

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

**Robert W. Miner, Jr., as Sole Successor Trustee of the Robert Wilson Miner Trust dated April 13, 1998,**

hereby GRANTS to:

**CITY OF PALM SPRINGS, a California charter city and municipal corporation,**

an easement for drainage purposes, including public utility and public services purposes, over, upon, across, and within the real property in the City of Palm Springs, County of Riverside, State of California, more particularly described on Exhibit A and shown on Exhibit B attached hereto and incorporated herein by this reference.

**TOGETHER** with:

1. All tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof; and
2. All rights, title, and interests of Seller in and under all covenants, conditions, restrictions, reservations, easements, and other matters of record, including, without limitation, all rights as "Declarant" under any Declarations of Covenants, Conditions and Restrictions ("Declarations") of record.

**Exhibit "C-4"**

**SAID GRANT BEING FURTHER SUBJECT TO:**

1. General and special real property taxes for the current fiscal year and all later years.
2. All assessments imposed by a duly empowered governmental entity, whether or not of record.

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

SELLER

Robert W. Miner, Jr., as Sole Successor  
Trustee of the Robert Wilson Miner Trust  
dated April 13, 1998

By: \_\_\_\_\_  
Robert W. Miner, Jr., Sole Successor  
Trustee



**Exhibit "C-5"**

**RECORDING REQUESTED BY**

City of Palm Springs

**WHEN RECORDED RETURN TO:**

City Clerk  
City of Palm Springs  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262

SPACE ABOVE THIS LINE FOR RECORDER'S USE  
Exempt from recording fees under Government Code §6103

**GRANT OF EASEMENT (ACCESS)**

**APN #669-060-026**

FOR VALUABLE CONSIDERATION,

**Robert W. Miner, Jr., as Sole Successor Trustee of the Robert Wilson Miner Trust, dated April 13, 1998, ("Grantor"), hereby grants to CITY OF PALM SPRINGS, a California charter city and municipal corporation ("Grantee"): a non-exclusive, perpetual access road easement ("Easement") City service vehicles and equipment, including the right to move equipment, on, over and across a strip within that certain real property in the City of Palm Springs, County of Riverside, described on Exhibit "A" and shown on Exhibit "B" attached hereto and incorporated herein by this reference.**

Grantor, for its heirs, successors and assigns, agrees that nothing shall be done to impair Grantee's vehicular access to and along the Easement.

Grantor reserves the right to (1) use any surface or subsurface areas, provided such use does not substantially interfere with Grantee's use of the Easement; (2) improve the Easement area surface with paved driveways, parking surfaces, sidewalks, curbs and gutters (hereinafter called "Improvements"); and (3) permit others the right of reasonable use and enjoyment of the above described Improvements in common with the Grantee, provided that Grantee shall not be liable for any damages occurring from activities of others using said Improvements.

Grantee, at any and all times shall have the right of ingress and egress along and over the Easement. It is understood and agreed that Grantee shall have the right, but not the obligation, to construct, improve, maintain or continue to maintain the Improvements in, along and over the Easement as Grantee deems necessary.

This Easement shall be binding upon and inure to the benefit of successors, heirs, and assigns of Grantor and Grantee.

**Exhibit "C-5"**

**IN WITNESS WHEREOF**, these presents are hereby signed this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_.

**GRANTOR: Robert W. Miner, Jr., as Sole Successor Trustee of the Robert Wilson  
Miner Trust, dated April 13, 1998,**

**By: \_\_\_\_\_  
Robert W. Miner, Jr., Sole Successor Trustee**

Exhibit "C-6"

Recording Requested by and  
when recorded mail to:

Southern California Gas Company 8101 S. Rosemead Blvd B1 ML:SC722K  
Pico Rivera, CA 90660-5100  
Attn.: Land & Right of Way

<b>R/W:</b>	1. 262,745	<b>DOCUMENTARY TRANSFER TAX \$</b> <u>CONVEYANCE OF EASEMENT (OIL AND GAS LEASE) AND CONSIDERATION &amp; VALUE IS LESS THAN \$100. R&amp;T 11911.</u>
<b>APN:</b>	669-060-026	_____ Computed on full value of property conveyed _____ Computed on full value less liens and encumbrances remaining at time of sale

**GRANT OF EASEMENT (ACCESS)**

FOR VALUABLE CONSIDERATION,

**Robert W. Miner, Jr., as Sole Successor Trustee of the Robert Wilson Miner Trust, dated April 13,**

**1998, ("Grantor"), hereby grants to Southern California Gas Company, a California corporation, its successors and assigns ("Grantee"): a non-exclusive, perpetual access road easement ("Easement") for pedestrian and vehicular passage, travel and transportation purposes, including the right to move equipment, on, over and across a strip within that certain real property in County of Riverside, described as follows:**

THAT PORTION OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY UNITED STATES GOVERNMENT SURVEY APPROVED FEBRUARY 29, 1856, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE INTERSECTION OF THE CENTER LINE OF SOUTHERN PACIFIC RAILROAD WITH THE CENTER LINE OF INDIAN CANYON DRIVE (FORMERLY INDIAN AVENUE) AS SHOWN ON RECORD OF SURVEY FILED IN BOOK 18 OF RECORDS OF SURVEY AT PAGE 2 ON AUGUST 20, 1951; THENCE ALONG THE CENTER LINE OF SAID INDIAN CANYON DRIVE NORTH 00°19'08" EAST 1136.57 FEET TO AN ANGLE POINT THEREIN, SAID POINT BEING THE ONESIXTEENTH SECTION CORNER OF SAID SECTION; THENCE ALONG THE SOUTHERLY LINE OF SAID NORTH HALF NORTH 89°22'22" WEST 50.00 FEET TO THE WESTERLY LINE OF INDIAN CANYON DRIVE (INDIAN AVENUE) AS SHOWN ON SAID RECORD OF SURVEY; THENCE ALONG SAID WESTERLY LINE NORTH 00°19'24" EAST 596.27 FEET TO THE INTERSECTION OF THE SOUTHERLY LINE OF THAT CERTAIN RIGHT OF WAY CONVEYED FROM DAVID MARGOLIUS, ET UX, TO SOUTHERN CALIFORNIA GAS COMPANY AND SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA, BY DEED RECORDED MAY 10, 1947 IN BOOK 825 PAGE 555 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, WITH THE WEST LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN PARCEL 1 IN DEED FROM DAVID MARGOLIUS AND BEULAH E. MARGOLIUS

TO THE COUNTY OF RIVERSIDE, RECORDED JULY 13, 1950 IN BOOK 1188 PAGE 493 OF OFFICIAL RECORDS OF SAID RIVERSIDE COUNTY; THENCE LEAVING SAID WESTERLY LINE ALONG SAID SOUTHERLY LINE OF THAT CERTAIN RIGHT OF WAY NORTH 86°28'57" WEST 6.01 FEET TO THE **TRUE POINT OF BEGINNING**;

1. THENCE CONTINUING ALONG SAID SOUTHERLY LINE NORTH 86°28'57" WEST 50.00 FEET;
2. THENCE LEAVING SAID SOUTHERLY LINE NORTH 00°19'10" EAST 16.53 FEET TO THE NORTHERLY LINE OF THAT CERTAIN RIGHT OF WAY;
3. THENCE ALONG SAID NORTHERLY LINE SOUTH 86°28'57" EAST 50.00 FEET;
4. THENCE LEAVING SAID NORTHERLY LINE SOUTH 00°19'24" WEST 16.53 FEET TO THE **TRUE POINT OF BEGINNING**.

AREA = 825 SQUARE FEET, MORE OR LESS

SEE **EXHIBIT "B"** ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF. THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. MULTIPLY

DISTANCES SHOWN BY 1.00002570 TO OBTAIN GROUND DISTANCES.

Grantor, for its heirs, successors and assigns, agrees that nothing shall be done to impair Grantee's vehicular access to and along the Easement.

Grantor reserves the right to (1) use any surface or subsurface areas, provided such use does not substantially interfere with Grantee's use of the Easement; (2) improve the Easement area surface with paved driveways, parking surfaces, sidewalks, curbs and gutters; and (3) permit others the right of reasonable use and enjoyment of the above described roadways in common with the Grantee, provided that Grantee shall not be liable for any damages occurring from activities of others using said roadways.

Grantee, at any and all times shall have the right of ingress and egress along and over the Easement. It is understood and agreed that Grantee shall have the right, but not the obligation, to construct, improve, maintain or continue to maintain any roadways in, along and over the Easement as Grantee deems necessary.

This Easement shall be binding upon and inure to the benefit of successors, heirs, and assigns of Grantor and Grantee.

IN WITNESS WHEREOF, these presents are hereby signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**GRANTOR: Robert W. Miner, Jr., as Sole Successor Trustee of the Robert Wilson Miner Trust, dated April 13, 1998,**

By: \_\_\_\_\_  
**Robert W. Miner, Jr., Sole Successor Trustee**

**EXHIBIT D**

DO NOT RECORD.  
DO NOT SEND  
TO IRS.

TRANSFeree (BUYER)  
MUST RETAIN FOR  
SIX YEARS AFTER  
THE TRANSACTION.

**CERTIFICATION OF NON-FOREIGN  
STATUS BY TRANSFEROR**

1. Section 1445 of the Internal Revenue Code provides that a transferee (Buyer) of a U. S. real property interest must withhold tax if the transferor (Seller) is a foreign person.

2. In order to inform each transferee that withholding of tax is not required upon disposition of a U. S. real property interest by \_\_\_\_\_ (hereinafter referred to as "the Transferor"), the undersigned hereby certifies, and declares by means of this certification, the following on behalf of the Transferor:

A. The one item marked below is true and correct:

\_\_\_\_\_ (I) The Transferor is not a foreign individual, foreign corporation, foreign partnership, foreign trust, or foreign estate (as these terms are defined in the Internal Revenue Code and Income Tax Regulations).

\_\_\_\_\_ (II) The Transferor is a corporation incorporated under the laws of a foreign jurisdiction but has elected to be treated as a U. S. corporation under Section 897(i) of the Internal Revenue Code, AND HAS ATTACHED TO THIS CERTIFICATE A TRUE AND GENUINE COPY OF THE ACKNOWLEDGMENT OF SUCH ELECTION ISSUED BY THE IRS.

B. The Transferor's social security number is \_\_\_\_\_.

C. The Transferor's address is \_\_\_\_\_.

---

3. The Transferor understands that this certificate may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained in this certification may be punished by fine or imprisonment (or both).

4. The Transferor understands that each transferee is relying on this certificate in determining whether withholding is required and each transferee may face liabilities if any statement in this certificate is false.

5. The Transferor hereby indemnifies each transferee, and agrees to defend and hold each transferee harmless, from any liability, cost, damage, or expense which such transferee may incur as a result of:

A. the Transferor's failure to pay any U. S. Federal income tax which the Transferor is required to pay under applicable U. S. law, or

B. any false or misleading statement contained herein.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete; I further declare that I have authority to sign this document on behalf of the Transferor.

EXECUTED in \_\_\_\_\_ County, State of \_\_\_\_\_

on \_\_\_\_\_.

Transferor: \_\_\_\_\_

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

Title: \_\_\_\_\_

## EXHIBIT E

### HAZARDOUS SUBSTANCE DEFINITION

The term "Hazardous Substance" as used in this Agreement shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to those substances, materials or wastes regulated now or in the future under any of the statutes or regulations listed below and any and all of those substances included within the definitions of "hazardous substances", "hazardous materials", "hazardous waste", "hazardous chemical substance or mixture", "imminently hazardous chemical substance or mixture", "toxic substances", "hazardous air pollutant", "toxic pollutant" or "solid waste" in the statutes or regulations listed below. Hazardous Substances shall also mean any and all other similar terms defined in other federal state and local laws, statutes, regulations, orders or rules and materials and wastes which are, or in the future become, regulated under applicable local, state or federal law for the protection of health or the environment or which are classified as hazardous or toxic substances, materials or waste, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) any petroleum products or fractions thereof, (iii) asbestos, (iv) polychlorinated biphenyls, (v) flammable explosives, (vi) urea formaldehyde, and (vii) radioactive materials and waste.

In addition, a Hazardous Substance shall include:

(1) A "Hazardous Substance", "Hazardous Material", "Hazardous Waste", or "Toxic Substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801, et seq., or the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.;

(2) "Oil" or a "Hazardous Substance" listed or identified pursuant to § 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321, as well as any other hydrocarbonic substance or by-product;

(3) Listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity;

(4) A material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, damages or threatens to damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or public agency requires in order for the property to be put to any lawful purpose;

(5) Any material the presence of which would require remediation, whether or not the presence of such material resulted from a leaking underground fuel tank;

(6) Pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.;

(7) Asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.;

(8) Any radioactive material including, without limitation, any "source material", "special nuclear material", "by-product material", "low-level wastes", "high-level radioactive waste", "spent nuclear fuel" or "transuranic waste", and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. §§ 2011 et seq., or the Nuclear Waste Policy Act, 42 U.S.C. §§ 10101 et seq.

(9) Industrial process and pollution control wastes, whether or not "hazardous" within the meaning of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.;

All other laws, ordinances, codes, statutes, regulations, administrative rules, policies and orders, promulgated pursuant to said foregoing statutes and regulations or any amendments or replacement thereof, provided such amendments or replacements shall in no way limit the original scope and/or definition of Hazardous Substance defined herein.



**EXHIBIT F**

**FUTURE ACCESS RIGHTS**

The following letter dated November 23, 2016, from Buyer to Seller regarding acknowledgement of existing and expectations for future access rights to Seller's property is made a part hereof this Agreement.

## EXHIBIT "F"



# City of Palm Springs

Public Works & Engineering Department

3200 East Tahquitz Canyon Way • Palm Springs, California 92262  
Tel: (760) 322-8380 • Fax: (760) 323-8207 • Web: [www.palmspringsca.gov](http://www.palmspringsca.gov)

November 23, 2016

Robert W. Miner, Jr.  
PO Box 190266  
Anchorage, AK 99519

**RE: Access Rights to Garnet Avenue and Indian Canyon Drive**

Dear Mr. Miner,

This letter is provided to confirm discussions with you related to the Indian Canyon Drive Widening and Bridge Replacement @ UPRR Project, City Project No. 01-11, (hereafter the "Project"), and its impact on access rights to your properties identified by Assessor Parcel Numbers (APN) 669-060-026, 669-070-004, and 669-060-022 (hereafter the "Property"). Dokken Engineering, acting on behalf of the City of Palm Springs as its Right of Way Agent, has previously submitted to you an offer to acquire various rights-of-way and temporary construction easements from the Property, as necessary to construct the Project.

Your existing access rights can be described as follows:

**Garnet Avenue:** The Property has direct access to Garnet Avenue, excluding a length of approximately 270 feet adjacent to the eastbound on/off ramps where access rights were previously acquired from you as part of the Indian Canyon Drive / Interstate 10 Interchange Project.

**Indian Canyon Drive:** The Property has direct access to Indian Canyon Drive, without any restrictions with the exception of those certain understandings expressed to you in a letter dated January 29, 2009, included herewith as Attachment 1, and as otherwise superseded by this letter.

Your future rights can be described as follows:

**Garnet Avenue:** You will retain full access rights to Garnet Avenue outside of the existing Caltrans restricted access previously acquired from you. At the time the Property is developed, the City will require minor widening of Garnet Avenue, which will also include re-striping Garnet Avenue with the necessary turn lane(s) into the Property at the access points approved with your development. Provided the access points proposed as part of any future development coordinate with existing driveways to adjacent properties on Garnet Avenue, full access rights will be provided.

Robert Miner  
November 23, 2016  
Page 2

**Indian Canyon Drive:**

The Project proposes to widen Indian Canyon Drive to a 6-lane divided roadway (with a raised landscaped median). The Project will change your existing access rights from full access, to limited access (right in / right out only).

At the time the Property is developed, the City will require modification of Indian Canyon Drive to provide a full, signalized access point into the Property, which will include modifying the planned raised median to include a break for a northbound left turn lane into the Property, and an eastbound left turn exit from the Property. At that time, the Property will be provided with full access at a centralized location along Indian Canyon Drive, approved by the City. The Property is designated as "Regional Business Center" (RSC), a higher density land use created in the 2007 General Plan Update. Given this land use designation, the City anticipates the Property will be developed with higher intensity industrial, office and commercial uses that relate to the close proximity with Interstate 10. These land uses will likely generate significant volumes of traffic, and as such, the City acknowledges that if developed consistent with the RSC land use designation, full signalized access from Indian Canyon Drive will be required. The exact location of the signalized access is yet to be determined.

The City has no written policy on the spacing of signalized intersections, however it is generally accepted that the minimum spacing between traffic signals should be one-eighth (1/8) mile (660 feet). It would be possible to locate a signalized intersection to the Property at 1/8 mile or more south of Garnet Avenue, provided you (or a future property owner) are successful in acquiring the UPRR surplus land (identified by APN 669-060-012). Absent acquisition of the UPRR property, development of the Property will be challenging and the location of a signalized intersection may have to occur closer to Garnet Avenue than the 1/8 mile minimum guideline.


As there are no development plans for the Property, it is impossible for me to guarantee you a specific location on Indian Canyon Drive for a full, signalized access point. However, the point being made here is that one will be necessary to ensure development of the Property is possible to its full potential under the RBC land use designation.

At the time a development is proposed on the Property, a full analysis of the proposed access points to Garnet Avenue and Indian Canyon Drive, layout of internal streets and/or parking lots, and traffic impacts generated by the development will occur. It is during the City's entitlement process where the Property will be granted specific rights, consistent with the proposed development and the traffic analysis that justifies the required access. Those access rights will be granted consistent with those generally identified in this letter: full access to Garnet Avenue consistent with existing access points / driveways along Garnet Avenue; and (1) signalized access point on Indian Canyon Drive.

Robert Miner  
November 23, 2016  
Page 3

If you have any questions, please feel free to contact me at (760) 322-8380, or by e-mail at [Marcus.Fuller@palmspringsca.gov](mailto:Marcus.Fuller@palmspringsca.gov).

Sincerely,

A handwritten signature in black ink that reads "Marcus Fuller". The signature is written in a cursive style with a large, looped initial "M".

Marcus L. Fuller, MPA, PE, PLS  
Assistant City Manager/City Engineer

cc: *Jamie Formico*  
*file*

**ATTACHMENT 1**



# City of Palm Springs

Department of Public Works and Engineering

3200 E. Tahquitz Canyon Way • Palm Springs, California 92262

Tel: (760) 323-8253 • Fax: (760) 322-8360 • Web: [www.ci.palm-springs.ca.us](http://www.ci.palm-springs.ca.us)

January 29, 2009

Mr. Robert Miner  
611 S. Palm Canyon Dr., Suite #7-456  
Palm Springs, CA 92264

Re: **Access Rights to Garnet Avenue and Indian Canyon Drive**

Dear Mr. Miner:

This letter memorializes a meeting held on January 15, 2009, to discuss the Indian Canyon Drive / Interstate 10 Interchange Project and its impact on access rights to your property identified by Assessor's Parcel Number (APN) 666-330-008, 669-060-004, 669-060-005, 669-060-018, and 669-093-011. Riverside County, acting on behalf of the City of Palm Springs as its Right of Way Agent, has previously submitted to you an offer to acquire right-of-way and temporary construction easements from your property, as necessary to implement the planned Indian Canyon Drive / Interstate 10 Interchange improvements. Our meeting was held at your request, and in response to the City's offer to acquire right-of-way from you, with the primary purpose to discuss existing and future access rights to your property.

Your existing access rights can be described as follows:

**Garnet Avenue:** Your property has direct access to Garnet Avenue, without any restrictions.

**Indian Canyon Drive:** Your property has direct access to Indian Canyon Drive, without any restrictions.

Your future access rights, as a result of the planned Interchange improvements, can be described as follows:

**Garnet Avenue:** Caltrans is requiring restricted access rights across from the planned eastbound on-ramp and off-ramp located on Garnet Avenue. The restricted access rights will extend 138.28 meters (453.67 feet) along your Garnet Avenue frontage opposite the new eastbound ramps. You will retain full access rights to Garnet Avenue outside of the Caltrans restricted access to be acquired from you.

As we discussed, Caltrans and the Federal Highway Administration (FHWA) have restrictions with providing local access (public or private) to any intersection with Interstate Highway ramps; therefore, although the City would prefer your property to have full signalized access at the new signalized intersection on Garnet Avenue with the eastbound I-10 ramps, Caltrans and FHWA regulations restrict such access. Full signalized access to your property from Garnet Avenue, if warranted and required, will have to be located outside of the Caltrans access control, at a location that makes appropriate sense given the proximity to the existing traffic signal at Indian Canyon Drive and other existing driveways to the adjacent properties.

Sheets PD-3 and PD-7 indicate the proposed traffic striping to be implemented as part of the planned interchange improvements. These plans show that Garnet Avenue will become a 4-lane, divided roadway (divided with a painted median). At the time your property is developed, it will include minor widening of Garnet Avenue (beyond what we are proposing as part of the planned Interchange improvements), which will also include re-striping Garnet Avenue with the necessary turn lane(s) into your property at the access points approved with your development. Provided the access points proposed as part of any future development coordinate with existing driveways to adjacent properties on Garnet Avenue, full access rights shall be provided.

### **Indian Canyon Drive:**

Sheet PD-7 indicates the proposed traffic striping to be implemented as part of the planned Interchange improvements. This plan shows that Indian Canyon Drive will become a 4-lane, divided roadway (divided with a painted median) transitioning to match the existing 2-lane divided roadway to the south of your property. As we discussed, I have directed our design engineer to revise Sheet PD-7 to remove the standard striped left-turn bay pocket and to indicate what is called a "Two Way Left Turn Lane" (TWLTL) which allows cars to pull into the painted median and turn left into your property. Likewise, vehicles are permitted to turn left out of your property into the TWLTL and pull into northbound traffic (when safe to do so). This will maintain the existing full access to your driveways on Indian Canyon Drive. Additionally, I have directed our design engineer to ensure that the northbound U-Turn movement at Garnet Avenue is allowed.

As we discussed, the City has a separate federally funded project that will widen *Indian Canyon Drive* to its full width extending south over the Union Pacific Railroad (UPRR). This project will widen Indian Canyon Drive to a 6-lane divided roadway (divided with a painted median), transitioning to match the existing 2-lane divided roadway south of the UPRR bridge. A third separate federally funded project will extend the widening of Indian Canyon Drive, to its ultimate 4-lane divided roadway width, through the Whitewater River south into Palm Springs.

At the time your property is developed, it will require modification of Indian Canyon Drive to provide a full, signalized access point into your property. Your property is designated as "Regional Business Center" (RBC), a higher density land use created in the 2007 General Plan Update. Given this land use designation, the City anticipates your property will be developed with higher intensity industrial, office and commercial uses that relate to the close proximity with Interstate 10. These land uses will likely generate significant volumes of traffic, and as such, the City acknowledges that if developed consistent with the RBC land use designation, full signalized access from Indian Canyon Drive will be required. The location of the signalized access is to be determined.

The City has no written policy on the spacing of signalized intersections, however it is generally accepted that the minimum spacing between traffic signals should be one-eighth ( $\frac{1}{8}$ ) mile (660 feet). It would be possible to locate a signalized intersection to your property at  $\frac{1}{8}$  mile or more south of Garnet Avenue, provided you (or a future property owner) are successful in acquiring the UPRR surplus land (identified by APN 669-060-012)<sup>1</sup>. Absent acquisition of the UPRR property, development of your property will be challenging and the location of a signalized intersection may have to occur closer to Garnet Avenue than the  $\frac{1}{8}$  mile minimum guideline.

---

<sup>1</sup> Note that I have initiated an inquiry with UPRR staff to determine who at UPRR is responsible for coordinating sale of surplus UPRR property, by e-mail dated January 29, 2009, to which you were copied.

Mr. Robert Miner  
January 29, 2009  
Page 3

As there are no development plans for your property, it is impossible for me to guarantee you a specific location on Indian Canyon Drive for a full, signalized access point. However, the point being made here is that one will be necessary to ensure development of your property to its full potential under the RBC land use designation is possible.

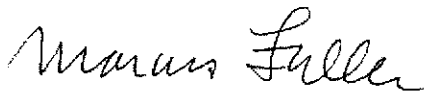
At the time a development is proposed on your property, a full analysis of the proposed access points to Garnet Avenue and Indian Canyon Drive, layout of internal streets and/or parking lots, and traffic impacts generated by the development will occur. It is during the City's entitlement process where your property will be granted specific rights, consistent with the proposed development and the traffic analysis that justifies the required access. Those access rights will be granted consistent with those generally identified in this letter: full access to Garnet Avenue consistent with existing access points / driveways along Garnet Avenue; and (1) signalized access point on Indian Canyon Drive.

As requested, I have enclosed copies of the latest plans for the planned Interchange improvements that affect your property.

As I recall from our discussion of January 15, 2009, you have tentatively agreed to the City's offer to acquire the rights-of-way and temporary construction easements, subject to receipt of this letter outlining the City's expectation of access rights to be afforded your property. With this understanding, I have asked Riverside County to forward to you the formal acquisition package for your approval. I am available to meet with you during your next visit to Palm Springs, February 7 - 14; please contact me so I might arrange a meeting date and time.

If you have any questions, I can be reached at (760) 323-8253, extension 8744, or by e-mail at [Marcus.Fuller@palmsprings-ca.gov](mailto:Marcus.Fuller@palmsprings-ca.gov).

Sincerely,



Marcus L. Fuller, P.E., P.L.S.  
Assistant Director of Public Works/  
Assistant City Engineer

cc: file



# **ATTACHMENT 4**

**TEMPORARY CONSTRUCTION EASEMENT AGREEMENT**

PROJECT: Indian Canyon Drive Widening and Bridge Replacement @ UPRR  
Federal Project No. BRLO-5282(017)  
City Project No. 01-11

APN(s): 669-060-026, 669-070-004

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT, (the "**Agreement**"), is hereby made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the **City of Palm Springs, a California charter city and municipal corporation**, organized and existing in the County of Riverside, under and by virtue of the laws of the State of California, hereinafter designated as the "**City**" and/or "**Grantee**", **Robert W. Miner, Jr., as Sole Successor Trustee of the Robert Wilson Miner Trust, dated April 13, 1998**, hereinafter designated as the "**Grantor**". City/Grantee and Grantor are individually referred to as "Party" and are collectively referred to as the "Parties".

**RECITALS**

A. Grantor is the owner of certain real property located in the City of Palm Springs, (the "**City**"), the County of Riverside, (the "**County**"), State of California, (the "**State**"), which is identified by Assessor Parcel Number(s) **669-060-026, 669-070-004**, (referred to as the "**Property**").

B. Grantee desires to obtain from Grantor a temporary construction easement over a portion of the Property, and Grantor hereby agrees to authorize Grantee and its assignees, including its contractor(s), to enter, for a limited duration and term subject to the conditions herein this Agreement, a portion of the Property as described on the attached legal description, referenced as Exhibit "A", and shown on the attached map, referenced as Exhibit "B", (the "**Easement Area**"), which are attached hereto and incorporated herein by reference.

C. The Parties desire by this Agreement to provide the terms and conditions for the Grantee's acquisition from Grantor of a Temporary Construction Easement, as defined below, over the Easement Area.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of performance by the Parties of the promises, covenants, and conditions herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Grantor hereby grants to City and its assignees, including its contractor(s), the right to enter upon and use Grantor's Property in the City of Palm Springs, Riverside County, State of California, described as Assessor's Parcel Number(s)

**669-060-026** for all purposes necessary to facilitate and accomplish the construction and installation of various public street improvements (“**Temporary Construction Easement**”) associated with the **Indian Canyon Drive Widening and Bridge Replacement @ UPRR, Federal Project No. BRLO-5282 (017), City Project No. 01-11 (“Project”)**.

2. The Temporary Construction Easement, used during construction of the Project consists of approximately 27,427 square feet as described on the attached legal description, referenced as Exhibit “A”, and shown on the attached map, referenced as Exhibit “B” (hereinafter the “**Easement Area**”).
3. It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this Agreement, the right of possession and use of the Easement Area by the Grantee, including the right to remove and dispose of improvements, shall commence upon the close of escrow controlling this transaction, and the amount shown in Section 13 herein includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date. The rental period of Temporary Construction Easement will begin on **July 1, 2017** and will expire on **July 1, 2022**. Upon the City’s recordation of a Notice of Completion for the Project with the Riverside County Recorder’s Office, the Temporary Construction Easement granted herein shall be automatically surrendered by Grantee, and Grantee’s interests thereto shall be automatically reverted to Grantor as if quitclaimed by Grantee, and shall no longer represent any title interest of or to Grantor’s Property. Nevertheless, if requested by Grantor following such termination, City will execute a quitclaim deed confirming such termination.
4. The rights granted herein include the right to enter upon and to pass and repass over and along the Easement Area, and to deposit tools, implements and other materials thereon by City, or its successors and assigns, its officers, agents and employees, and by persons or entities under contract with City, its successors and assigns, wherever and whenever necessary for the purpose of completing the Project in accordance with applicable laws. The City’s activities may involve surveying, staking, excavation, grading, and other related uses that are reasonably required to construct the Project. City agrees not to damage Grantor’s property in the process of performing such activities. At all times during the term of this Agreement (and during construction of the Project), Grantor’s property will remain accessible for Grantor’s ingress and egress.
5. At the termination of the period of use of Grantor’s land by City, but before its relinquishment to Grantor, debris generated by City’s use will be removed and the surface will be graded and left in a neat condition, as close to the condition of Grantor’s land that existed as of the time of the execution. The City will not commit or permit the commission by others of any waste within the Temporary Construction Easement area, and the City will not maintain, commit, or permit the maintenance or commission of any nuisance as defined by California Civil Code § 3479, within said area.

6. Any notice to be given or other document or documents to be delivered to either Party by the other hereunder may be delivered in person or may be deposited in the United States Mail in the State of California, duly registered or certified, with postage prepaid, and addressed as follows:

If to Grantee, to:

Attn: City Clerk  
City of Palm Springs  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262  
Facsimile No.: (760) 322-8332  
Telephone No.: (760) 323-8204

If to Grantor, to:

Robert W. Miner, Jr., as Sole Successor Trustee of the Robert Wilson Miner Trust, dated April 13, 1998  
PO Box 190266  
Anchorage, AK 99519

7. City hereby agrees to indemnify and hold harmless the Grantor, its successors and assigns, from any loss damage, and/or liability either resulting from and/or arising out of the City's, City's employees, agents and/or contractors possession, use, and/or activities performed in or about the Temporary Construction Easement area.

City shall indemnify, defend, protect, and hold harmless, the Grantor and its successors and assigns, from any and all claims, demands, judgments, penalties, fines, costs, liabilities, damages, losses, or expenses including, without limitation, site repair, restoration and/or remediation costs following or as a part of environmental response actions, any request by any governmental agency to remediate contamination of any portion of the Temporary Construction Easement area, the soil, and/or ground water or other property, damages for the loss or restriction on the use of the Temporary Construction Easement area, settlement of claims, attorneys' fees, consultant fees, expert fees, which arise either during or after the expiration of the Temporary Construction Easement from or in connection with an actual deposit, release, or discharge by the City, its agents, employees, contractors, or invitees, of any chemicals or hydrocarbons in or about the Temporary Construction Easement area and/or the City's removal and disposition of any property from the Temporary Construction Easement area.

At all times during the term of the Agreement the City will keep and maintain at its own expense, adequate commercial general public liability and property damage insurance coverage, naming the Grantor as an "additional insured" with public liability limits not less than Five Million Dollars (\$5,000,000). The City will maintain Workers Compensation Insurance and Employer's Liability Insurance for itself and its employees, and will require coverage for its agents, contractors, and invitees who may enter upon, possess and/or use any portion of the Temporary Construction Easement area where said entrance, possession and/or use is at the specific direction of the City.

8. Grantor hereby warrants that they are the owners of the Property described above and that they have the right to grant City, its successors or assigns, permission to enter upon and use the Easement Area.
9. This Agreement is the result of negotiations between the Parties hereto. This Agreement is intended by the Parties as a final expression of their understanding with respect to the matters herein, and is a complete and exclusive statement of the terms and conditions thereof.
10. This Agreement shall not be changed, modified, or amended except upon the written consent of the Parties hereto.
11. This Agreement supersedes any and all other prior agreements or understandings, oral or written, in connection therewith.
12. Grantor, its assigns and successors in interest, shall be bound by all the terms and conditions contained in this Agreement, and all the Parties thereto shall be jointly and severally liable thereunder in accordance with Civil Code Section 1468.
13. City shall pay to Grantor the total sum of **Twenty-Nine Thousand Seven Hundred Seventy-Six dollars and Zero cents (\$29,776)**, (the "**Rental Price**"), for the right to enter upon and use Grantor's land in accordance with the terms hereof. Grantor hereby expressly and unconditionally waives any and all claims for damages, relocation assistance benefits, severance damages, interest, loss of goodwill, claims for inverse condemnation or unreasonable pre-condemnation conduct, or any other compensation or benefits, other than for payment of the Rental Price, it being understood that the Rental Price constitutes complete and full settlement of all acquisition claims, liabilities, or benefits of any type or nature whatsoever, whether known or unknown as of the date of this Agreement, relating to or in connection with the Temporary Construction Easement or any other rights granted under this Agreement. Payment shall be made within thirty (30) days after execution of this Agreement, or pursuant to the terms of and through the close of escrow if acquisition of the Temporary Construction Easement is associated with the City's acquisition from Grantor of permanent right-of-way over a portion of the Property.

Grantor hereby acknowledges that it has been advised by its attorney and is familiar with the provisions of California Civil Code section 1542, which provides as follows:

"A general release does not extend to claims which the Creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

By signing below, Grantor acknowledges that it may have sustained damage, loss, costs or expenses which are presently unknown and unsuspected, and such damage, loss, costs or expenses which may have been sustained, may give rise to additional damage, loss, costs or expenses in the future. Nevertheless, Grantor hereby acknowledges that this Agreement has been negotiated and agreed upon in light of that situation, and hereby expressly waives any and all rights which it may have under California Civil Code section 1542, or under any statute or common law or equitable principle of similar effect, except as set forth in this Section 13.

***[SIGNATURE PAGE FOLLOWS]***

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date and year first above written.

**GRANTEE:**

**CITY OF PALM SPRINGS, a California  
charter city and municipal corporation**

By: \_\_\_\_\_  
David H. Ready, City Manager

ATTEST:

By: \_\_\_\_\_  
James Thompson, City Clerk

APPROVED AS TO FORM:

WOODRUFF, SPRADLIN & SMART

By: \_\_\_\_\_  
Douglas C. Holland, Esq., City Attorney

**GRANTOR:**

**Robert W. Miner, Jr., as Sole  
Successor Trustee of the Robert  
Wilson Miner Trust, dated April 13,  
1998**

By: \_\_\_\_\_  
Robert W. Miner, Jr., Sole Successor  
Trustee

Exhibit List

- Exhibit A -- Legal Description of the Easement Area
- Exhibit B -- Depiction of Easement Area

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 \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature

My Commission Expires: \_\_\_\_\_ *This area for official notarial seal*



**Exhibit "A"**

**LEGAL DESCRIPTION OF THE EASEMENT AREA**

EXHIBIT "A"  
TEMPORARY CONSTRUCTION EASEMENT  
APN 669-060-026 & 669-070-004

THAT PORTION OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, AS SHOWN BY UNITED STATES GOVERNMENT SURVEY APPROVED FEBRUARY 29, 1856, TOGETHER WITH, THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, LYING NORTHERLY AND NORTHEASTERLY OF THE NORTHERLY LINE OF PARCEL 1 AS SHOWN ON RECORD OF SURVEY FILED IN BOOK 33 OF RECORDS OF SURVEY AT PAGE 45 ON MARCH 2, 1961, ALL IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE INTERSECTION OF THE CENTER LINE OF SOUTHERN PACIFIC RAILROAD WITH THE CENTER LINE OF INDIAN CANYON DRIVE (FORMERLY INDIAN AVENUE) AS SHOWN ON RECORD OF SURVEY FILED IN BOOK 18 OF RECORDS OF SURVEY AT PAGE 2 ON AUGUST 20, 1951; THENCE ALONG THE CENTER LINE OF SAID INDIAN CANYON DRIVE NORTH 00°19'08" EAST 1136.57 FEET TO AN ANGLE POINT THEREIN, SAID POINT BEING THE ONE-SIXTEENTH SECTION CORNER OF SAID SECTION; THENCE ALONG THE SOUTHERLY LINE OF SAID NORTH HALF NORTH 89°22'22" WEST 50.00 FEET TO THE WESTERLY LINE OF INDIAN CANYON DRIVE (INDIAN AVENUE) AS SHOWN ON SAID RECORD OF SURVEY; THENCE ALONG SAID WESTERLY LINE NORTH 00°19'24" EAST 524.27 FEET TO A POINT THAT BEARS SOUTH 00°19'24" WEST 72.00 FEET FROM THE INTERSECTION OF THE SOUTHERLY LINE OF THAT CERTAIN RIGHT OF WAY CONVEYED FROM DAVID MARGOLIUS, ET UX, TO SOUTHERN CALIFORNIA GAS COMPANY AND SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA, BY DEED RECORDED MAY 10, 1947 IN BOOK 825 PAGE 555 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, WITH THE WEST LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN PARCEL 1 IN DEED FROM DAVID MARGOLIUS AND BEULAH E. MARGOLIUS TO THE COUNTY OF RIVERSIDE, RECORDED JULY 13, 1950 IN BOOK 1188 PAGE 493 OF OFFICIAL RECORDS OF SAID RIVERSIDE COUNTY, THENCE LEAVING SAID WESTERLY LINE PARALLEL WITH SAID SOUTHERLY LINE OF THAT CERTAIN RIGHT OF WAY NORTH 86°28'57" WEST 14.68 FEET TO THE **TRUE POINT OF BEGINNING**;

1. THENCE CONTINUING ALONG SAID PARALLEL LINE NORTH 86°28'57" WEST 41.33 FEET;
2. THENCE LEAVING SAID PARALLEL LINE PARALLEL WITH THE EAST LINE OF SAID NORTH HALF NORTH 0°19'24" EAST 72.00 FEET TO SAID SOUTHERLY LINE OF THAT CERTAIN RIGHT OF WAY;
3. THENCE ALONG SAID SOUTHERLY LINE SOUTH 86°28'57" EAST 50.00 FEET;
4. THENCE LEAVING SAID SOUTHERLY LINE NORTH 00°19'24" EAST 16.53 FEET TO THE NORTHERLY LINE OF SAID CERTAIN RIGHT OF WAY;
5. THENCE ALONG SAID NORTHERLY LINE NORTH 86°28'57" WEST 80.18 FEET;
6. THENCE LEAVING SAID NORTHERLY LINE SOUTH 00°19'10" WEST 352.44 FEET;
7. THENCE SOUTH 89°38'35" EAST 44.16 FEET;
8. THENCE SOUTH 2°47'20" WEST 15.40 FEET;
9. THENCE SOUTH 89°38'35" EAST 1.00 FEET;

EXHIBIT "A"  
TEMPORARY CONSTRUCTION EASEMENT  
APN 669-060-026 & 669-070-004

10. THENCE SOUTH 2°47'20" WEST 194.81 FEET;
11. THENCE SOUTH 0°19'10" WEST 54.85 FEET;
12. THENCE SOUTH 0°19'08" WEST 180.13 FEET TO THE NORTHERLY LINE OF SAID PARCEL 1;
13. THENCE ALONG SAID NORTHERLY LINE SOUTH 89°22'22" EAST 15.00 FEET;
14. THENCE LEAVING SAID NORTHERLY LINE NORTH 0°19'10" EAST 234.74 FEET;
15. THENCE NORTH 2°47'20" EAST 470.73 FEET TO THE TRUE POINT OF BEGINNING.

AREA = 27,427 SQUARE FEET, MORE OR LESS

SEE EXHIBIT "B" ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. MULTIPLY DISTANCES SHOWN BY 1.00002570 TO OBTAIN GROUND DISTANCES.

SIGNATURE Michael A. Havener 8-11-2016  
MICHAEL A. HAVENER DATE  
PLS 7354



**Exhibit "B"**

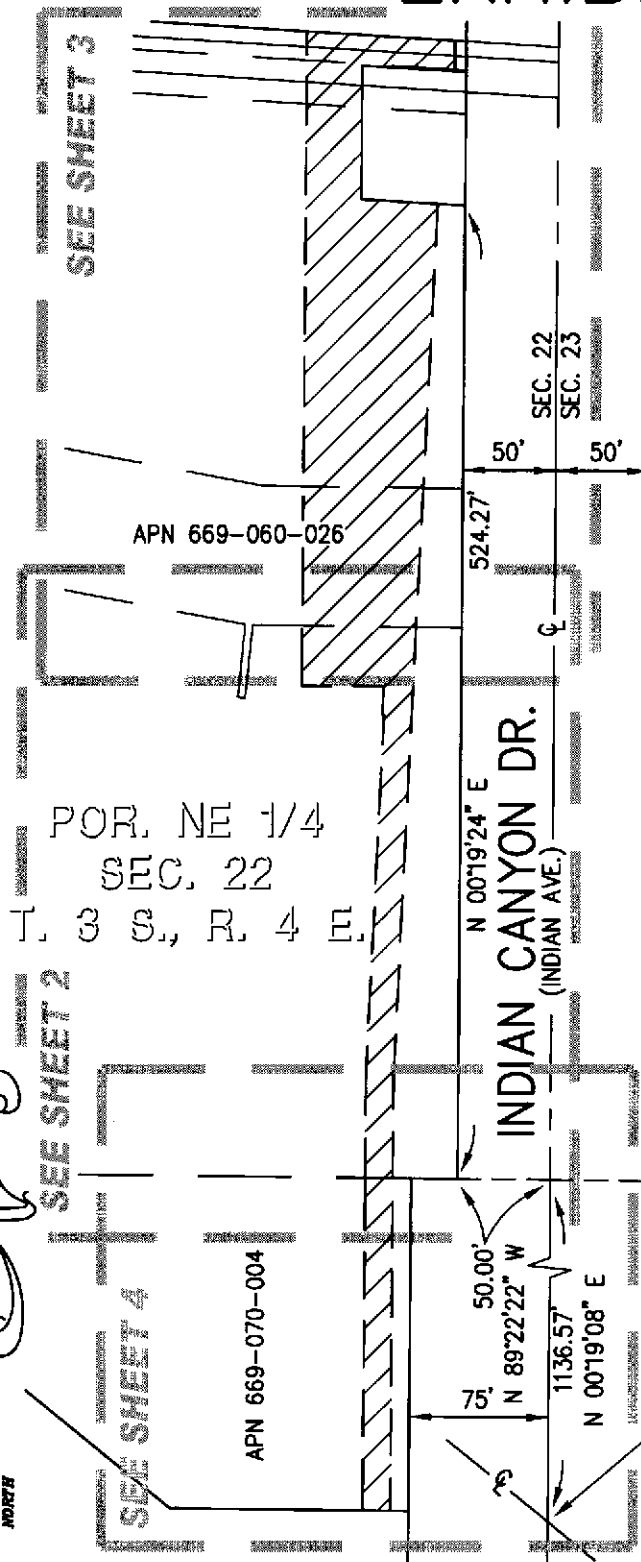
DEPICTION OF THE EASEMENT AREA

# EXHIBIT "B"

MULTIPLY DISTANCE BY 1.00002570  
TO OBTAIN GROUND DISTANCES



**APN 669-060-026 NON-PLOTTABLE EASEMENTS**  
 RIGHT-OF-WAY FOR DITCHES OR CANALS  
 CONSTRUCTED BY THE AUTHORITY OF THE UNITED  
 STATES AND RESERVING UNTO THE UNITED STATES,  
 ITS PERMITTEES OR LICENSEES, THE RIGHT TO  
 OCCUPY AND USE ANY PART OF SECTION 22 LYING  
 WITHIN FIFTY FEET OF THE CENTER LINE OF THE  
 TRANSMISSION LINE RIGHT-OF-WAY OF THE  
 COACHELLA VALLEY ICE AND ELECTRIC COMPANY  
 REC. 11/23/1921 IN BK. 8, PG. 204 OF PATENTS.  
 A POLE LINE EASEMENT IN FAVOR OF THE  
 SOUTHERN CALIFORNIA TELEPHONE CO. REC.  
 7/10/1933 IN BK. 131, PG. 119 O.R.  
 A RIGHT OF ACCESS AND TO INSTALL  
 UTILITIES IN FAVOR OF SMSA LIMITED PARTNERSHIP  
 REC. 7/08/2003 AS INST. NO. 2003-506376 O.R.  
 A PERMANENT TELECOMMUNICATIONS  
 EASEMENT IN FAVOR OF VARIOUS REC.  
 8/29/2013 AS DOC. NO. 2013-0423943 O.R.



## LEGEND

TEMPORARY CONSTRUCTION EASEMENT (TCE)  
 AREA = 27,427 SQ. FT., MORE OR LESS

T.P.O.B. TRUE POINT OF BEGINNING

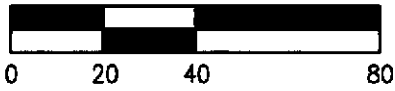
P.O.C. POINT OF COMMENCEMENT

P.O.C.  
 INT. OF THE CENTER LINE OF  
 INDIAN CANYON DR. (INDIAN AVE.)  
 AND SOUTHERN PACIFIC RAILROAD  
 AS SHOWN ON ROS 18/2


SHEET 1 OF 4 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 100'
DRAWN BY: KA	DATE: 4-23-15		DOC. NO.
CHECKED BY: MH	DATE: 8-11-16	INDIAN CANYON DRIVE WIDENING APN 669-060-026 & 669-070-004 THE ROBERT WILSON MINER TRUST DATED 4/13/1998	DWG. NO.
APPROVED BY:	DATE:		

POLE LINE EASEMENT IN FAVOR  
OF SOUTHERN CALIFORNIA EDISON  
CO. REC. 1/12/1973 AS INST.  
NO. 5042 O.R.

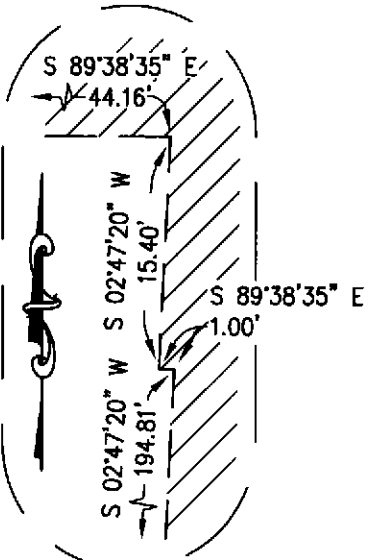


**LEGEND**

 TEMPORARY CONSTRUCTION EASEMENT (TCE)  
AREA = 27,427 SQ. FT., MORE OR LESS

NORTH

POR. N. 1/2  
NE 1/4  
SEC. 22  
T. 3 S., R. 4 E.  
APN 669-060-026



**DETAIL**  
NOT TO SCALE

SEE SHEET 4

SEE SHEET 3

INDIAN CANYON DR.  
(INDIAN AVE.)

SEC. 22  
SEC. 23

SHEET 2 OF 4 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 40'
DRAWN BY: KA	DATE: 4-23-15		DOC. NO.
CHECKED BY: MH	DATE: 8-11-16	INDIAN CANYON DRIVE WIDENING APN 669-060-026 & 669-070-004 THE ROBERT WILSON MINER TRUST DATED 4/13/1998	DWG. NO.
APPROVED BY:	DATE:		

A UTILITY EASEMENT IN FAVOR OF THE SOUTHERN CALIFORNIA GAS CO. REC. 5/10/1947 IN BK. 825, PG. 555 O.R.

A UTILITY EASEMENT IN FAVOR OF THE SOUTHERN CALIFORNIA GAS CO. REC. 12/15/1952 IN BK. 1424, PG. 279 O.R.

**LEGEND**



TEMPORARY CONSTRUCTION EASEMENT (TCE)  
AREA = 27,427 SQ. FT., MORE OR LESS

T.P.O.B. TRUE POINT OF BEGINNING

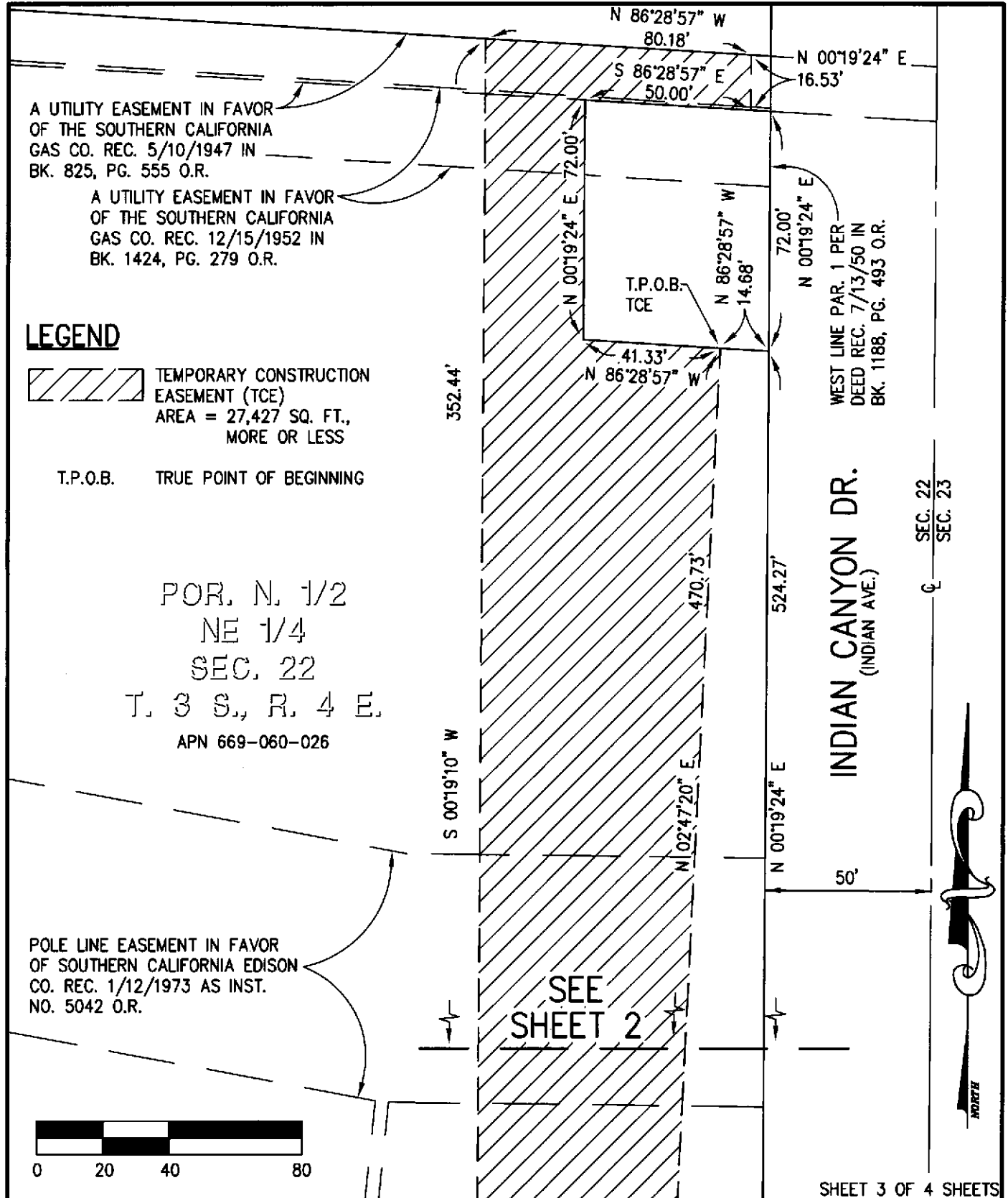
POR. N. 1/2  
NE 1/4  
SEC. 22  
T. 3 S., R. 4 E.  
APN 669-060-026

POLE LINE EASEMENT IN FAVOR OF SOUTHERN CALIFORNIA EDISON CO. REC. 1/12/1973 AS INST. NO. 5042 O.R.



SEE SHEET 2

SHEET 3 OF 4 SHEETS

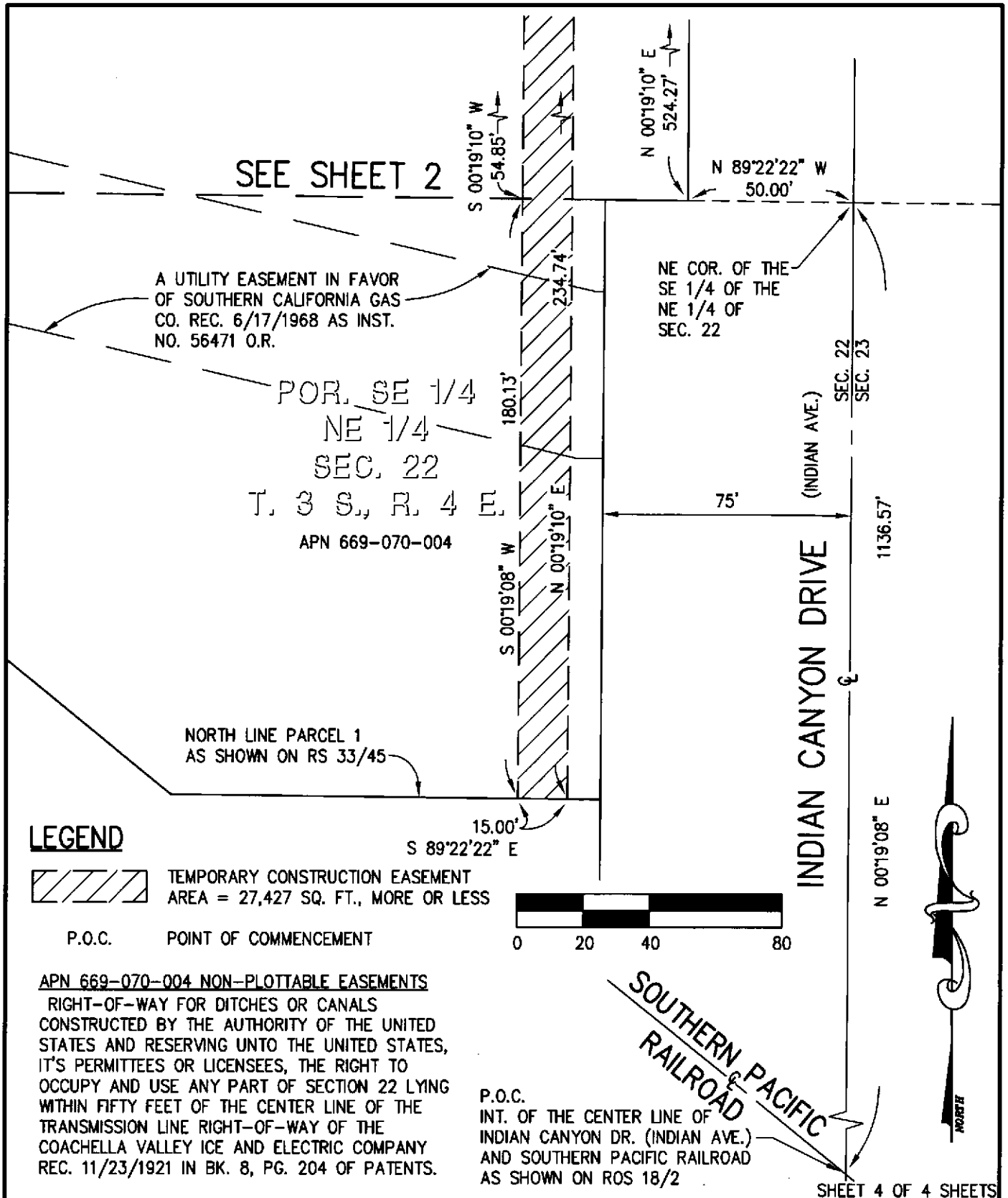


INDIAN CANYON DR.  
(INDIAN AVE.)


SEC. 22  
SEC. 23



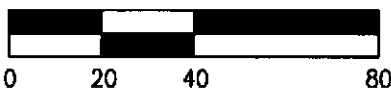
REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 40'
DRAWN BY: KA	DATE: 4-23-15		DOC. NO.
CHECKED BY: MH	DATE: 8-11-16	INDIAN CANYON DRIVE WIDENING APN 669-060-026 & 669-070-004 THE ROBERT WILSON MINER TRUST DATED 4/13/1998	DWG. NO.
APPROVED BY:	DATE:		



**LEGEND**

 TEMPORARY CONSTRUCTION EASEMENT  
AREA = 27,427 SQ. FT., MORE OR LESS

P.O.C. POINT OF COMMENCEMENT



APN 669-070-004 NON-PLOTTABLE EASEMENTS  
RIGHT-OF-WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES AND RESERVING UNTO THE UNITED STATES, ITS PERMITTEES OR LICENSEES, THE RIGHT TO OCCUPY AND USE ANY PART OF SECTION 22 LYING WITHIN FIFTY FEET OF THE CENTER LINE OF THE TRANSMISSION LINE RIGHT-OF-WAY OF THE COACHELLA VALLEY ICE AND ELECTRIC COMPANY REC. 11/23/1921 IN BK. 8, PG. 204 OF PATENTS.

P.O.C. INT. OF THE CENTER LINE OF INDIAN CANYON DR. (INDIAN AVE.) AND SOUTHERN PACIFIC RAILROAD AS SHOWN ON ROS 18/2



SHEET 4 OF 4 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 40'
DRAWN BY: KA	DATE: 4-23-15		DOC. NO.
CHECKED BY: MH	DATE: 8-11-16	INDIAN CANYON DRIVE WIDENING APN 669-060-026 & 669-070-004 THE ROBERT WILSON MINER TRUST, DATED 4/13/1998	DWG. NO.
APPROVED BY:	DATE:		



# **ATTACHMENT 5**

Project: Indian Cyn. Drive Widening and Bridge Replacement @ UPRR  
Project No.: Federal Project No. BRLO 5282 (017), City Project No. 01-11  
APN: 669-093-002 & 003

**RIGHT-OF-WAY AGREEMENT FOR ACQUISITION OF REAL PROPERTY  
INTEREST AND ESCROW INSTRUCTIONS**

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THIS RIGHT-OF-WAY AGREEMENT FOR ACQUISITION OF REAL PROPERTY INTEREST AND ESCROW INSTRUCTIONS ("**Agreement**"), dated and entered into for solely for reference purposes as of \_\_\_\_\_, 20\_\_, by and between the CITY OF PALM SPRINGS, a California charter city and municipal corporation ("**Buyer**") and **Robert W. Miner, Jr., Successor Trustee of the Robert Wilson Miner Trust, dated April 13, 1998 ("Seller")**, with reference to the following facts:

**RECITALS**

A. Seller is the owner of certain real property comprised of approximately sixteen thousand three hundred forty-four (16,344) square feet, located in the City of Palm Springs (the "**City**"), the County of Riverside (the "**County**"), State of California (the "**State**"), which is a portion of Assessor's Parcel No. 669-093-002 & 003, more particularly described on Exhibit A and shown on Exhibit B attached hereto (the "**Easement Area** ").

B. Seller desires to convey to Buyer and Buyer desires to acquire from Seller an exclusive easement to the Easement Area, in accordance with the terms and conditions contained in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by Seller, Buyer and Seller (hereinafter collectively referred to as the "parties", or individually as a "party") hereby agree as follows:

**AGREEMENT**

1. PURCHASE AND SALE.

1.1. Agreement to Buy and Sell. Subject to the terms and conditions set forth herein, Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to acquire and purchase from Seller, an easement and right-of-way for earth embankment slopes, together with the right to construct and maintain such slopes and embankments and facilities incidental thereto, over, under, along and across all that real property situated in the City of Palm Springs, and within the entirety of the Easement Area as such area, scope and use is more particularly described in the Grant of Easement attached hereto as Exhibit C the "Easement"), which Exhibits A and B attached hereto that define the Easement Area shall be made a part of.

1.2. Purchase Price. The purchase price ("**Purchase Price**") for the Easement shall be **Thirty-Seven Thousand Two Hundred Sixty-Four Dollars and Zero cents** (\$37,264) payable as cash at the Close of Escrow as defined and provided for herein.

2. ESCROW AND CLOSING.

2.1. Opening of Escrow. Within fourteen (14) business days after execution of this Agreement by the last of Seller or Buyer, Buyer shall open an escrow (the "**Escrow**") with Lawyers Title & Escrow, at the address set forth in Section 7.12 ("**Escrow Holder**"), by depositing with Escrow Holder this Agreement fully executed, or executed counterparts hereof. The date this fully executed Agreement is signed and accepted by Escrow Holder on the last page hereof shall be deemed the "**Opening of Escrow**" and Escrow Holder shall advise Buyer and Seller of such date in writing. The escrow instructions shall incorporate this Agreement as part thereof and shall contain such other standard and usual provisions as may be required by Escrow Holder, provided, however, that no escrow instructions shall modify or amend any provision of this Agreement, unless expressly set forth in writing by mutual consent of Buyer and Seller. In the event there is a conflict between any such standard or usual provisions and the provisions of this Agreement, the provisions of this Agreement shall control.

2.2. Escrow Fees and Other Charges. At the Close of Escrow, Buyer agrees to pay all of Seller's and Buyer's usual fees, charges and costs incidental to the conveyance of the Easement and Close of Escrow that may arise in this Escrow, including, but not limited to, any costs for the Standard Coverage Policy (defined below) or if elected, an ALTA Extended Coverage Owner's Policy.

2.3. Closing Date; Conditions Precedent to Close of Escrow. Provided all of the conditions set forth in this Section 2.3 have been satisfied (or are in a position to be satisfied concurrently with the Close of Escrow), the Close of Escrow shall occur on or before July 1, 2017, (the "**Closing Date**"), unless otherwise extended by mutual agreement. As used in this Agreement, the "**Close of Escrow**" shall mean the date a Grant of Easement, as provided in Section 2.4.2(a) hereof ("**Grant of Easement**"), is recorded in the Official Records of the County.

2.3.1 Conditions of Buyer for Close of Escrow. The Close of Escrow and Buyer's obligation to purchase the Easement are subject to the satisfaction of the following conditions or Buyer's written waiver of such conditions, on or before the Closing Date. Buyer may waive in writing any or all of such conditions in its sole and absolute discretion.

(a) The Purchase Price shall have been adjusted in accordance with this Agreement and a closing statement duly executed by Seller setting forth the Purchase Price and any adjustments thereto; ;

(b) Seller shall have performed all obligations to be performed by Seller pursuant to this Agreement;

(c) No event or circumstance shall have occurred, which, in the sole opinion of Buyer, would make any of Seller's representations, warranties and covenants set forth herein untrue as of the Close of Escrow, including, but not limited to,

those warranties and representations of Seller set forth in Sections 3.4 and 4.1 of this Agreement;

(d) There shall have occurred no material adverse change in the physical condition of the Easement Area (such as those caused by natural disasters), which, in the sole opinion of Buyer, would render the Easement Area unsuitable for Buyer's intended use, materially increase the cost, or cause a material delay in the schedule for the development of the Easement Area;

(e) The Title Company shall be committed to issue to Buyer, as of the Closing Date, the Title Policy (defined below) covering the Easement Area, subject only to the Permitted Exceptions.

(f) Seller shall have executed and submitted to Escrow Holder the Affidavit of Non-Foreign Status By Transferor (Exhibit D)

(g) Seller shall have caused any lien or charge of any deed of trust that encumbers the Easement Area to be subordinated to the rights of Buyer under the terms of the Easement.

**2.3.2 Conditions of Seller for Close of Escrow.** The Close of Escrow and Seller's obligation to sell and convey the Easement are subject to the satisfaction of the following conditions or Seller's written waiver of such conditions on or before the Closing Date. Seller may waive in writing any or all of such conditions as a condition to the Close of Escrow in its sole and absolute discretion.

(a) The Purchase Price shall have been adjusted in accordance with this Agreement and a closing statement duly executed by Buyer setting forth the Purchase Price and any adjustments thereto;

(b) Buyer shall have performed all obligations to be performed by Buyer pursuant to this Agreement;

(c) No event or circumstance shall have occurred which would make any of Buyer's representations, warranties, and covenants set forth herein untrue as of the Close of Escrow including, but not limited to, those warranties and representations of Buyer set forth in Section 4.2 of this Agreement.

**2.3.3 Waiver of a Condition Does Not Excuse Performance.** If any condition precedent to the Close of Escrow is expressly waived, in writing, as a condition to the Close of Escrow by the party for whose benefit such condition exists, then, to the extent such condition is capable of being satisfied following the Close of Escrow, such condition shall become a condition subsequent to the Close of Escrow and shall be satisfied by the party whose performance is required to satisfy such condition as soon as reasonably possible following the Close of Escrow.

**2.4. Closing Documents.** The parties shall deposit the following with Escrow Holder prior to the Close of Escrow:

**2.4.1 Buyer's Deposits.** Buyer shall deposit:

(a) The Purchase Price together with Buyer's escrow and other cash charges; and

(b) A Certificate of Acceptance for the Grant of Easement executed by the City Clerk of the City of Palm Springs (See, Exhibit C).

2.4.2 Seller's Deposits. Seller shall deposit:

(a) The Grant of Easement in the form of Exhibit C attached hereto, appropriately executed to convey the Easement subject only to the Permitted Exceptions (defined below);

(b) Subject to Section 2.5.1 below, an executed Affidavit of Non-foreign Status in the form of Exhibit D attached hereto and such other documentation necessary to exempt Seller from the withholding requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder; and

(c) Subject to Section 2.5.1 below, a Withholding Exemption Certificate Form 593 as contemplated by California Revenue and Taxation Code §18662 (the "**Withholding Affidavit**") duly executed by Seller.

2.4.3 Deposits of Additional Instruments. Seller and Buyer shall each deposit such other instruments as are reasonably required by Escrow Holder or otherwise required to proceed to the Close of Escrow and consummate the grant of the Easement in accordance with the terms of this Agreement.

2.5. Closing.

2.5.1 Withholding. In the event that, pursuant to Section 2.4.2(b) above, Seller fails to deposit with Escrow Holder the executed Affidavit of Non-foreign Taxpayer Status which exempts Seller from the withholding requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder, Seller hereby authorizes Escrow Holder to withhold ten percent (10%) of the Purchase Price less any applicable closing costs and to report and transmit the withheld amount to the Internal Revenue Service. Additionally, in the event that, pursuant to Section 2.4.2(c) above, Seller fails to deposit with Escrow Holder any applicable tax document which exempts Buyer from California withholding requirements, if any, Seller hereby authorizes Escrow Holder to withhold such additional percentage of the Purchase Price of the Easement as is required by California law, and Escrow Holder shall report and transmit the withheld amount in the manner required by California law. By agreeing to act as Escrow Holder hereunder, Escrow Holder expressly agrees to undertake and be responsible for all withholding obligations imposed pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder and under any similar provisions of California law, and shall defend, indemnify and hold Buyer harmless in connection with such obligations.

2.5.2 Necessary Actions of Escrow Holder. On the Close of Escrow, Escrow Holder shall in the following order: (i) record the Grant of Easement and Certificate of Acceptance in the Office of the County Recorder of the County; (ii) pay any transfer taxes; (iii) instruct the County Recorder to return the Grant of Easement to Buyer; (iv) distribute to

Seller the Purchase Price; and (v) deliver to Buyer the Title Policy covering the Easement Area subject only to the Permitted Exceptions, the Affidavit of Non-foreign Status, and the applicable California withholding exemption form, if any.

2.5.3 Real Estate Taxes. Seller shall pay real property taxes at the Close of Escrow, paid through Escrow proceeds, based on the most current real property tax bill available, including any additional property taxes that may be assessed after the Close of Escrow but that relate to the period prior to the Close of Escrow, regardless of when notice of those taxes is received or who receives the notice. Seller may seek reimbursement from the Riverside County Tax Assessor's office for any property taxes that have been assessed for a period after the Close of Escrow as Buyer is a public agency exempt from payment of such taxes. Buyer further agrees to cooperate with Seller to provide any necessary information to the Assessor's office in connection with such request for refund.

## 2.6. Failure to Close; Termination.

2.6.1 Neither Party in Default. In the event that any condition set forth in Section 2.3 (and its subdivisions) is not satisfied or waived, in writing, and the Close of Escrow does not occur within the time required herein due to the failure of such condition or the Close of Escrow does not occur within the time frame required herein for any reason other than Seller's or Buyer's breach of or default of its respective obligations hereunder, or if this Agreement is terminated without default by either party as otherwise set forth herein, then Escrow Holder, with no further instructions from the parties hereto, shall return to the depositor thereof any funds, or other materials previously delivered to Escrow Holder, the Escrow shall be automatically terminated and of no force and effect, Buyer shall pay any Escrow termination fees, and except as otherwise provided herein the parties will have no further obligation to one another.

## 3. ACTIONS PENDING CLOSING.

### 3.1. Title Review.

3.1.1 Title Report. Within three (3) business days after the Opening of Escrow, Lawyers Title & Escrow (the "**Title Company**") will furnish Buyer with an updated Title Commitment on the Easement Area together with legible copies of all documents referenced therein as exceptions to title and a plot plan for the Easement Area showing all the locations of all easements referenced therein (collectively, the "**Title Commitment**").

3.1.2 Title Notices. Buyer shall have ten (10) business days after its actual receipt of the Title Commitment to deliver to Escrow Holder written notice (the "**Preliminary Title Notice**") of Buyer's approval, conditional approval, or disapproval of the title exceptions and other matters disclosed in the Title Commitment. All title exceptions not timely approved by Buyer will be deemed disapproved. All such exceptions and other matters disapproved by Buyer are referred to herein as "**Disapproved Exceptions**". It shall be the sole responsibility of Buyer to work with the Title Company to remove any Disapproved Exceptions, and if unsuccessful shall either purchase the Easement subject to the Disapproved Exceptions or terminate the Agreement.

3.1.3 Permitted Exceptions. "**Permitted Exceptions**" shall mean all exceptions appearing on the Title Commitment which are: (i) standard printed exceptions in

the Title Policy issued by Title Company; (ii) general and special real property taxes and assessments, a lien not yet due and payable; and (iii) any other liens, easements, encumbrances, covenants, conditions and restrictions of record approved, or expressly waived by Buyer pursuant to this Section 3.1.

3.2. Title Policy. Buyer's obligation to proceed to the Close of Escrow shall be conditioned upon the commitment by Title Company to issue an ALTA Standard Coverage Owner's Policy of Title Insurance (the "**Standard Coverage Policy**"), showing title to the Easement Area vested in Buyer with liability equal to the Purchase Price, subject only to the Permitted Exceptions. At Buyer's option, Buyer may require an ALTA Extended Coverage Owner's Policy instead of the Standard Coverage Policy provided that Buyer pays any additional premium on account thereof. The form of title policy selected by Buyer shall be referred to herein as the "**Title Policy**".

3.3. Possession and Use. It is mutually understood and agreed by and between the parties hereto that the right of exclusive possession and use of the Easement Area and Easement by the Buyer, including the right to remove and dispose of improvements, shall commence upon the close of escrow. The Purchase Price includes, but is not limited to, full payment for such improvements and exclusive possession and use of the Easement Area.

3.4. Seller's Covenant Not to Further Encumber the Easement Area. Seller shall not, directly or indirectly, alienate, encumber, transfer, option, lease, assign, sell, transfer or convey its interest or any portion of its interest in the Easement Area, or any portion thereof, or enter into any agreement to do so, so long as this Agreement is in force. Seller shall timely discharge, prior to the Closing, any and all obligations relating to work performed on or conducted at or materials delivered to or for the Easement Area from time to time by Seller, or at Seller's direction or on its behalf, in order to prevent the filing of any claim or mechanic's lien with respect to such work or materials.

#### 4. REPRESENTATIONS, WARRANTIES AND COVENANTS.

4.1. Seller's Representations, Warranties and Covenants. In addition to the representations, warranties, and covenants of Seller contained in other sections of this Agreement, Seller hereby represents, warrants and covenants to Buyer as follows, all of which shall survive the Close of Escrow:

4.1.1 Seller's Authority. Seller has the capacity and full power and authority to enter into and carry out the agreements contained in, and the transactions contemplated by, this Agreement, and that this Agreement has been duly authorized and executed by Seller, and upon delivery to and execution by Buyer, shall be a valid and binding agreement of Seller.

4.1.2 Leases. There are no leases, rental agreements, or other such contracts of any kind or nature affecting possession or occupancy of the Easement Area, and Seller shall not enter into any such contracts during the terms of this Agreement without the prior consent of Buyer.

4.1.3 No Liens and Subordination. Seller warrants that at the time of the Close of Escrow, Seller shall have caused any lien and charge of any deed of trust that

encumbers the Easement Area to be subordinated to the rights of Buyer under the terms of the Easement.

4.1.4 No Untrue Statements or Omissions of Fact. Each of the representations and warranties made by Seller in this Agreement, or in any exhibit, or on any document or instrument delivered pursuant hereto shall be continuing representations and warranties which shall be true and correct in all material respects on the date hereof, and shall be deemed to be made again as of the Close of Escrow and shall then be true and correct in all material respects. The truth and accuracy of each of the representations and warranties, and the performance of all covenants of Seller contained in this Agreement, are conditions precedent to the Close of Escrow. Seller shall immediately notify Buyer of any fact or circumstance which becomes known to Seller which would make any of the representations or warranties in this Agreement untrue.

4.2. Buyer's Representations and Warranties. Buyer represents and warrants to Seller as follows, all of which shall survive the Close of Escrow:

4.2.1 Buyer's Authority. Buyer has the capacity and full power and authority to enter into and carry out the agreements contained in, and the transactions contemplated by, this Agreement, and that this Agreement has been duly authorized and executed by Buyer and, upon delivery to and execution by Seller, shall be a valid and binding Agreement of Buyer.

4.2.2 No Untrue Statements or Omissions of Fact. Each of the representations and warranties made by Buyer in this Agreement, or in any exhibit or on any document or instrument delivered pursuant hereto, shall be continuing representations and warranties which shall be true and correct in all material respects on the date hereof, and shall be deemed to be made again as of the Close of Escrow, and shall then be true and correct in all material respects. The truth and accuracy of each of the representations and warranties, and the performance of all covenants of Buyer contained in this Agreement, are conditions precedent to the Close of Escrow. Buyer shall notify Seller immediately of any facts or circumstances which are contrary to the representations and warranties contained in this Agreement.

4.2.1 Future Access Rights. This Agreement incorporates herein by reference, that certain letter to Seller included herewith as Exhibit "E", regarding acknowledgement of existing and expectations for future access rights to Seller's property.

4.3. Mutual Indemnity. Seller and Buyer shall defend, indemnify, and hold free and harmless the other from and against any losses, damages, costs and expenses (including attorneys' fees) resulting from any inaccuracy in or breach of any representation or warranty of the indemnifying party or any breach or default by such indemnifying party under any of such indemnifying party's covenants or agreements contained in this Agreement and the City further agrees to indemnify and hold harmless Grantor from any liability arising out of City's operations under this Agreement and agrees to assume responsibility for any damages proximately caused by reason of City's operations under this Agreement and City will, at its option, either repair or pay for such damage.



5. CONDEMNATION. Seller and Buyer acknowledge that this transaction is a negotiated settlement *in lieu* of condemnation, and Seller hereby agrees and consents to the dismissal or abandonment of any eminent domain action in the Superior Court of the State of California in and for the City of Palm Springs, wherein the herein described Easement Area or Easement is included, in whole or in part, and also waives any and all claims to any money on deposit in the action and further waives all attorneys' fees, costs, disbursements, and expenses incurred in connection therewith. If, prior to the close of the execution of this transaction, Seller (or Seller's tenant) is served with a Summons and Complaint in Eminent Domain in which Seller (or Seller's tenant) is a named defendant, upon the Close of Escrow, Seller agrees and consents to Buyer taking a default in the action. Moreover, the total compensation to be paid by Buyer to Seller is for all of Seller's interest in the Easement Area or as described and set forth in the Easement and any rights which exist or may arise out of the acquisition of the Easement for public purposes, including without limitation, Seller's interest in the land and any improvements and fixtures and equipment located thereon, improvements pertaining to the realty (if any), severance damages, any alleged pre-condemnation damages, loss of business goodwill (if any), costs, interest, attorney's fees, and any claim whatsoever of Seller which might arise out of or relate in any respect to the acquisition of the Easement Area or Easement by the Buyer. The compensation paid under this Agreement does not reflect any consideration of or allowance for any relocation assistance and payments or other benefits which Seller may be entitled to receive, if any. Relocation assistance, if any, will be handled via separate Agreement.

6. BROKERS. Seller and Buyer each represents and warrants to the other that they have not dealt with or been represented by any brokers or finders in connection with the purchase and sale of the Easement and that no commissions or finder's fees are payable in connection with this transaction. Buyer and Seller each agree to indemnify and hold harmless the other against any loss, liability, damage, cost, claim or expense (including reasonable attorneys' fees) incurred by reason of breach of the foregoing representation by the indemnifying party. Notwithstanding anything to the contrary contained herein, the representations, warranties, indemnities and agreements contained in this Section 6 shall survive the Close of Escrow or earlier termination of this Agreement.

7. GENERAL PROVISIONS.

7.1. Counterparts; Facsimile Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument and any executed counterpart may be delivered by facsimile transmission with the same effect as if an originally executed counterpart had been delivered.

7.2. Further Assurances. Each of the parties agree to execute and deliver such other instruments and perform such acts, in addition to the matters herein specified, as may be appropriate or necessary to effectuate the agreements of the parties, whether the same occurs before or after the Close of Escrow.

7.3. Entire Agreement. This Agreement, together with all exhibits hereto and documents referred to herein, if any, constitute the entire agreement among the parties

hereto with respect to the subject matter hereof, and supersede all prior understandings or agreements. This Agreement may be modified only by a writing signed by both parties. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement whether or not actually attached.

7.4. Headings. Headings used in this Agreement are for convenience of reference only and are not intended to govern, limit, or aid in the construction of any term or provision hereof.

7.5. Choice of Law. This Agreement and each and every related document are to be governed by, and construed in accordance with, the laws of the State of California.

7.6. Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction or rendered by the adoption of a statute by the State of California or the United States invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby; provided that the invalidity or unenforceability of such provision does not materially adversely affect the benefits accruing to, or the obligations imposed upon, any party hereunder, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

7.7. Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The exercise of any remedy provided in this Agreement shall not be a waiver of any other remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other remedies unless they are expressly excluded.

7.8. Legal Advice and Construction. Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question. There shall be no presumption in the interpretation of this Agreement that any ambiguity is to be resolved against any party hereto. The parties waive expressly each and all provisions of California Civil Code Section 1654, which provides: "IN CASES OF UNCERTAINTY NOT REMOVED BY THE PRECEDING RULES, THE LANGUAGE OF A CONTRACT SHOULD BE INTERPRETED MOST STRONGLY AGAINST THE PARTY WHO CAUSED THE UNCERTAINTY TO EXIST."

7.9. Relationship of Parties. The parties agree that their relationship is that of Seller and Buyer, and that nothing contained herein shall constitute either party, the agent or legal representative of the other for any purpose whatsoever, nor shall this

Agreement be deemed to create any form of business organization between the parties hereto, nor is either party granted the right or authority to assume or create any obligation or responsibility on behalf of the other party, nor shall either party be in any way liable for any debt of the other.

7.10. Attorneys' Fees. In the event that any party hereto institutes an action or proceeding for a declaration of the rights of the parties under this Agreement, for injunctive relief, for an alleged breach or default of, or any other action arising out of, this Agreement, or the transactions contemplated hereby, or in the event any party is in default of its obligations pursuant thereto, whether or not suit is filed or prosecuted to final judgment, the non-defaulting party or prevailing party shall be entitled to its actual attorneys' fees and to any court costs incurred, in addition to any other damages or relief awarded.

7.11. Assignment. Neither Seller nor Buyer shall assign its rights or delegate its obligations hereunder without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties to this Agreement.

7.12. Notices. No notice, request, demand, instruction, or other document to be given hereunder to any Party shall be effective for any purpose unless personally delivered to the person at the appropriate address set forth below (in which event such notice shall be deemed effective only upon such delivery), delivered by air courier next-day delivery (e.g. Federal Express), delivered by mail, sent by registered or certified mail, return receipt requested, or sent via telecopier, as follows:

If to Buyer, to:	City Manager & City Clerk City of Palm Springs 3200 E. Tahquitz Canyon Way Palm Springs, CA 92262 Facsimile No.: (760) 323-8204 Telephone No.: (760) 323-8332
With a copy to:	City Attorney c/o Woodruff, Spradlin & Smart 555 Anton Boulevard, Suite 1200 Costa Mesa, CA 92626 Facsimile No.: (714) 835-7787 Telephone No.: (714) 558-7000
If to Seller, to:	Robert W. Miner, Jr., Successor Trustee PO Box 190266 Anchorage, AK 99519

If to Escrow Holder, to: Kimberly Rogers  
Lawyers Title & Escrow  
777 E. Tahquitz Canyon Way  
Palm Springs, CA 92262  
Facsimile No.: (866) 350-3317  
Telephone No.: (760) 327-6523

Notices delivered by air courier shall be deemed to have been given the next business day after deposit with the courier and notices mailed shall be deemed to have been given on the second business day following deposit of same in any United States Post Office mailbox in the state to which the notice is addressed or on the third business day following deposit in any such post office box other than in the state to which the notice is addressed, postage prepaid, addressed as set forth above. Notices sent via telecopy shall be deemed delivered the same business day transmitted if done so before 4:00 p.m., otherwise delivery shall be considered to be on the next business day. The addresses, addressees, and telecopy numbers for the purpose of this Paragraph, may be changed by giving written notice of such change in the manner herein provided for giving notice. Unless and until such written notice of change is received, the last address, addressee, and telecopy number stated by written notice, or provided herein if no such written notice of change has been received, shall be deemed to continue in effect for all purposes hereunder.

7.13. Survivability. All covenants of Buyer or Seller which are intended hereunder to be performed in whole or in part after Close of Escrow and all representations, warranties, and indemnities by either Party to the other, shall survive Close of Escrow and delivery of the Grant of Easement, and be binding upon and inure to the benefit of the respective Parties.

7.14. Release. The total compensation to be paid by Buyer for the Easement is the Purchase Price, which consideration covers any and all land and improvements, attached or detached furniture, fixtures and equipment, loss of business goodwill, and is the full and complete acquisition cost of the Easement. Buyer shall have no obligation to Seller under the California Relocation Assistance and Real Property Acquisition statutes and guidelines. Except for any breach of terms or conditions contained in this Agreement, Seller waives and forever releases Buyer, including its successors, officers, employees, attorneys, agents, representatives and anyone else acting on Buyer's behalf, of and from any and all claims, demands, actions or causes of action, obligations, liabilities, or claims for further compensation, known or unknown, based upon or relating to the facts or allegations and circumstances arising from Buyer's acquisition of the Easement. By such release, Seller expressly waives its rights, if any, under California Civil Code Section 1542 which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HIS SETTLEMENT WITH THE DEBTOR."

7.15 City Council Approval of Agreement. This Agreement is subject to the approval of the Buyer's City Council. If this Agreement remains unapproved by the Buyer's City Council then the parties will have no further obligation under this Agreement. If Buyer's City Council approves this Agreement within less than thirty (30) days of the Closing Date set forth herein, the parties agree to extend the Closing Date for an additional thirty (30) days.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement, which shall only become effective as of the day and year the last of the parties set forth below signs this Agreement.

BUYER

SELLER

CITY OF PALM SPRINGS, a California charter city and municipal corporation,

Robert W. Miner, Jr., Successor Trustee of the Robert Wilson Miner Trust, dated April 13, 1998

\_\_\_\_\_  
David H. Ready  
City Manager  
Dated:

By: \_\_\_\_\_  
Robert W. Miner, Jr., Successor Trustee  
Dated:

Attest:

\_\_\_\_\_  
James Thompson  
City Clerk  
Dated:

Approved as to form by:

WOODRUFF, SPRADLIN & SMART

\_\_\_\_\_  
Douglas C. Holland, Esq.  
City Attorney

Dated:

**Exhibit List**

- Exhibit A -- Legal Description of the Easement Area
- Exhibit B -- Depiction of the Easement Area
- Exhibit C -- Form of Grant of Easement
- Exhibit D -- Affidavit of Non-foreign Taxpayer Status
- Exhibit E -- Letter Regarding Future Access Rights

**ACCEPTANCE BY ESCROW HOLDER:**

          LAWYERS TITLE & ESCROW           hereby acknowledges that it has received a fully executed counterpart of the foregoing Right-of-Way Agreement for Acquisition of Real Property and Escrow Instructions and agrees to act as Escrow Holder thereunder and to be bound by and perform the terms thereof as such terms apply to Escrow Holder.

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

          LAWYERS TITLE & ESCROW            
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Exhibit "A" to the Easement**

**LEGAL DESCRIPTION OF THE RIGHT OF WAY**



EXHIBIT "A"  
SLOPE EASEMENT  
APN 669-093-002 & 669-093-003

THAT PORTION OF PARCEL 'B' OF CERTIFICATE OF COMPLIANCE NO. COC 11-02, RECORDED FEBRUARY 28, 2012 AS DOCUMENT NO. 2012-0086271 OF OFFICIAL RECORDS, BEING A PORTION OF THE WEST HALF OF THE NORTHWEST QUARTER AND A PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY UNITED STATES GOVERNMENT SURVEY APPROVED FEBRUARY 29, 1856, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

NORTHERLY SLOPE EASEMENT

**COMMENCING** AT THE INTERSECTION OF THE CENTER LINE OF SOUTHERN PACIFIC RAILROAD WITH THE CENTER LINE OF INDIAN CANYON DRIVE (FORMERLY INDIAN AVENUE) AS SHOWN ON RECORD OF SURVEY FILED IN BOOK 18 OF RECORDS OF SURVEY AT PAGE 2 ON AUGUST 20, 1951; THENCE ALONG THE CENTER LINE OF SAID INDIAN CANYON DRIVE NORTH 00°19'08" EAST 1136.57 FEET TO AN ANGLE POINT THEREIN, SAID POINT BEING THE ONE-SIXTEENTH SECTION CORNER OF SAID SECTION; THENCE CONTINUING ALONG SAID CENTER LINE NORTH 00°19'24" EAST 181.98 FEET TO THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF SAID PARCEL 'B' PER CERTIFICATE OF COMPLIANCE NO. COC 11-02; THENCE LEAVING SAID CENTER LINE ALONG SAID WESTERLY PROLONGATION NORTH 88°51'40" EAST 50.02 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 'B', BEING A POINT ON A LINE PARALLEL WITH AND DISTANT 50.00 FEET EASTERLY OF THE WESTERLY LINE OF SAID NORTHWEST QUARTER OF SECTION 23, SAID WESTERLY LINE ALSO BEING THE CENTER LINE OF SAID INDIAN CANYON DRIVE, SAID POINT BEING THE **TRUE POINT OF BEGINNING**;

1. THENCE CONTINUING ALONG SAID NORTHERLY LINE OF PARCEL 'B' NORTH 88°51'40" EAST 20.01 FEET;
2. THENCE LEAVING SAID NORTHERLY LINE SOUTH 00°19'24" WEST 184.14 FEET TO THE NORTH ONE-SIXTEENTH LINE OF SAID NORTHWEST QUARTER OF SECTION 23;
3. THENCE ALONG SAID NORTH ONE-SIXTEENTH LINE NORTH 89°22'22" WEST 20.00 FEET TO SAID LINE PARALLEL WITH AND DISTANT 50.00 FEET EASTERLY OF THE WESTERLY LINE OF SAID NORTHWEST QUARTER;
4. THENCE ALONG SAID PARALLEL LINE NORTH 00°19'24" EAST 183.52 FEET TO THE **TRUE POINT OF BEGINNING**.

SOUTHERLY SLOPE EASEMENT

**COMMENCING** AT THE INTERSECTION OF THE CENTER LINE OF SOUTHERN PACIFIC RAILROAD WITH THE CENTER LINE OF INDIAN CANYON DRIVE (FORMERLY INDIAN AVENUE) AS SHOWN ON RECORD OF SURVEY FILED IN BOOK 18 OF RECORDS OF SURVEY AT PAGE 2 ON AUGUST 20, 1951; THENCE ALONG THE CENTER LINE OF SAID INDIAN CANYON DRIVE NORTH 00°19'08" EAST 128.31 FEET TO THE NORTHWESTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF SAID PARCEL 'B'; THENCE LEAVING SAID CENTER

EXHIBIT "A"  
SLOPE EASEMENT  
APN 669-093-002 & 669-093-003

LINE ALONG SAID NORTHWESTERLY PROLONGATION SOUTH 50°53'07" EAST 96.23 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL 'B', BEING A POINT ON A LINE PARALLEL WITH AND DISTANT 75.00 FEET EASTERLY OF SAID WESTERLY LINE OF THE NORTHWEST QUARTER OF SECTION 23; SAID POINT BEING THE **TRUE POINT OF BEGINNING**;

1. THENCE ALONG SAID PARALLEL LINE, BEING THE WESTERLY LINE OF SAID PARCEL 'B', NORTH 00°19'08" EAST 297.27 FEET;
2. THENCE LEAVING SAID PARALLEL LINE SOUTH 26°25'21" EAST 104.45 FEET;
3. THENCE SOUTH 00°19'08" WEST 241.77 FEET TO SAID SOUTHERLY LINE OF PARCEL 'B';
4. THENCE ALONG SAID SOUTHERLY LINE NORTH 50°53'07" WEST 60.30 FEET TO THE **TRUE POINT OF BEGINNING**.

AREA = 16,344 SQUARE FEET, MORE OR LESS

SEE EXHIBIT "B" ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. MULTIPLY DISTANCES SHOWN BY 1.00002570 TO OBTAIN GROUND DISTANCES.

SIGNATURE Michael A. Havener 11-30-2015  
MICHAEL A. HAVENER DATE  
PLS 7354



**Exhibit "B" to the Easement**  
**DEPICTION OF THE RIGHT OF WAY**

# EXHIBIT "B"

R.S. 45/40  
PAR. 1

MULTIPLY DISTANCE BY 1.00002570  
TO OBTAIN GROUND DISTANCES



SEE SHEET 2

POR. NE 1/4  
SEC. 22  
T. 3 S., R. 4 E.

APN 669-093-003 &  
669-093-002 NON-PLOTTABLE EASEMENTS  
A QUITCLAIM DEED REC. 4/20/1959 AT  
BK. 2455 PG. 39 O.R. RESERVES AN  
EASEMENT FOR ANY EXISTING PUBLIC  
UTILITIES OVER 669-093-002.

RIGHT-OF-WAY FOR PIPES OR AQUEDUCTS  
REC. 3/23/1912 IN BK. 347, PG. 127 OF  
DEEDS

## LEGEND



SLOPE EASEMENT (SLOPE)  
AREA = 16,344 SQ. FT., MORE OR LESS

P.O.C. POINT OF COMMENCEMENT

E1 POLE LINE EASEMENT IN FAVOR OF CALIFORNIA  
ELECTRIC POWER CO. REC. 1/18/1949 IN BK.  
1045, PG. 186 O.R. NO WIDTH GIVEN.

E2 POLE LINE EASEMENT IN FAVOR OF NEVADA-  
CALIFORNIA ELECTRIC CORP. REC. 2/26/1938  
IN BK. 364, PG. 494 O.R. AND REC. 10/8/1943  
IN BK. 601, PG. 66 O.R. AND REC. 10/8/1943  
IN BK. 596, PG. 515 O.R.

E3 A PIPELINE EASEMENT IN FAVOR OF SOUTHERN  
CALIFORNIA GAS CO. AND SOUTHERN COUNTIES  
GAS CO. OF CALIFORNIA REC. 6/17/1968 AS  
INST. NO. 56471 O.R.

SOUTHERN PACIFIC  
RAILROAD

INDIAN CANYON DR. (INDIAN AVE.)

P.O.C.  
INT. OF THE CENTER LINE OF  
INDIAN CANYON DR. (INDIAN AVE.)  
AND SOUTHERN PACIFIC RAILROAD  
AS SHOWN ON ROS 18/2

SEC. 22  
SEC. 23

APN 669-093-002

PAR. 1, B

(CERT. OF COMPLIANCE COC 11-02  
REC. 2/28/12 AS DOC. NO.  
2012-0086271 O.R.)

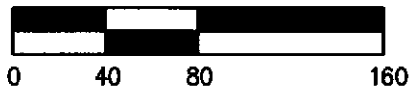
POR. W 1/2  
NW 1/4  
SEC. 23  
T. 3 S., R. 4 E.

APN 669-093-003

SEE SHEET 3

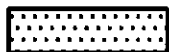
SHEET 1 OF 3 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE
DRAWN BY: KA	DATE: 5-12-15		1" = 200'
CHECKED BY: MH	DATE: 11-30-15	INDIAN CANYON DRIVE WIDENING APN 669-093-002 & 669-093-003	DOC. NO.
APPROVED BY:	DATE:	THE ROBERT WILSON MINER TRUST, DATED 4/13/1998	DWG. NO.



MULTIPLY DISTANCE BY 1.00002570  
TO OBTAIN GROUND DISTANCES

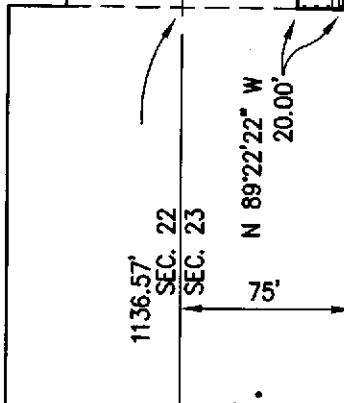
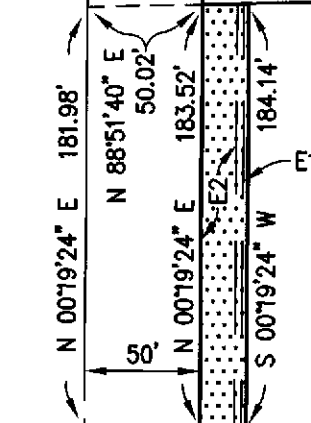
**LEGEND**



SLOPE EASEMENT (SLOPE)  
AREA = 16,344 SQ. FT., MORE OR LESS

- T.P.O.B. TRUE POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT
- E1 POLE LINE EASEMENT IN FAVOR OF CALIFORNIA ELECTRIC POWER CO. REC. 1/18/1949 IN BK. 1045, PG. 186 O.R. NO WIDTH GIVEN.
- E2 POLE LINE EASEMENT IN FAVOR OF NEVADA-CALIFORNIA ELECTRIC CORP. REC. 2/26/1938 IN BK. 364, PG. 494 O.R. AND REC. 10/8/1943 IN BK. 601, PG. 66 O.R. AND REC. 10/8/1943 IN BK. 596, PG. 515 O.R.
- E3 A PIPELINE EASEMENT IN FAVOR OF SOUTHERN CALIFORNIA GAS CO. AND SOUTHERN COUNTIES GAS CO. OF CALIFORNIA REC. 6/17/1968 AS INST. NO. 56471 O.R.

N 88°51'40" E 20.01'  
T.P.O.B. R.S. 45/40  
N'LY SLOPE PAR. 1



INDIAN CANYON DR.  
(INDIAN AVE.)

N 00°19'08" E

1136.57'  
SEC. 22  
SEC. 23

PAR. 'B'  
(CERT. OF COMPLIANCE COC 11-02  
REC. 2/28/12 AS DOC. NO.  
2012-0086271 O.R.)

APN 669-093-002  
POR. 1/2  
NW 1/4  
SEC. 23  
T. 3 S., R. 4 E.

SEE SHEET 3

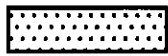
SHEET 2 OF 3 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 80'
DRAWN BY: KA	DATE: 5-12-15		DOC. NO.
CHECKED BY: MH	DATE: 11-30-15	INDIAN CANYON DRIVE WIDENING APN 669-093-002 & 669-093-003 THE ROBERT WILSON MINER TRUST, DATED 4/13/1998	DWG. NO.
APPROVED BY:	DATE:		

POR. NE 1/4  
 SEC. 22  
 T. 3 S., R. 4 E.

SEE SHEET 2

**LEGEND**



SLOPE EASEMENT (SLOPE)  
 AREA = 16,344 SQ. FT., MORE OR LESS

T.P.O.B. TRUE POINT OF BEGINNING

P.O.C. POINT OF COMMENCEMENT

MULTIPLY DISTANCE BY 1.00002570  
 TO OBTAIN GROUND DISTANCES



SOUTHERN PACIFIC  
 RAILROAD

1136.57'

SEC. 22  
 SEC. 23

INDIAN CANYON DR.  
 (INDIAN AVE.)

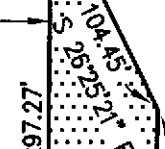
PAR. 'B'  
 W 1/2 NW 1/4  
 SEC. 23  
 T. 3 S., R. 4 E.

(CERT. OF COMPLIANCE COC 11-02  
 REC. 2/28/12 AS DOC. NO.  
 2012-0086271 O.R.)

APN 669-093-003

N 00°19'08" E

75'



S 50° 53' 07" E  
 96.23'

N 50° 53' 07" W  
 60.30'

N 00°19'08" E  
 297.27'

S 00°19'08" W  
 241.77'

P.O.C.  
 INT. OF THE CENTER LINE OF  
 INDIAN CANYON DR. (INDIAN AVE.)  
 AND SOUTHERN PACIFIC RAILROAD  
 AS SHOWN ON ROS 18/2

T.P.O.B.  
 S'LY SLOPE

SHEET 3 OF 3 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 80'
DRAWN BY: KA	DATE: 5-12-15		DOC. NO.
CHECKED BY: MH	DATE: 11-30-15		DWG. NO.
APPROVED BY:	DATE:		INDIAN CANYON DRIVE WIDENING APN 669-093-002 & 669-093-003 THE ROBERT WILSON MINER TRUST, DATED 4/13/1998

**EXHIBIT C**

**RECORDING REQUESTED BY**  
City of Palm Springs  
**WHEN RECORDED RETURN TO:**

City Clerk  
CITY OF PALM SPRINGS  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262

SPACE ABOVE THIS LINE FOR RECORDER'S USE  
Exempt from recording fees under Government Code §6103

**GRANT DEED - SLOPE EASEMENT**

**APN #669-093-002 & 669-093-003**

For a valuable consideration, receipt of which is hereby acknowledged, Robert W. Miner, Jr., Successor Trustee of the Robert Wilson Miner Trust, dated April 13, 1998, (hereinafter "Grantor"), hereby GRANTS to the CITY OF PALM SPRINGS, a California charter city and municipal corporation, (hereinafter "Grantee"), an easement and right-of-way for earth embankment slopes, together with the right to construct and maintain such slopes and embankments and facilities incidental thereto, over, under, along and across all that real property situated in the City of Palm Springs, County of Riverside, State of California, described as follows:

See exhibit "A" attached hereto and exhibit "B" attached for illustration purposes

Reserving unto the Grantor herein, heirs and assigns the continued use of the above described parcel of land subject to the following conditions: The erecting of buildings, masonry walls, and other permanent structures; the planting of trees; the changing of the surface grade; and the installation of privately owned pipe lines shall be prohibited except by Encroachment Agreement issued by the City Engineer.

**GRANTOR: Robert W. Miner, Jr.,  
Successor Trustee of the Robert Wilson  
Miner Trust, dated April 13, 1998**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Robert W. Miner, Jr., Successor Trustee

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 \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature

My Commission Expires: \_\_\_\_\_

*This area for official notarial seal*



**EXHIBIT D**

DO NOT RECORD.  
DO NOT SEND  
TO IRS.

TRANSFeree (BUYER)  
MUST RETAIN FOR  
SIX YEARS AFTER  
THE TRANSACTION.

**CERTIFICATION OF NON-FOREIGN  
STATUS BY TRANSFEROR**

1. Section 1445 of the Internal Revenue Code provides that a transferee (Buyer) of a U. S. real property interest must withhold tax if the transferor (Seller) is a foreign person.

2. In order to inform each transferee that withholding of tax is not required upon disposition of a U. S. real property interest by \_\_\_\_\_ (hereinafter referred to as "the Transferor"), the undersigned hereby certifies, and declares by means of this certification, the following on behalf of the Transferor:

A. The one item marked below is true and correct:

- \_\_\_\_\_ (I) The Transferor is not a foreign individual, foreign corporation, foreign partnership, foreign trust, or foreign estate (as these terms are defined in the Internal Revenue Code and Income Tax Regulations).
- \_\_\_\_\_ (II) The Transferor is a corporation incorporated under the laws of a foreign jurisdiction but has elected to be treated as a U. S. corporation under Section 897(i) of the Internal Revenue Code, AND HAS ATTACHED TO THIS CERTIFICATE A TRUE AND GENUINE COPY OF THE ACKNOWLEDGMENT OF SUCH ELECTION ISSUED BY THE IRS.

B. The Transferor's social security number is \_\_\_\_\_.

C. The Transferor's address is \_\_\_\_\_.

3. The Transferor understands that this certificate may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained in this certification may be punished by fine or imprisonment (or both).

4. The Transferor understands that each transferee is relying on this certificate in determining whether withholding is required and each transferee may face liabilities if any statement in this certificate is false.

5. The Transferor hereby indemnifies each transferee, and agrees to defend and hold each transferee harmless, from any liability, cost, damage, or expense which such transferee may incur as a result of:

A. the Transferor's failure to pay any U. S. Federal income tax which the Transferor is required to pay under applicable U. S. law, or

B. any false or misleading statement contained herein.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete; I further declare that I have authority to sign this document on behalf of the Transferor.

EXECUTED in \_\_\_\_\_ County, State of \_\_\_\_\_

on \_\_\_\_\_.

Transferor: \_\_\_\_\_

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

Title: \_\_\_\_\_

**EXHIBIT E**

**FUTURE ACCESS RIGHTS**

The following letter dated November 23, 2016, from Buyer to Seller regarding acknowledgement of existing and expectations for future access rights to Seller's property is made a part hereof this Agreement.

## EXHIBIT "E"



# City of Palm Springs

## Public Works & Engineering Department

3200 East Tahquitz Canyon Way • Palm Springs, California 92262  
Tel: (760) 322-8380 • Fax: (760) 323-8207 • Web: [www.palmspringsca.gov](http://www.palmspringsca.gov)

November 23, 2016

Robert W. Miner, Jr.  
PO Box 190266  
Anchorage, AK 99519

**RE: Access Rights to Garnet Avenue and Indian Canyon Drive**

Dear Mr. Miner,

This letter is provided to confirm discussions with you related to the Indian Canyon Drive Widening and Bridge Replacement @ UPRR Project, City Project No. 01-11, (hereafter the "Project"), and its impact on access rights to your properties identified by Assessor Parcel Numbers (APN) 669-060-026, 669-070-004, and 669-060-022 (hereafter the "Property"). Dokken Engineering, acting on behalf of the City of Palm Springs as its Right of Way Agent, has previously submitted to you an offer to acquire various rights-of-way and temporary construction easements from the Property, as necessary to construct the Project.

Your existing access rights can be described as follows:

**Garnet Avenue:** The Property has direct access to Garnet Avenue, excluding a length of approximately 270 feet adjacent to the eastbound on/off ramps where access rights were previously acquired from you as part of the Indian Canyon Drive / Interstate 10 Interchange Project.

**Indian Canyon Drive:** The Property has direct access to Indian Canyon Drive, without any restrictions with the exception of those certain understandings expressed to you in a letter dated January 29, 2009, included herewith as Attachment 1, and as otherwise superseded by this letter.

Your future rights can be described as follows:

**Garnet Avenue:** You will retain full access rights to Garnet Avenue outside of the existing Caltrans restricted access previously acquired from you. At the time the Property is developed, the City will require minor widening of Garnet Avenue, which will also include re-striping Garnet Avenue with the necessary turn lane(s) into the Property at the access points approved with your development. Provided the access points proposed as part of any future development coordinate with existing driveways to adjacent properties on Garnet Avenue, full access rights will be provided.

Robert Miner  
November 23, 2016  
Page 2

**Indian Canyon Drive:**

The Project proposes to widen Indian Canyon Drive to a 6-lane divided roadway (with a raised landscaped median). The Project will change your existing access rights from full access, to limited access (right in / right out only).

At the time the Property is developed, the City will require modification of Indian Canyon Drive to provide a full, signalized access point into the Property, which will include modifying the planned raised median to include a break for a northbound left turn lane into the Property, and an eastbound left turn exit from the Property. At that time, the Property will be provided with full access at a centralized location along Indian Canyon Drive, approved by the City. The Property is designated as "Regional Business Center" (RSC), a higher density land use created in the 2007 General Plan Update. Given this land use designation, the City anticipates the Property will be developed with higher intensity industrial, office and commercial uses that relate to the close proximity with Interstate 10. These land uses will likely generate significant volumes of traffic, and as such, the City acknowledges that if developed consistent with the RSC land use designation, full signalized access from Indian Canyon Drive will be required. The exact location of the signalized access is yet to be determined.

The City has no written policy on the spacing of signalized intersections, however it is generally accepted that the minimum spacing between traffic signals should be one-eighth (1/8) mile (660 feet). It would be possible to locate a signalized intersection to the Property at 1/8 mile or more south of Garnet Avenue, provided you (or a future property owner) are successful in acquiring the UPRR surplus land (identified by APN 669-060-012). Absent acquisition of the UPRR property, development of the Property will be challenging and the location of a signalized intersection may have to occur closer to Garnet Avenue than the 1/8 mile minimum guideline.

As there are no development plans for the Property, it is impossible for me to guarantee you a specific location on Indian Canyon Drive for a full, signalized access point. However, the point being made here is that one will be necessary to ensure development of the Property is possible to its full potential under the RBC land use designation.

At the time a development is proposed on the Property, a full analysis of the proposed access points to Garnet Avenue and Indian Canyon Drive, layout of internal streets and/or parking lots, and traffic impacts generated by the development will occur. It is during the City's entitlement process where the Property will be granted specific rights, consistent with the proposed development and the traffic analysis that justifies the required access. Those access rights will be granted consistent with those generally identified in this letter: full access to Garnet Avenue consistent with existing access points / driveways along Garnet Avenue; and (1) signalized access point on Indian Canyon Drive.

Robert Miner  
November 23, 2016  
Page 3

If you have any questions, please feel free to contact me at (760) 322-8380, or by e-mail at [Marcus.Fuller@palmspringsca.gov](mailto:Marcus.Fuller@palmspringsca.gov).

Sincerely,

A handwritten signature in cursive script that reads "Marcus Fuller". The signature is written in black ink and is positioned above the typed name and title.

Marcus L. Fuller, MPA, PE, PLS  
Assistant City Manager/City Engineer

cc: *Jamie Formico*  
*file*

**ATTACHMENT 1**



# City of Palm Springs

Department of Public Works and Engineering

3200 E. Tahquitz Canyon Way • Palm Springs, California 92262  
Tel: (760) 323-8253 • Fax: (760) 322-8360 • Web: [www.ci.palm-springs.ca.us](http://www.ci.palm-springs.ca.us)

January 29, 2009

Mr. Robert Miner  
611 S. Palm Canyon Dr., Suite #7-456  
Palm Springs, CA 92264

Re: **Access Rights to Garnet Avenue and Indian Canyon Drive**

Dear Mr. Miner:

This letter memorializes a meeting held on January 15, 2009, to discuss the Indian Canyon Drive / Interstate 10 Interchange Project and its impact on access rights to your property identified by Assessor's Parcel Number (APN) 666-330-008, 669-060-004, 669-060-005, 669-060-018, and 669-093-011. Riverside County, acting on behalf of the City of Palm Springs as its Right of Way Agent, has previously submitted to you an offer to acquire right-of-way and temporary construction easements from your property, as necessary to implement the planned Indian Canyon Drive / Interstate 10 Interchange improvements. Our meeting was held at your request, and in response to the City's offer to acquire right-of-way from you, with the primary purpose to discuss existing and future access rights to your property.

Your existing access rights can be described as follows:

**Garnet Avenue:** Your property has direct access to Garnet Avenue, without any restrictions.

**Indian Canyon Drive:** Your property has direct access to Indian Canyon Drive, without any restrictions.

Your future access rights, as a result of the planned Interchange improvements, can be described as follows:

**Garnet Avenue:** Caltrans is requiring restricted access rights across from the planned eastbound on-ramp and off-ramp located on Garnet Avenue. The restricted access rights will extend 138.28 meters (453.67 feet) along your Garnet Avenue frontage opposite the new eastbound ramps. You will retain full access rights to Garnet Avenue outside of the Caltrans restricted access to be acquired from you.

As we discussed, Caltrans and the Federal Highway Administration (FHWA) have restrictions with providing local access (public or private) to any intersection with Interstate Highway ramps; therefore, although the City would prefer your property to have full signalized access at the new signalized intersection on Garnet Avenue with the eastbound I-10 ramps, Caltrans and FHWA regulations restrict such access. Full signalized access to your property from Garnet Avenue, if warranted and required, will have to be located outside of the Caltrans access control, at a location that makes appropriate sense given the proximity to the existing traffic signal at Indian Canyon Drive and other existing driveways to the adjacent properties.



Sheets PD-3 and PD-7 indicate the proposed traffic striping to be implemented as part of the planned Interchange improvements. These plans show that Garnet Avenue will become a 4-lane, divided roadway (divided with a painted median). At the time your property is developed, it will include minor widening of Garnet Avenue (beyond what we are proposing as part of the planned Interchange improvements), which will also include re-striping Garnet Avenue with the necessary turn lane(s) into your property at the access points approved with your development. Provided the access points proposed as part of any future development coordinate with existing driveways to adjacent properties on Garnet Avenue, full access rights shall be provided.

### **Indian Canyon Drive:**

Sheet PD-7 indicates the proposed traffic striping to be implemented as part of the planned Interchange improvements. This plan shows that Indian Canyon Drive will become a 4-lane, divided roadway (divided with a painted median) transitioning to match the existing 2-lane divided roadway to the south of your property. As we discussed, I have directed our design engineer to revise Sheet PD-7 to remove the standard striped left-turn bay pocket and to indicate what is called a "Two Way Left Turn Lane" (TWLTL) which allows cars to pull into the painted median and turn left into your property. Likewise, vehicles are permitted to turn left out of your property into the TWLTL and pull into northbound traffic (when safe to do so). This will maintain the existing full access to your driveways on Indian Canyon Drive. Additionally, I have directed our design engineer to ensure that the northbound U-Turn movement at Garnet Avenue is allowed.

As we discussed, the City has a separate federally funded project that will widen Indian Canyon Drive to its full width extending south over the Union Pacific Railroad (UPRR). This project will widen Indian Canyon Drive to a 6-lane divided roadway (divided with a painted median), transitioning to match the existing 2-lane divided roadway south of the UPRR bridge. A third separate federally funded project will extend the widening of Indian Canyon Drive, to its ultimate 4-lane divided roadway width, through the Whitewater River south into Palm Springs.

At the time your property is developed, it will require modification of Indian Canyon Drive to provide a full, signalized access point into your property. Your property is designated as "Regional Business Center" (RBC), a higher density land use created in the 2007 General Plan Update. Given this land use designation, the City anticipates your property will be developed with higher intensity industrial, office and commercial uses that relate to the close proximity with Interstate 10. These land uses will likely generate significant volumes of traffic, and as such, the City acknowledges that if developed consistent with the RBC land use designation, full signalized access from Indian Canyon Drive will be required. The location of the signalized access is to be determined.

The City has no written policy on the spacing of signalized intersections, however it is generally accepted that the minimum spacing between traffic signals should be one-eighth ( $\frac{1}{8}$ ) mile (660 feet). It would be possible to locate a signalized intersection to your property at  $\frac{1}{8}$  mile or more south of Garnet Avenue, provided you (or a future property owner) are successful in acquiring the UPRR surplus land (identified by APN 669-060-012)<sup>1</sup>. Absent acquisition of the UPRR property, development of your property will be challenging and the location of a signalized intersection may have to occur closer to Garnet Avenue than the  $\frac{1}{8}$  mile minimum guideline.

---

<sup>1</sup> Note that I have initiated an inquiry with UPRR staff to determine who at UPRR is responsible for coordinating sale of surplus UPRR property, by e-mail dated January 29, 2009, to which you were copied.

Mr. Robert Miner  
January 29, 2009  
Page 3

As there are no development plans for your property, it is impossible for me to guarantee you a specific location on Indian Canyon Drive for a full, signalized access point. However, the point being made here is that one will be necessary to ensure development of your property to its full potential under the RBC land use designation is possible.

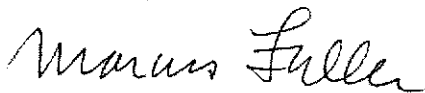
At the time a development is proposed on your property, a full analysis of the proposed access points to Garnet Avenue and Indian Canyon Drive, layout of internal streets and/or parking lots, and traffic impacts generated by the development will occur. It is during the City's entitlement process where your property will be granted specific rights, consistent with the proposed development and the traffic analysis that justifies the required access. Those access rights will be granted consistent with those generally identified in this letter: full access to Garnet Avenue consistent with existing access points / driveways along Garnet Avenue; and (1) signalized access point on Indian Canyon Drive.

As requested, I have enclosed copies of the latest plans for the planned Interchange improvements that affect your property.

As I recall from our discussion of January 15, 2009, you have tentatively agreed to the City's offer to acquire the rights-of-way and temporary construction easements, subject to receipt of this letter outlining the City's expectation of access rights to be afforded your property. With this understanding, I have asked Riverside County to forward to you the formal acquisition package for your approval. I am available to meet with you during your next visit to Palm Springs, February 7 - 14; please contact me so I might arrange a meeting date and time.

If you have any questions, I can be reached at (760) 323-8253, extension 8744, or by e-mail at [Marcus.Fuller@palmsprings-ca.gov](mailto:Marcus.Fuller@palmsprings-ca.gov).

Sincerely,



Marcus L. Fuller, P.E., P.L.S.  
Assistant Director of Public Works/  
Assistant City Engineer

cc: file

# **ATTACHMENT 6**

\* .

**TEMPORARY CONSTRUCTION EASEMENT AGREEMENT**

PROJECT: Indian Canyon Drive Widening and  
Bridge Replacement @ UPRR  
Federal Project No. BRLO-5282(017)  
City Project No. 01-11

APN(s): 669-093-002 & 669-093-003

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT, (the "**Agreement**"), is hereby made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the **City of Palm Springs, a California charter city and municipal corporation**, organized and existing in the County of Riverside, under and by virtue of the laws of the State of California, hereinafter designated as the "**City**" and/or "**Grantee**", **Robert W. Miner, Jr., Successor Trustee of the Robert Wilson Miner Trust, dated April 13, 1998**, hereinafter designated as the "**Grantor**". City/Grantee and Grantor are individually referred to as "Party" and are collectively referred to as the "Parties".

**RECITALS**

A. Grantor is the owner of certain real property located in the City of Palm Springs, (the "**City**"), the County of Riverside, (the "**County**"), State of California, (the "**State**"), which is identified by Assessor Parcel Number(s) **669-093-002 & 669-093-003**, (referred to as the "**Property**").

B. Grantee desires to obtain from Grantor a temporary construction easement over a portion of the Property, and Grantor hereby agrees to authorize Grantee and its assignees, including its contractor(s), to enter, for a limited duration and term subject to the conditions herein this Agreement, a portion of the Property as described on the attached legal description, referenced as Exhibit "A", and shown on the attached map, referenced as Exhibit "B", (the "**Easement Area**"), which are attached hereto and incorporated herein by reference.

C. The Parties desire by this Agreement to provide the terms and conditions for the Grantee's acquisition from Grantor of a Temporary Construction Easement, as defined below, over the Easement Area.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of performance by the Parties of the promises, covenants, and conditions herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Grantor hereby grants to City and its assignees, including its contractor(s), the right to enter upon and use Grantor's Property in the City of Palm Springs, Riverside County, State of California, described as Assessor's Parcel Number(s)

**669-093-002 & 669-093-003** for all purposes necessary to facilitate and accomplish the construction and installation of various public street improvements ("**Temporary Construction Easement**") associated with the **Indian Canyon Drive Widening and Bridge Replacement @ UPRR, Federal Project No. BRLO-5282 (017), City Project No. 01-11 ("Project")**.

2. The Temporary Construction Easement, used during construction of the Project consists of approximately **14,860** square feet as described on the attached legal description, referenced as Exhibit "A", and shown on the attached map, referenced as Exhibit "B" (hereinafter the "**Easement Area**").
3. It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this Agreement, the right of possession and use of the Easement Area by the Grantee, including the right to remove and dispose of improvements, shall commence upon the close of escrow controlling this transaction, and the amount shown in Section 13 herein includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date. The rental period of Temporary Construction Easement will begin on **July 1, 2017** and will expire on **July 1, 2022**. Upon the City's recordation of a Notice of Completion for the Project with the Riverside County Recorder's Office, the Temporary Construction Easement granted herein shall be automatically surrendered by Grantee, and Grantee's interests thereto shall be automatically reverted to Grantor as if quitclaimed by Grantee, and shall no longer represent any title interest of or to Grantor's Property. Nevertheless, if requested by Grantor following such termination, City will execute a quitclaim deed confirming such termination.
4. The rights granted herein include the right to enter upon and to pass and repass over and along the Easement Area, and to deposit tools, implements and other materials thereon by City, or its successors and assigns, its officers, agents and employees, and by persons or entities under contract with City, its successors and assigns, wherever and whenever necessary for the purpose of completing the Project in accordance with applicable laws. The City's activities may involve surveying, staking, excavation, grading, and other related uses that are reasonably required to construct the Project. City agrees not to damage Grantor's property in the process of performing such activities. At all times during the term of this Agreement (and during construction of the Project), Grantor's property will remain accessible for Grantor's ingress and egress.
5. At the termination of the period of use of Grantor's land by City, but before its relinquishment to Grantor, debris generated by City's use will be removed and the surface will be graded, if applicable, and left in a neat condition, as close to the condition of Grantor's land that existed as of the time of the execution. The City will not commit or permit the commission by others of any waste within the Temporary Construction Easement area, and the City will not maintain, commit, or permit the maintenance or commission of any nuisance as defined by California Civil Code .§ 3479, within said area.

6. Any notice to be given or other document or documents to be delivered to either Party by the other hereunder may be delivered in person or may be deposited in the United States Mail in the State of California, duly registered or certified, with postage prepaid, and addressed as follows:

If to Grantee, to:

Attn: City Clerk  
City of Palm Springs  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262  
Facsimile No.: (760) 322-8332  
Telephone No.: (760) 323-8204

If to Grantor, to:

Robert W. Miner, Jr., Successor Trustee  
PO Box 190266  
Anchorage, AK 99519

7. City hereby agrees to indemnify and hold harmless the Grantor, its successors and assigns, from any loss damage, and/or liability either resulting from and/or arising out of the City's, City's employees, agents and/or contractors possession, use, and/or activities performed in or about the Temporary Construction Easement area.

City shall indemnify, defend, protect, and hold harmless, the Grantor and its successors and assigns, from any and all claims, demands, judgments, penalties, fines, costs, liabilities, damages, losses, or expenses including, without limitation, site repair, restoration and/or remediation costs following or as a part of environmental response actions, any request by any governmental agency to remediate contamination of any portion of the Temporary Construction Easement area, the soil, and/or ground water or other property, damages for the loss or restriction on the use of the Temporary Construction Easement area, settlement of claims, attorneys' fees, consultant fees, expert fees, which arise either during or after the expiration of the Temporary Construction Easement from or in connection with an actual deposit, release, or discharge by the City, its agents, employees, contractors, or invitees, of any chemicals or hydrocarbons in or about the Temporary Construction Easement area and/or the City's removal and disposition of any property from the Temporary Construction Easement area.

At all times during the term of the Agreement the City will keep and maintain at its own expense, adequate commercial general public liability and property damage insurance coverage, naming the Grantor as an "additional insured" with public liability limits not less than Five Million Dollars (\$5,000,000). The City will maintain Workers Compensation Insurance and Employer's Liability Insurance

for itself and its employees, and will require coverage for its agents, contractors, and invitees who may enter upon, possess and/or use any portion of the Temporary Construction Easement area where said entrance, possession and/or use is at the specific direction of the City.

8. Grantor hereby warrants that they are the owners of the Property described above and that they have the right to grant City, its successors or assigns, permission to enter upon and use the Easement Area.
9. This Agreement is the result of negotiations between the Parties hereto. This Agreement is intended by the Parties as a final expression of their understanding with respect to the matters herein, and is a complete and exclusive statement of the terms and conditions thereof.
10. This Agreement shall not be changed, modified, or amended except upon the written consent of the Parties hereto.
11. This Agreement supersedes any and all other prior agreements or understandings, oral or written, in connection therewith.
12. Grantor, its assigns and successors in interest, shall be bound by all the terms and conditions contained in this Agreement, and all the Parties thereto shall be jointly and severally liable thereunder in accordance with Civil Code Section 1468.
13. City shall pay to Grantor the total sum of **Sixteen Thousand One Hundred Thirty-Six Dollars and Zero cents (\$16,136)**, (the "**Rental Price**"), for the right to enter upon and use Grantor's land in accordance with the terms hereof. Grantor hereby expressly and unconditionally waives any and all claims for damages, relocation assistance benefits, severance damages, interest, loss of goodwill, claims for inverse condemnation or unreasonable pre-condemnation conduct, or any other compensation or benefits, other than for payment of the Rental Price, it being understood that the Rental Price constitutes complete and full settlement of all acquisition claims, liabilities, or benefits of any type or nature whatsoever, whether known or unknown as of the date of this Agreement, relating to or in connection with the Temporary Construction Easement or any other rights granted under this Agreement. Payment shall be made within thirty (30) days after execution of this Agreement, or pursuant to the terms of and through the close of escrow if acquisition of the Temporary Construction Easement is associated with the City's acquisition from Grantor of permanent right-of-way over a portion of the Property.

Grantor hereby acknowledges that it has been advised by its attorney and is familiar with the provisions of California Civil Code section 1542, which provides as follows:

“A general release does not extend to claims which the Creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

By signing below, Grantor acknowledges that it may have sustained damage, loss, costs or expenses which are presently unknown and unsuspected, and such damage, loss, costs or expenses which may have been sustained, may give rise to additional damage, loss, costs or expenses in the future. Nevertheless, Grantor hereby acknowledges that this Agreement has been negotiated and agreed upon in light of that situation, and hereby expressly waives any and all rights which it may have under California Civil Code section 1542, or under any statute or common law or equitable principle of similar effect, except as set forth in this Section 13.

***[SIGNATURE PAGE FOLLOWS]***



**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date and year first above written.

**GRANTEE:**

**CITY OF PALM SPRINGS, a California charter city and municipal corporation**

By: \_\_\_\_\_  
David H. Ready, City Manager

**GRANTOR:**

**Robert W. Miner, Jr., Successor Trustee of the Robert Wilson Miner Trust, dated April 13, 1998**

By: \_\_\_\_\_  
Robert W. Miner, Jr., Successor Trustee

**ATTEST:**

By: \_\_\_\_\_  
James Thompson, City Clerk

**APPROVED AS TO FORM:**

**WOODRUFF, SPRADLIN & SMART**

By: \_\_\_\_\_  
Douglas C. Holland, Esq., City Attorney

**Exhibit List**

- Exhibit A -- Legal Description of the Easement Area
- Exhibit B -- Depiction of Easement Area

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 \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature

My Commission Expires: \_\_\_\_\_ This area for official notarial seal

**Exhibit "A"**

**LEGAL DESCRIPTION OF THE EASEMENT AREA**

EXHIBIT "A"  
TEMPORARY CONSTRUCTION EASEMENT  
APN 669-093-002 & 669-093-003

THAT PORTION OF PARCEL 'B' OF CERTIFICATE OF COMPLIANCE NO. COC 11-02, RECORDED FEBRUARY 28, 2012 AS DOCUMENT NO. 2012-0086271 OF OFFICIAL RECORDS, BEING A PORTION OF THE WEST HALF OF THE NORTHWEST QUARTER AND A PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY UNITED STATES GOVERNMENT SURVEY APPROVED FEBRUARY 29, 1856, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE INTERSECTION OF THE CENTER LINE OF SOUTHERN PACIFIC RAILROAD WITH THE CENTER LINE OF INDIAN CANYON DRIVE (FORMERLY INDIAN AVENUE) AS SHOWN ON RECORD OF SURVEY FILED IN BOOK 18 OF RECORDS OF SURVEY AT PAGE 2 ON AUGUST 20, 1951; THENCE ALONG THE CENTER LINE OF SAID INDIAN CANYON DRIVE NORTH 00°19'08" EAST 128.31 FEET TO THE NORTHWESTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF SAID PARCEL 'B'; THENCE LEAVING SAID CENTER LINE ALONG SAID NORTHWESTERLY PROLONGATION SOUTH 50°53'07" EAST 96.23 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL 'B', BEING A POINT ON A LINE PARALLEL WITH AND DISTANT 75.00 FEET EASTERLY OF SAID WESTERLY LINE OF THE NORTHWEST QUARTER OF SECTION 23; THENCE ALONG SAID PARALLEL LINE, BEING THE WESTERLY LINE OF SAID PARCEL 'B', NORTH 00°19'08" EAST 297.27 FEET TO THE **TRUE POINT OF BEGINNING**;

1. THENCE CONTINUING ALONG SAID PARALLEL LINE NORTH 00°19'08" EAST 770.88 FEET TO THE NORTH ONE-SIXTEENTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 23;
2. THENCE ALONG SAID NORTH ONE-SIXTEENTH LINE NORTH 89°22'22" WEST 5.00 FEET;
3. THENCE LEAVING SAID NORTH ONE-SIXTEENTH LINE NORTH 00°19'24" EAST 184.14 FEET TO THE NORTHERLY LINE OF SAID PARCEL 'B';
4. THENCE ALONG SAID NORTHERLY LINE NORTH 88°51'40" EAST 14.00 FEET;
5. THENCE LEAVING SAID NORTHERLY LINE SOUTH 00°19'24" WEST 184.12 FEET;
6. THENCE SOUTH 00°19'08" WEST 755.81 FEET;
7. THENCE SOUTH 26°25'21" EAST 117.79 FEET;
8. THENCE SOUTH 00°19'08" WEST 257.40 FEET TO SAID SOUTHWESTERLY LINE OF PARCEL 'B';
9. THENCE ALONG SAID SOUTHWESTERLY LINE NORTH 50°53'07" WEST 19.25 FEET;
10. THENCE LEAVING SAID SOUTHWESTERLY LINE NORTH 00°19'08" EAST 241.77 FEET;
11. THENCE NORTH 26°25'21" WEST 104.45 FEET TO THE **TRUE POINT OF BEGINNING**.

AREA = 14,860 SQUARE FEET, MORE OR LESS

EXHIBIT "A"  
TEMPORARY CONSTRUCTION EASEMENT  
APN 669-093-002 & 669-093-003

SEE EXHIBIT "B" ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE  
BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. MULTIPLY  
DISTANCES SHOWN BY 1.00002570 TO OBTAIN GROUND DISTANCES.

SIGNATURE Michael A Havener 5-12-2016  
MICHAEL A. HAVENER DATE  
PLS 7354



**Exhibit "B"**

DEPICTION OF THE EASEMENT AREA

# EXHIBIT "B"

R.S. 45/40  
PAR. 1

MULTIPLY DISTANCE BY 1.00002570  
TO OBTAIN GROUND DISTANCES



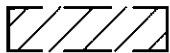
SEE SHEET 2

POR. NE 1/4  
SEC. 22  
T. 3 S., R. 4 E.

APN 669-093-003 &  
669-093-002 NON-PLOTTABLE EASEMENTS  
A QUITCLAIM DEED REC. 4/20/1959 AT  
BK. 2455 PG. 39 O.R. RESERVES AN  
EASEMENT FOR ANY EXISTING PUBLIC  
UTILITIES OVER 669-093-002.

RIGHT-OF-WAY FOR PIPES OR AQUEDUCTS  
REC. 3/23/1912 IN BK. 347, PG. 127 OF  
DEEDS

## LEGEND



TEMPORARY CONSTRUCTION EASEMENT (TCE)  
AREA = 14,860 SQ. FT., MORE OR LESS

P.O.C. POINT OF COMMENCEMENT

E1 POLE LINE EASEMENT IN FAVOR OF CALIFORNIA  
ELECTRIC POWER CO. REC. 1/18/1949 IN BK.  
1045, PG. 186 O.R. NO WIDTH GIVEN.

E2 POLE LINE EASEMENT IN FAVOR OF NEVADA-  
CALIFORNIA ELECTRIC CORP. REC. 2/26/1938  
IN BK. 364, PG. 494 O.R. AND REC. 10/8/1943  
IN BK. 601, PG. 66 O.R. AND REC. 10/8/1943  
IN BK. 596, PG. 515 O.R.

E3 A PIPELINE EASEMENT IN FAVOR OF SOUTHERN  
CALIFORNIA GAS CO. AND SOUTHERN COUNTIES  
GAS CO. OF CALIFORNIA REC. 6/17/1968 AS  
INST. NO. 56471 O.R.

SOUTHERN PACIFIC  
RAILROAD

INDIAN CANYON DR. (INDIAN AVE.)

SEC. 22  
SEC. 23

APN 669-093-002

PAR. 1, B

(CERT. OF COMPLIANCE COC 11-02  
REC. 2/28/12 AS DOC. NO.  
2012-0086271 O.R.)

POR. W 1/2  
NW 1/4  
SEC. 23  
T. 3 S., R. 4 E.

APN 669-093-003

P.O.C.  
INT. OF THE CENTER LINE OF  
INDIAN CANYON DR. (INDIAN AVE.)  
AND SOUTHERN PACIFIC RAILROAD  
AS SHOWN ON ROS 18/2

SEE SHEET 3

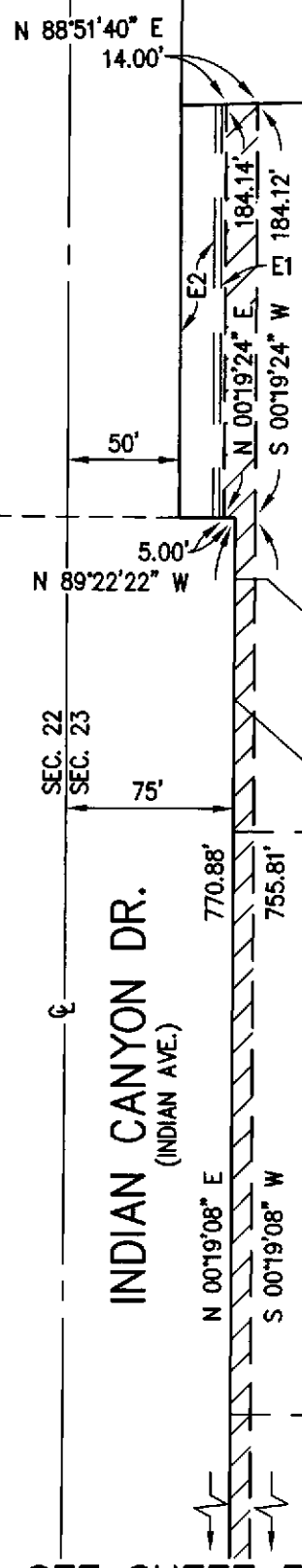
SHEET 1 OF 3 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE
DRAWN BY: KA	DATE: 5-12-15		1" = 200'
CHECKED BY: MH	DATE: 5-12-16	INDIAN CANYON DRIVE WIDENING APN 669-093-002 & 669-093-003	DOC. NO.
APPROVED BY:	DATE:	THE ROBERT WILSON MINER TRUST, DATED 4/13/1998	DWG. NO.

R.S. 45/40  
PAR. 1



MULTIPLY DISTANCE BY 1.00002570  
TO OBTAIN GROUND DISTANCES



PAR. 'B'  
(CERT. OF COMPLIANCE COC 11-02  
REC. 2/28/12 AS DOC. NO.  
2012-0086271 O.R.)

APN 669-093-002  
APN 669-093-003  
POR. LW, 1/2  
NW 1/4  
SEC. 23  
T. 3 S., R. 4 E.

**LEGEND**

- TEMPORARY CONSTRUCTION EASEMENT (TCE)  
AREA = 14,860 SQ. FT., MORE OR LESS
- T.P.O.B. TRUE POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT
- E1 POLE LINE EASEMENT IN FAVOR OF CALIFORNIA  
ELECTRIC POWER CO. REC. 1/18/1949 IN BK.  
1045, PG. 186 O.R. NO WIDTH GIVEN.
- E2 POLE LINE EASEMENT IN FAVOR OF NEVADA-  
CALIFORNIA ELECTRIC CORP. REC. 2/26/1938  
IN BK. 364, PG. 494 O.R. AND REC. 10/8/1943  
IN BK. 601, PG. 66 O.R. AND REC. 10/8/1943  
IN BK. 596, PG. 515 O.R.
- E3 A PIPELINE EASEMENT IN FAVOR OF SOUTHERN  
CALIFORNIA GAS CO. AND SOUTHERN COUNTIES  
GAS CO. OF CALIFORNIA REC. 6/17/1968 AS  
INST. NO. 56471 O.R.

SEE SHEET 3

SHEET 2 OF 3 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 80'
DRAWN BY: KA	DATE: 5-12-15		DOC. NO.
CHECKED BY: MH	DATE: 5-12-16	INDIAN CANYON DRIVE WIDENING APN 669-093-002 & 669-093-003 THE ROBERT WILSON MINER TRUST, DATED 4/13/1998	DWG. NO.
APPROVED BY:	DATE:		



POR. NE 1/4  
 SEC. 22  
 T. 3 S., R. 4 E.

**LEGEND**

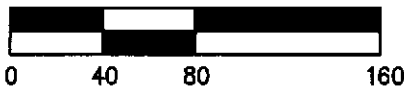


TEMPORARY CONSTRUCTION EASEMENT (TCE)  
 AREA = 14,860 SQ. FT., MORE OR LESS

T.P.O.B. TRUE POINT OF BEGINNING

P.O.C. POINT OF COMMENCEMENT

MULTIPLY DISTANCE BY 1.00002570  
 TO OBTAIN GROUND DISTANCES



SOUTHERN PACIFIC  
 RAILROAD

P.O.C.  
 INT. OF THE CENTER LINE OF  
 INDIAN CANYON DR. (INDIAN AVE.)  
 AND SOUTHERN PACIFIC RAILROAD  
 AS SHOWN ON ROS 18/2

SEE SHEET 2

SEC. 22  
 SEC. 23

INDIAN CANYON DR.  
 (INDIAN AVE.)

T.P.O.B.  
 TCE  
 75'

N 00°19'08" E  
 128.31'

N 50°53'07" W  
 19.25'

S 50°53'07" E  
 96.23'

297.27'

104.45'

117.79'

770.88'

N 00°19'08" E

S 00°19'08" W

755.81'

PAR. 'B'

POR. W 1/2 NW 1/4

(CERT. OF COMPLIANCE COC 11-02  
 REC. 2/28/12 AS DOC. NO.  
 2012-0086271 O.R.)

SEC. 23

T. 3 S., R. 4 E.

APN 669-093-003

SHEET 3 OF 3 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 80'
DRAWN BY: KA	DATE: 5-12-15		DOC. NO.
CHECKED BY: MH	DATE: 5-12-16	INDIAN CANYON DRIVE WIDENING APN 669-093-002 & 669-093-003 THE ROBERT WILSON MINER TRUST, DATED 4/13/1998	DWG. NO.
APPROVED BY:	DATE:		

# **ATTACHMENT 7**

STATE OF CALIFORNIA - THE RESOURCES AGENCY  
 DEPARTMENT OF FISH AND GAME  
**ENVIRONMENTAL FILING FEE CASH RECEIPT**

Receipt #: 200900795

State Clearinghouse # (if applicable): 2009071044

Lead Agency: CITY OF PALM SPRINGS

Date: 11/05/2009

County Agency of Filing: Riverside

Document No: 200900795

Project Title: INDIAN CANYON DRIVE & BRIDGE WIDENING

Project Applicant Name: DOKKEN ENGINEERING

Phone Number:

Project Applicant Address: 2365 IRON POINT RD, SUITE 200 FOLSOM, CA 95630-8709

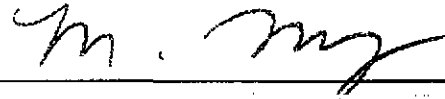
Project Applicant: Private Entity

CHECK APPLICABLE FEES:

- Environmental Impact Report
- Negative Declaration
- Application Fee Water Diversion (State Water Resources Control Board Only)
- Project Subject to Certified Regulatory Programs
- County Administration Fee
  - Project that is exempt from fees (DFG No Effect Determination (Form Attached))
  - Project that is exempt from fees (Notice of Exemption)

	1993.00
	\$64.00
<b>Total Received</b>	<b>2057.00</b>

Signature and title of person receiving payment:



FROM : F&G 2009 00795  
 BY : HANEYER

FISH FISH & GAME 2057.00

TOTAL FEE -----> 2057.00  
 AMOUNT (CHECK) RECEIVED -----> ( 2057.00)

CHANGE -----> 0.00

1 Check Received  
 Check #625723  
 \*\*\* RECEIPT \*\*\*

LARRY M. WARD  
 Riverside County  
 Clerk and Recorder  
 2724 Gateway Drive  
 Riverside, CA 92507  
 (951) 486-7000  
 www.RiversideAECR.com

11/05/2009 \*\* REPRINT \*\* 12:22PM

RECEIPT # 2734467

Notice of Determination

Appendix D

To:

Office of Planning and Research
For U.S. Mail: Street Address:
P.O. Box 3044 1400 Tenth St.
Sacramento, CA 95812-3044 Sacramento, CA 95814

County Clerk

County of: Riverside
Address: 2724 Gateway Drive
Riverside, CA 92507

From:

Public Agency: City of Palm Springs
Address: 3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262
Contact: Marcus Fuller
Phone: (760) 323-8253

Lead Agency (if different from above):

FILED RIVERSIDE COUNTY D

Address:

NOV 05 2009

Contact:

LARRY W. WARD, CLERK

Phone:

By M. Meyer Deputy

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

State Clearinghouse Number (if submitted to State Clearinghouse): 2009071044

Project Title: Indian Canyon Drive and Bridge Widening

Project Location (include county): Indian Canyon Drive over UPRR, just south of Interstate 10, Riverside County.

Project Description:

The City of Palm Springs proposes to widen Indian Canyon Drive for a distance of approximately 4,000 feet south of its intersection with Garnet Avenue (south of Interstate 10). The Indian Canyon Drive Bridge, which crosses over the Union Pacific Railroad Tracks, would also be widened. The existing 2 lane road and bridge would be widened to a 6 lane facility.

This is to advise that the City of Palm Springs has approved the above described project on November 4, 2009 and has made the following determinations regarding the above described project.

Lead Agency or Responsible Agency

November 4, 2009 (Date)

COUNTY CLERK Neg Declaration/Ntc Determination: POSTED per P.R.C. 21152

- 1. The project [ ] will [X] will not have a significant effect on the environment.
2. [ ] An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA. [X] A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures [X] were [ ] were not made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan [X] was [ ] was not adopted for this project.
5. A statement of Overriding Considerations [ ] was [X] was not adopted for this project.
6. Findings [X] were [ ] were not made pursuant to the provisions of CEQA.

NOV 05 2009

Removed: County of Riverside, State of California Dept.

This is to certify that the final EIR with comments and responses and record of project approval, or the negative Declaration, is available to the General Public at: 3200 E. Tahquitz Canyon Way, Palm Springs, CA 92262

Signature (Public Agency)

Marcus Fuller

Title Assistant Director of Public Works, Ass. City Engineer

Date

Nov. 5, 2009

Date Received for filing at OPR

# **ATTACHMENT 8**

**DEPARTMENT OF TRANSPORTATION**

DISTRICT 8

ENVIRONMENTAL LOCAL ASSISTANCE (MS 1162)

464 WEST 4<sup>TH</sup> STREET, 6<sup>TH</sup> FLOOR

SAN BERNARDINO, CA 92401

PHONE (909) 388-1804

FAX (909) 383-6494

TTY (909) 383-6300



*Flex your power!  
Be energy efficient!*

September 24, 2009

Mr. Marcus Fuller  
3200 East Tahquitz Canyon Way  
Palm Springs, CA. 92201

File: 08-Riv-Local Assistance

FPN: BRLO 5282 (017)  
STPLN 5282 (016)

Dear Mr. Fuller:

The California Department of Transportation (Caltrans) has prepared the NEPA environmental determination (Categorical Exclusion) for the proposed project in the City of Palm Springs in the County of Riverside consisting of widening the existing Indian Canyon Bridge from 2 to 6 lanes (86' - ultimate width) from UPRR overcrossing (bridge 56C0025) to Garnet Ave. The project will accommodate horizontal and vertical clearance requirements as dictated by CPUC and UPRR during final design.

Caltrans would also like to reiterate the requirements of the NEPA Pilot Program MOU that became effective July 1, 2007. Pursuant to the MOU and Section 6005 of SAFETEA-LU codified at 23 U.S.C. 327(a)(2)(A), effective July 1, 2007 FHWA has assigned, and Caltrans has assumed, all the United States Department of Transportation (USDOT) Secretary's responsibilities under NEPA. The assignment applies to all projects on the State Highway System (SHS) and all Local Assistance Projects off the SHS within the State of California.

- Local Agency or its consultant *must do* formal QC of environmental documents and technical reports paralleling Caltrans standards, to be confirmed by use of "External QC Form" provided to Caltrans. <http://www.dot.ca.gov/ser/forms.htm>
- Local Assistance documents *must use* Annotated Outlines for EAs and EISs
  - Annotated Outlines are effective and efficient tools to ensure all requirements are met and to ensure consistency of terminology and treatment of issues. Agencies may use either the combined CEQA/NEPA outlines, or the NEPA-only outline. <http://www.dot.ca.gov/ser/forms.htm>
  - One Caltrans standard for federal environmental documents is required.
  - If challenged, Caltrans must defend Local Agency documents in federal court; documents that follow standardized formats and procedures are more defensible
- Local Agencies *must send* copies of:

1) Environmental documents, 2) technical reports, 3) summary lists of environmental commitments to be incorporated into PS&E, and 4) permits to Caltrans' DLAE for files to facilitate audits and process reviews. The requirement to have environmental commitments and permits is not new (Local Assistance Procedures Manual Chapters 6, 12, 15, 17), but providing copy to DLAE is now mandated because of the need to provide rapid response to FHWA in process reviews and audits and because FHWA nationally is placing new emphasis on ensuring these commitments are carried out.

If you have any questions regarding the CE, please call Julie Lugaro at (909) 383-1570.

Sincerely,

Aaron Burton  
Senior Environmental Planner  
Environmental Local Assistance

**CATEGORICAL EXEMPTION/ CATEGORICAL EXCLUSION DETERMINATION FORM**

**08-RIV-Palm Springs**

**0-Riv**

**BRLO 5282 (017) and STPLN 5282 (016)**

Dist.-Co.-Rte. (or Local Agency)

P./M.P.M.

E.A. (State project)

Federal-Aid Project No. (Local project)/ Proj. No.

**PROJECT DESCRIPTION:**

(Briefly describe project, purpose, location, limits, right-of-way requirements, and activities involved.)

*Enter project description in this box. Use Continuation Sheet, if necessary*

The proposed project in the City of Palm Springs in the County of Riverside consists of widening the existing Indian Canyon Bridge from 2 to 6 lanes (86' - ultimate width) from UPRR overcrossing (bridge 56C0025) to Garnet Ave, also construct north and south bridge approaches to improve traffic circulation and safety. The project will accommodate horizontal and vertical clearance requirements as dictated by CPUC and UPRR during final design.

**CEQA COMPLIANCE** (for State Projects only)

Based on an examination of this proposal, supporting information, and the following statements (See 14 CCR 15300 et seq.):

- If this project falls within exempt class 3, 4, 5, 6 or 11, it does not impact an environmental resource of hazardous or critical concern where designated, precisely mapped and officially adopted pursuant to law.
- There will not be a significant cumulative effect by this project and successive projects of the same type in the same place, over time.
- There is not a reasonable possibility that the project will have a significant effect on the environment due to unusual circumstances.
- This project does not damage a scenic resource within an officially designated state scenic highway.
- This project is not located on a site included on any list compiled pursuant to Govt. Code § 65962.5 ("Cortese List").
- This project does not cause a substantial adverse change in the significance of a historical resource.

**CALTRANS CEQA DETERMINATION** (Check one)

**Exempt by Statute.** (PRC 21080[b]; 14 CCR 15260 et seq.)

Based on an examination of this proposal, supporting information, and the above statements, the project is:

**Categorically Exempt. Class \_\_\_\_\_.** (PRC 21084; 14 CCR 15300 et seq.)

**Categorically Exempt. General Rule exemption.** [This project does not fall within an exempt class, but it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment (CCR 15061[b][3])]

N/A

N/A

Print Name: Environmental Branch Chief

Print Name: Project Manager/DLA Engineer

N/A

N/A

Signature

Date

Signature

Date

**NEPA COMPLIANCE**

In accordance with 23 CFR 771.117, and based on an examination of this proposal and supporting information, the State has determined that this project:

- does not individually or cumulatively have a significant impact on the environment as defined by NEPA and is excluded from the requirements to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS), and
- has considered unusual circumstances pursuant to 23 CFR 771.117(b) (<http://www.fhwa.dot.gov/hep/23cfr771.htm> - sec.771.117).

In non-attainment or maintenance areas for Federal air quality standards, the project is either exempt from all conformity requirements, or conformity analysis has been completed pursuant to 42 USC 7506(c) and 40 CFR 93.

**CALTRANS NEPA DETERMINATION** (Check one)

**Section 6004:** The State has been assigned, and hereby certifies that it has carried out, the responsibility to make this determination pursuant to Chapter 3 of Title 23, United States Code, Section 326 and a Memorandum of Understanding (MOU) dated June 7, 2007, executed between the FHWA and the State. The State has determined that the project is a Categorical Exclusion under:

- 23 CFR 771.117(c): activity (c) ()
- 23 CFR 771.117(d): activity (d) ()
- Activity listed in the MOU between FHWA and the State

**Section 6005:** Based on an examination of this proposal and supporting information, the State has determined that the project is a CE under Section 6005 of 23 U.S.C. 327.

Aaron P. Burton  
Print Name: Environmental Branch Chief

JOAN PAGANO  
Print Name: Project Manager/DLA Engineer

[Signature] 9-24-2009  
Signature Date

[Signature] 9/24/09  
Signature Date

Briefly list environmental commitments on continuation sheet. Reference additional information, as appropriate (e.g., air quality studies, documentation of conformity exemption, FHWA conformity determination if Section 6005 project; §106 commitments; §4(f); §7 results; Wetlands Finding; Floodplain Finding; additional studies; and design conditions). Revised September 15, 2008

**CATEGORICAL EXEMPTION/CATEGORICAL EXCLUSION DETERMINATION FORM**  
**Continuation Sheet**

**08-RIV-Palm Springs**

**0-Riv**

**BRLO 5282 (017) and STPLN 5282 (016)**

Dist.-Co.-Rte. (or Local Agency)

P.M/P.M.

E.A. (State project)

Federal-Aid Project No. (Local project) Proj. No.

Continued from page 1:

**Project Components**

- Widen Indian Canyon Drive from 2 lanes to 6 lanes from UPRR overcrossing (bridge 56C0025) to Gamet Ave
- Construct north and south bridge approaches to improve traffic circulation and safety.
- The project will accommodate horizontal and vertical clearance requirements as dictated by CPUC and UPRR during final design.
- PES form signed July 9, 2002

**Technical Study Results**

**Noise**

- Noise Analysis was approved on February 24, 2003

**Water Quality**

- For project areas exceeding 0.4 hectare (1 acre), NPDES guidelines necessitate the development of a SWPPP by the contractor prior to construction to establish project-specific permanent and temporary BMPs. During the design phase, a Water Pollution Control Plan would be prepared to determine the minimum control requirements to be included in the SWPPP.
- BMPs include any facilities and methods used to remove, reduce, or prevent storm water runoff pollutants from entering receiving waters. Implementation of BMP goals may involve providing bioswales to reduce downstream pollutant concentrations, informing the public about runoff concerns to lessen impacts on receiving waters, and minimizing cuts and fills to curtail erosion.
- Erosion control methods, temporary and permanent BMPs, and improvement of drainage facilities along the roadway would minimize impacts from storm water runoff. The SWPPP and NPDES-compliant measures would ensure no adverse impacts would occur to water quality associated with the Build Alternative (Locally Preferred).

**Floodplain**

- The Location Hydraulic Study and the Summary Floodplain Encroachment Report found that the project was assessed as a low level of risk to the floodplain and Caltrans approved of the study August 20, 2009.

**Natural Environment Study**

- Appended Biological Opinion was signed on October 11, 2007
- Biological Assessment dated August 2006
- Avoidance, Minimization, and/or Mitigation Measures:
- The Programmatic Biological Opinion (USFWS 2005) and appended PBO with conservation measures (October 11, 2007) shall be followed.

**Invasive Species**

- Minimization measures for effects on invasive species would be implemented to comply with regulations under the California Department of Fish and Game.
- All construction equipment should be cleaned prior to movement to the construction site.
- Only weed-free mulches and erosion control mixes should be included in specification.
- Only appropriate native plants should be included in project landscaping.
- No topsoil should be imported.
- A weed eradication program should be implemented over the first year after construction.

**Conservation Measures (Appended PBO, October 11, 2007)**

Caltrans and the City proposed the following measures as part of the proposed action to avoid and minimize adverse effects for listed species:

1. Conservation measures I through 20 of the PBO shall be implemented by the Caltrans/City for the appended Project with the possible exception of PBO #4. If loose sand is to be removed from the



**CATEGORICAL EXEMPTION/CATEGORICAL EXCLUSION DETERMINATION FORM**  
**Continuation Sheet**

Project site and deposited on the Preserve in accordance with the existing agreement between CVWD and the City, then PBO conservation measure #14 would be null.

2. Approximately 14.2 acres (7.1 acres at a 2:1 ratio or 14.2 acres) of suitable habitats for the Coachella Valley milk-vetch and Coachella Valley fringe-toed lizards shall be preserved in an established conservation area near the action area as agreed to on Page 5 of the Appended BO for the Tiered Date Palm Drive Interchange Project (1-6-05-P-3282, EA 455900). Prior to construction, the Coachella Valley Association of Governments (CVAG), acting on behalf of Caltrans, has committed to the purchase and establishment of a conservation area, the finalization of a conservation agreement, and the establishment of an endowment fund for the management of the conservation area in perpetuity. The 26.34 acres (Table 1) of conservation habitat, required to offset the indirect impacts for this proposed Project, was previously purchased and accounted for as identified in the Appended BO for the Tiered Indian Avenue Interchange Project (1-6-05-P-3282).
3. The 14.2 acres (Table 1) of sandy habitat suitable for the fringe-toed lizard and milkvetch shall be purchased prior to the commencement of construction activities (including brush clearing and grading) associated with the Project.
4. Sand removed from the project footprint shall be deposited in accordance with an agreement between the City and CVWD. The Service shall approve the removal of sand and the deposition area prior to pickup, transportation and deposition of sand. If the quality of loose sand to be removed from the Project site and deposited on the Preserve is not suitable (consisting of rocks, fine sediment, and gravel), then conservation measure #4 would be null and the sand would not be removed to the Preserve.
5. During construction, soils to be impacted shall be watered down to prevent fugitive dust from drifting into adjacent habitat.
6. All construction equipment shall be cleaned prior to initial movement to the construction site.
7. Caltrans/City shall ensure that the Contractor avoids entering or damaging habitat located outside of the project footprint. The Contractor's operations shall be limited to the immediate project footprint and other designated work areas shown on the plans, except as authorized in writing by the authorized biologist. The Contractor shall avoid killing or injuring any wildlife within the habitat and shall avoid killing or injuring any wildlife that crosses into the work area, except as required for the immediate safety of project personnel. The Contractor shall notify the authorized biologist of any wildlife killed or injured by construction activities or the contractor's employees in the course of work.

Native plants located inside the habitat, that are not shown on the plans to be removed, and that are injured or damaged by reason of the Contractor's operations, shall be replaced by the Contractor in accordance with Section 7 1.11 "Preservation of Property" of the Standard Specifications.

8. The Contractor shall retain, and have available, the services of an authorized biologist who will perform the duties of the biological monitor. The monitor is required to provide a pre-construction survey of the project site and any associated staging areas, provide employee training, monitor the temporary silt/wildlife fence installation, perform construction monitoring, and conduct endangered species relocation.

USFWS Conservation Measures (PBO September 23, 2004)

9. All areas outside of the project footprint will be delineated as Environmentally Sensitive Areas (ESAs). All parties in conjunction with this operation will strictly avoid these areas. No construction activities, materials, or equipment will be permitted in the ESAs. These areas must be placed on the design plans and included in the construction contract.

ESAs will be designated by erecting protective fencing delineating the project impact boundary and sensitive habitats. This barrier fencing will be constructed in such a way as to restrict the movement of reptiles into impacted areas. Fencing material can vary; however, it should consist of a cloth-like material that can withstand high winds, sun and heat. This fence should be buried 24-inches below the surface, to prevent terrestrial species from burrowing underneath, and extend above ground at least 24-inches.

**CATEGORICAL EXEMPTION/CATEGORICAL EXCLUSION DETERMINATION FORM**  
**Continuation Sheet**

10. An employee education program will be developed. Each employee (including temporary, contractors, and subcontractors) will receive a training/awareness program within two weeks of working on the proposed project. They will be advised of the potential impact to the listed species and the potential penalties for taking such species. At a minimum, the program will include the following topics: occurrence of the listed and sensitive species in the area, their general ecology, sensitivity of the species to human activities, legal protection afforded these species, penalties for violations of Federal and State laws, reporting requirements, and project features designed to reduce the impacts to these species and promote continued successful occupation of the project area environs. Included in this program will be color photos of the listed species, which will be shown to the employees. Following the education program, the photos will be posted in the contractor and resident engineer's office, where they will remain throughout the duration of the project. The contractor, Resident Engineer, and Service-approved biological monitor will be responsible for ensuring that employees are aware of the listed species.
11. The project proponent will designate a Service-approved qualified biologist who will be responsible for overseeing compliance with protective measures for the listed species. The biologist will have the authority to halt all associated project activities that may be in violation of this biological opinion. In such an event, the biologist will contact the Service within 24 hours.
12. Construction work areas will be delineated and marked clearly in the field prior to habitat removal, and the marked boundaries maintained and clearly visible to personnel on foot and by heavy equipment operators. Employees will strictly limit their activities and vehicles to the proposed project areas, staging areas, and routes of travel. The project proponent and/or the biological monitor will contact the Service to verify that the limits of construction have been properly staked and are readily identifiable.
13. A biologist will monitor construction to ensure that vegetation removal, Best Management Practices (BMPs), ESA fencing, and all avoidance and minimization measures are properly constructed and followed.
14. All equipment maintenance, staging, and dispensing of fuel, oil, or any other such activities, will occur in designated upland areas. The designated upland areas will be located in such a manner as to prevent any runoff from entering waters of the United States, including wetlands.
15. Typical erosion control measures, BMPs, in the vicinity of streams will be employed in accordance with the conditions in the 401 Water Quality Certification requirements of the Regional Water Quality Control Board.
16. Use of invasive exotic plant species in landscaped areas adjacent to or near sensitive vegetation communities will be restricted. In compliance with Executive Order 13112, impacted areas will be revegetated with plant species native to desert habitat types and the Coachella Valley, and will avoid the use of species listed in Lists A & B of the California Exotic Pest Plant Council's list of Exotic Pest Plants of Greatest Ecological Concern in California as of October 1999.
17. The seed of Coachella Valley milk-vetch will be collected off of plants from within the boundaries of permanent and temporary impacts from project construction. Seed collection will occur when the seed is past soft dough and prior to being naturally dispersed. The top four inches of soil surrounding the milk-vetch plants to be impacted will be collected and placed in plastic bags. This seed and soil will be distributed at an area consisting of aeolian habitat immediately following collection. The location where seed will be dispersed will be coordinated with the Service prior to collection.
18. All construction equipment will be inspected and cleaned prior to use in the proposed project footprint to minimize the importation of non-native plant material. All mulch, topsoil and seed mixes used during post construction landscaping activities and erosion control BMPs will be free of invasive plant species propagules. A weed abatement program will be implemented should invasive plant species colonize the area within the project footprint post-construction.
19. No off-road vehicle activity from construction personnel or other persons affiliated with the project will occur outside of the project footprint.
20. To reduce attraction of ravens and crows, which may eat fringe-toed lizards, all trash will be placed in raven-proof containers and promptly removed from the site.

**CATEGORICAL EXEMPTION/CATEGORICAL EXCLUSION DETERMINATION FORM**  
**Continuation Sheet**

21. No pets or firearms will be permitted inside the project's construction boundaries or other associated work areas.
22. All sand removal and storage activities will be restricted to the project footprint. No maintenance activities will be authorized that extend beyond the boundaries of the project footprint.
23. To the extent possible, no sand removal activities will take place from 1 November – 30 March (to avoid winter dormancy periods for the lizards) or if ambient air temperature exceeds 102 degrees Fahrenheit (the temperature at which lizard activity tends to be reduced).
24. Vehicle speeds on unpaved access roads will be restricted to a maximum of 25 MPH.
25. All culverts, bridges, and associated water passage structures will be maintained such that water and sediment may pass between upstream and downstream locations and so as not to block the passage of wildlife.
26. Impacts resulting from this project will be offset by implementing the agreements established in the Conservation Bank Plan Addressing the Direct, Indirect, and Cumulative Effects of Interstate 10 Coachella Valley Interchange Projects (Plan). The Plan assesses potential effects and offsetting measures for the proposed projects. The Plan establishes mitigation ratios at 2:1 for direct impacts of the interchange and associated arterial improvements covered under this Opinion and 1:1 for indirect impacts. Required offsetting measures will be provided through the acquisition of land and the final conservation bank agreement. Caltrans and/or Coachella Valley Association of Governments (CVAG) will set up an endowment fund for the purpose of managing the proposed conservation bank in perpetuity.
27. Prior to beginning construction, CVAG, Caltrans, and FHWA will purchase and establish a conservation bank (Bank), as per the Plan; finalize a conservation bank agreement with the Service and CDFG, and set up the endowment fund for managing the property in perpetuity. Sufficient land will be purchased for the bank prior to start of construction for any given project. CVAG, Caltrans, and FHWA will coordinate with the Service and CDFG to locate and acquire Bank lands. All Bank lands will be approved by the Service and CDFG prior to purchase to ensure that these conservation lands benefit the fringed-toed lizard and milk-vetch. In addition, CVAG or its designee will be the manager of all Bank lands.
28. Geotechnical borings in areas with aeolian sand deposits will include the following measures:
  - a. No cross country-travel and geotechnical borings will take place from 1 November - 30 March (to avoid winter dormancy periods for the lizards) or if ambient air temperature exceeds 102 degrees Fahrenheit (the temperature at which lizard activity tends to be reduced).
  - b. When traveling cross-country, a route will be established and followed that avoids, to the maximum extent practicable, all sand hummocks and dunes.
  - c. The surface area will be returned to the pre-disturbance state. If sand dunes or hummocks were impacted, then the surface sand will be placed in a separate pile and replaced as a dune or hummock.
29. Archaeological surveys in areas with aeolian sand deposits will include the following measures:
  - a. The outer perimeter of all survey areas will be delineated and the area within this perimeter will be calculated and deducted from the Conservation Bank.
  - b. All work including staging, depositing excavated materials, storing equipment, etc. will be conducted within the perimeter of the survey area.

Air

- Air Quality Analysis was approved on January 16, 2003.
- On July 13, 2009, FHWA found that the Conformity Determination for the Indian Canyon Drive and Bridge Widening Project conforms to the State Implementation Plan (SIP) in accordance with 40 C.F.R. Part 93.
- Avoidance, Minimization, and/or Mitigation Measures:
  - Upon development of the project construction details and schedule, the City shall reestimate NOX emissions; and

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- If emissions are forecast to exceed the SCAQMD NOX threshold, the contractor shall use aqueous diesel fuel or one or more pieces of construction equipment with exhaust gas recirculation-type engines as necessary to reduce forecast emissions to less than the threshold limit.
- A Fugitive Dust (PM10) Mitigation Plan shall be prepared in compliance with Ordinance 1439 of the City of Palm Springs Municipal Code and shall be included as part of the construction contract specifications prior to the issuance of a grading permit. The Fugitive Dust Mitigation Plan shall specify steps that will be taken to comply with the City's Fugitive Dust and Erosion Control Ordinance, which restricts fugitive dust emissions. Measures outlined in the plan shall include but not be limited to daily watering of graded areas, washing of equipment tires before leaving the construction site, and use of SCAQMD-approved chemical stabilizers or soil binders.
- The proposed project shall incorporate into the project specifications the applicable provisions of the Final Coachella Valley PM10 SIP and SCAQMD Rule 403 and 403.1, as shown in the air quality technical report.
- The contractor shall discontinue construction activities during first- and second-stage smog alerts.
- When feasible, the contractor shall utilize existing power sources (i.e., temporary power poles) to minimize the use of diesel generators.
- The proposed project shall incorporate into the project specifications the applicable provisions of the Final Coachella Valley PM10 SIP and SCAQMD Rule 403 and 403.1, as shown in the air quality technical report.

**Hazardous Waste – ISA**

- ISA approved on February 24, 2003
- ISA re-approved September 2009
- ADL approved on February 24, 2003
- All hazardous waste testing should be done during WBS 165, prior to completion of PAED so that any special handling, treatment, or disposal provisions associated with hazardous wastes may be included in construction documents.

**Traffic**

- Traffic study was approved on June 5, 2007.
- Avoidance, Minimization, and/or Mitigation Measures:
  - Impacts to traffic flow as a result of construction activities could be reduced by developing and implementing a traffic management plan and a construction-phasing plan.

**Cultural Resources**

- State Historic Preservation Officer (SHPO) concurred with Caltrans' determination that there are no historic properties within the APE on June 11, 2004.

**Climate Change**

- Avoidance, Minimization, and/or Mitigation Measures:
  - The project would incorporate the use of energy efficient lighting, such as LED traffic signals. LED bulbs — or balls, in the stoplight vernacular — cost \$60 to \$70 apiece but last five to six years, compared to the one-year average lifespan of the incandescent bulbs previously used. The LED balls themselves consume 10 percent of the electricity of traditional lights, which will also help reduce the projects CO2 emissions.
  - Portland cement will be used where possible and if feasible, fly ash will be added to Portland cement mixes. The use of lighter color surfaces such as Portland cement helps to reduce the albedo effect and cool the surface. Adding fly ash reduces the GHG emissions associated with cement production and it also can make the pavement stronger.

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**Indian Canyon Drive Street and Bridge Widening  
Mitigation Monitoring Program Checklist**

Mitigation Measure No.	Avoidance, Minimization, and/or Mitigation Measure	Method of Verification	Timing of Verification			Responsible Party Initials	Completed Date	Comments
			Pre-construction	During Construction	Post-construction			
	<b>AIR QUALITY</b>							
1	<p>The following measures would mitigate air quality-related impacts:</p> <p>Grading activities for the bridge construction and the road widening shall occur sequentially, not simultaneously.</p> <p>Minimize land disturbance during construction.</p> <p>Use watering trucks to minimize dust; watering should be sufficient to confine dust plumes to the project work areas.</p> <p>Suspend grading and earth moving when wind gusts exceed 25 miles per hour unless the soil is wet enough to prevent dust plumes.</p> <p>Cover trucks when hauling dirt.</p> <p>Stabilize the surface of dirt piles if not removed immediately.</p> <p>Limit vehicular paths on unpaved surfaces and stabilize any temporary roads.</p> <p>Minimize unnecessary vehicular and machinery activities.</p> <p>Sweep paved streets at least once per day where there is evidence of dirt that has been carried onto the roadway.</p> <p>Revegetate disturbed land, including vehicular paths created during construction, to avoid future off-road vehicular activities.</p> <p>Remove unused material.</p> <p>Discontinue construction activities during first- and second-stage smog alerts.</p> <p>Incorporate into the project specifications the applicable provisions of the Final Coachella Valley PM<sub>10</sub> SIP and South Coast Air Quality Management District Rule 403 and 403.1, as shown in the air quality technical report.</p> <p>A Fugitive Dust (PM<sub>10</sub>) Mitigation Plan shall be prepared in compliance with Ordinance 1439 of the City of Palm Springs Municipal Code and shall be included as part</p>	Place as notes on the project plans	X	X	X	City of Palms Springs, Construction Contractor		Develop air quality measures prior to construction and implement during construction. Monitor during construction.

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Mitigation Measure No.	Avoidance, Minimization, and/or Mitigation Measure	Method of Verification	Timing of Verification			Responsible Party Initials	Completed Date	Comments
			Pre-construction	During Construction	Post-construction			
	of the construction contract specifications prior to the issuance of a grading permit.							
2	<p>The following measure would minimize exposure to diesel particulate emissions:</p> <p>When feasible, replace at least one piece of diesel-operated equipment with a gas-operated piece equipment.</p> <p>When feasible, utilize existing power sources (i.e., temporary power poles) to minimize the use of diesel generators.</p> <p>Locate construction equipment and truck staging and maintenance areas as far as feasible and nominally downwind of schools, active recreation areas, and other areas of high population density.</p>	Place as notes on the project plans	X	X	X	National City, Construction Contractor		Inform construction contractor prior to grading and monitor during construction.
<b>HYDROLOGY, WATER QUALITY, AND STORM WATER RUNOFF</b>								
3	<p>The following measures shall be implemented to minimize storm water and hydrology-related impacts:</p> <p>A Storm Water Pollution Prevention Plan (SWPPP) shall be prepared to address erosion control and sedimentation issues related to the grading aspect of the project. The SWPPP shall specify and describe the implementation process of all best management practices that will address equipment operation and materials management, prevention of erosion, and prevention of sedimentation. The City Engineer of the City of Palms Springs shall ensure that the SWPPP is properly implemented.</p>	Completed plan	X	X		City Engineer, City of Palms Springs, Construction Contractor		Prepare plan prior to construction. Implement during construction.
<b>WILDLIFE</b>								
4	<p>The following measure shall be implemented to reduce wildlife impacts:</p> <p>Implementation of the required mitigation measures outlined in the <i>Conservation Plan Addressing the Direct, Indirect, and Cumulative Effects of Interstate 10 Coachella Valley Interchange Projects</i> (Caltrans 2003) regarding impacts to wildlife habitat. These measures include the purchase and conservation of comparable habitat in an established Conservation Bank under the auspices of the Draft Coachella Valley Multi-Species Habitat</p>	Approval by the resource agencies	X	X		City of Palms Springs, Construction Contractor		Prepare plan prior to construction. Implement during construction.

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Mitigation Measure No.	Avoidance, Minimization, and/or Mitigation Measure	Method of Verification	Timing of Verification			Responsible Party Initials	Completed Date	Comments
			Pre-construction	During Construction	Post-construction			
	Conservation Plan (CVMSHCP).							
	<b>THREATENED AND ENDANGERED SPECIES</b>							
5	<p>The following measures shall be implemented to reduce threatened and endangered species impacts:</p> <p>Implementation of the required mitigation measures outlined in the Conservation Plan (Caltrans 2003) regarding threatened and endangered species. Required mitigation shall be met through the replacement of desert sand fields habitat, on a 2:1 basis in the case of direct impacts, and a 1:1 basis in the case of indirect impacts, in an established Conservation Bank under the auspices of the CVMSHCP.</p> <p>All areas outside of the project footprint will be delineated as Environmentally Sensitive Areas with protective fencing.</p> <p>An education program will be developed to advise construction staff of potential impacts to listed species.</p> <p>Biological monitoring will be provided to oversee compliance with protective measures for listed species.</p> <p>Seed of the Coachella Valley milk-vetch will be collected from plants that are within the Area of Effect prior to construction.</p> <p>All equipment will be inspected and cleaned prior to use in the project area to minimize exotic species introductions.</p> <p>To the extent feasible, no sand removal activities will take place from November 1 – March 30 to avoid winter dormancy periods for lizards or if ambient air temperatures exceed 102 degrees Fahrenheit (the temperature at which lizard activity tends to be reduced.</p>	Approval by the resource agencies	X	X		City of Palms Springs, Construction Contractor		Prepare plan prior to construction. Implement during construction.
	<b>CLIMATE CHANGE</b>							
6	To the extent that equipment and technology is available and cost effective, the applicant shall encourage contractors to use alternate fuels, catalyst and filtration technologies, and retrofit existing engines in construction equipment.	Place as notes on the project plans	X	X		City of Palms Springs, Construction Contractor		Before and during construction – Note shall be written on all construction documents for implementation during

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Mitigation Measure No.	Avoidance, Minimization, and/or Mitigation Measure	Method of Verification	Timing of Verification			Responsible Party Initials	Completed Date	Comments
			Pre-construction	During Construction	Post-construction			
	<p>Minimize idling time to 5 minutes when construction equipment is not in use, unless per engine manufacturer's specifications or for safety reasons more time is required.</p> <p>To the extent practicable, manage operation of heavy-duty equipment to reduce emissions such as maintain heavy-duty earthmoving, stationary and mobile equipment in optimum running conditions which can result in 5% fewer emissions. Properly maintain equipment according to manufacturers' specifications.</p> <p>Use electric equipment when feasible.</p> <p>The project would incorporate the use of energy efficient lighting, such as LED traffic signals. LED bulbs — or balls, in the stoplight vernacular — cost \$60 to \$70 apiece but last five to six years, compared to the one-year average lifespan of the incandescent bulbs previously used. The LED balls themselves consume 10 percent of the electricity of traditional lights, which will also help reduce the projects CO2 emissions.</p> <p>Portland cement will be used where possible and if feasible, fly ash will be added to Portland cement mixes. The use of lighter color surfaces such as Portland cement helps to reduce the albedo effect and cool the surface. Adding fly ash reduces the GHG emissions associated with cement production and it also can make the pavement stronger.</p>						construction.	