



## City Council Staff Report

DATE: May 6, 2009

NEW BUSINESS

SUBJECT: APPROVE THE AGREEMENT FOR TRANSFER OF ARTWORK OWNERSHIP TO THE CITY OF PALM SPRINGS AND REIMBURSEMENT OF PUBLIC ART IN-LIEU FEES TO THE AGUA CALIENTE BAND OF CAHUILLA INDIANS FOR ARTWORK BY DOUG HYDE AND AN AGREEMENT FOR PLACEMENT OF ARTWORK ON PRIVATE PROPERTY AND GRANT OF EASEMENT FOR PUBLIC ART BETWEEN THE CITY OF PALM SPRINGS AND LUNDIN DEVELOPMENT COMPANY.

FROM: David H. Ready, City Manager

BY: Community and Economic Development

---

### SUMMARY

Lundin Development Company, developer of the Ralph's Shopping Center at Sunrise Way and Ramon Road made a presentation to the Public Arts Commission on June 8, 2006 and received approval for their Public Art Application. Although the Public Arts Commission approved the artwork, the developer still had to present the work to the Indian Planning Commission (IPC). Immediately following the Public Arts Commission approval the IPC reviewed the artwork and denied the application because they felt the piece was not significant enough for the site as it is one of four prominent corners in Section 14. The developer worked diligently for over two years to develop artwork that would meet the requirements of the Section 14 Gateway feature at their center. The developer put forth his best efforts but could not develop a design that would be approved by both Commissions. The Developer worked with City staff to move forward with a simpler alternative to accomplish the goals of the Public Arts Program and the IPC. Staffs suggestion was to allow the City to keep the in-lieu fees on deposit (\$28,049) and work with the IPC on a developing artwork that met the requirements of the Section 14 Master Plan Gateway Elements. The developer would also grant an easement to the City to place and maintain the artwork ultimately selected for the site.

The Section 14 Gateway features are a requirement of the Tribe through its Section 14 Master Plan, the Tribe proposed that they advance the cost of developing a design for these features, in collaboration with the Public Arts Commission and IPC. This approach would ensure the uniformity and appropriateness of the Gateway features and make it easier for the developers at all of the gateway corners of Section 14 to apply

ITEM NO. 5D.

public art fees generated from their projects. In accordance with the Section 14 Master Plan Gateway Elements, on September 13, 2007 Tribal Planning Staff submitted design ideas for the site to the Public Arts Commission and then Tribal Council. The Tribal Council approved the design and commission of artist Doug Hyde to create all of the Section 14 Gateway sculptures. Since the Tribe does not have a public art program in place or the appropriate resources to maintain public artwork, they are requesting that the City apply the public art fee generated from this project towards the costs to fabricate and install the artwork. Ownership of the artwork will be transferred to the City as part of the Public Arts Program.

RECOMMENDATION:

1. Approve an Agreement for Transfer of Artwork Ownership to the City of Palm Springs and Reimbursement of the Public Art In-Lieu Fee for Artwork to the Agua Caliente Band of Cahuilla Indians ("Tribe"), in an amount not to exceed \$28,049 from public art fees collected from the Sunrise Place Project.
2. Approve an Agreement for Placement of Artwork on Private Property and Grant of Easement with Lundin Development Company and Sunrise Place No. 2, LTD.
3. Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

The developer, Lundin Development Company, of the Ralph's Shopping Center located at Ramon Road and Sunrise Way selected artwork for this project and made presentations to the Public Arts Commission and the Indian Planning Commission (IPC) for approval of their Public Art Application. At that time the Tribe was in the process of adopting the Section 14 Master Plan and the proposed artwork was denied by the IPC.

The Tribe has decided to commission artwork in accordance with their Section 14 Master Plan which places two types of artwork at the boundaries of Section 14. The types of artwork are referred to as *Type 1* and *Type 2* pieces. Margaret Park from the Agua Caliente Band of Cahuilla Indians presented the *Section 14 Master Plan Gateway Elements Proposal* to the Public Arts Commission on September 13, 2007. The Commission commented and expressed that this presented a great opportunity for the Tribe to create a landmark sculpture for Section 14.

The *Type 1* artwork will be used to demarcate Section 14. Each element is a triangle shaped column 96" high, 48" wide on each side and finished with a granite veneer in Absolute Black and the Tribal medallion water jet cut on each side. These will be located at the four boundary corners of Section 14. The locations are: the intersection of Ramon Road and Sunrise Way, Ramon Road and Indian Canyon Drive, Indian Canyon Drive and Alejo Road and Alejo Road and Sunrise Way.

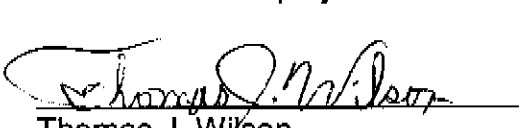
The *Type 2* artwork will be a single 12' high bronze sculpture of a Cahuilla basket maker. This will be located at the main thoroughfare entrance of Section 14, Tahquitz Canyon Way and Sunrise Way in the center median. The *Type 2* artwork is meant to complement the *Agua Caliente Women* sculpture located at Tahquitz Canyon Way and Indian Canyon Drive.

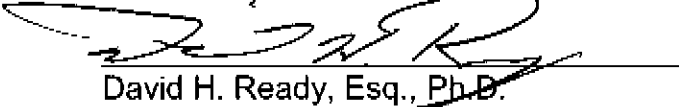
As the *Type I and II* pieces are installed the Tribe would like to transfer ownership of the artwork to the City. The sculptures would become a part of the City's public art collection and the City would be responsible for the maintenance of the artwork. In addition, the Tribe is requesting to be reimbursed the public art fees that are associated with the development of each site. In this case, the first piece that the Tribe would like to install is at the Ralph's shopping center. The Tribe would then seek reimbursement in the amount of \$28,049, the fees paid by Lundin Development Company for this project.

FISCAL IMPACT:

The Finance Department collects and maintains the public art fees collected on all projects with accounting records established to sufficiently identify and control these funds. The reimbursements shall be processed through the City's established warrant payment procedure. There is no negative fiscal impact to the City as the Tribe is seeking reimbursement for a cost that was paid by Public Art Fees and which is allowed by the Ordinance. No General Fund money will be used for this project.

  
\_\_\_\_\_  
Jennifer Henning  
Arts and Special Projects Coordinator

  
\_\_\_\_\_  
Thomas J. Wilson,  
Assistant City Manager

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

Attachments:

- Section 14 Master Plan Gateway Element Presentation
- Agreement for Transfer of Artwork Ownership and Reimbursement of the Public Art In-Lieu Fee for Artwork.
- Agreement for Placement of Artwork and Grant of Easement.



## TRIBAL PLANNING & DEVELOPMENT

Section 14 Master Plan Gateway Element Presentation  
to the  
Palm Springs Public Arts Commission

September 13, 2007



116°32'28"W

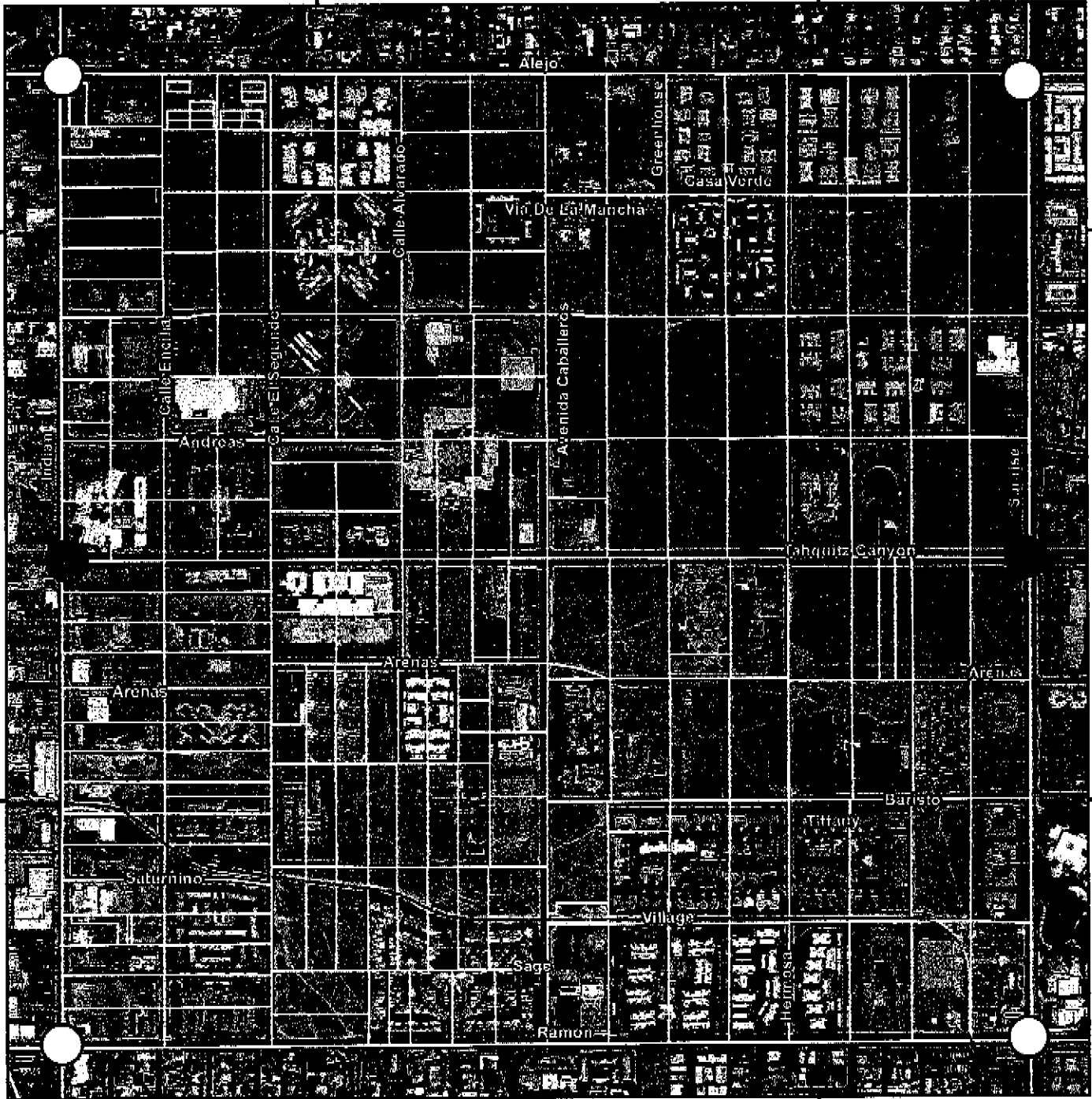
116°31'55"W

33°49'41"N

33°49'41"N

33°49'10"N

33°49'10"N



116°32'28"W

116°31'55"W






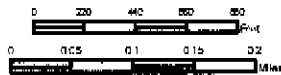
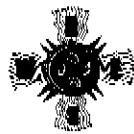
# AGUA CALIENTE INDIAN RESERVATION

## TOWNSHIP 4 SOUTH RANGE 4 EAST

### SECTION 14 GATEWAYS

Parcel Status

-  Type 1 Proposed
-  Type 2 Existing
-  Type 2 Proposed





Agua Caliente Band of Cahuilla Indians  
 Planning & Development Department  
 777 E. Yahquitz Canyon, Palm Springs, CA, 92262  
 Geospatial Information Services  
 (760) 325-1811 / (760) 325-1837

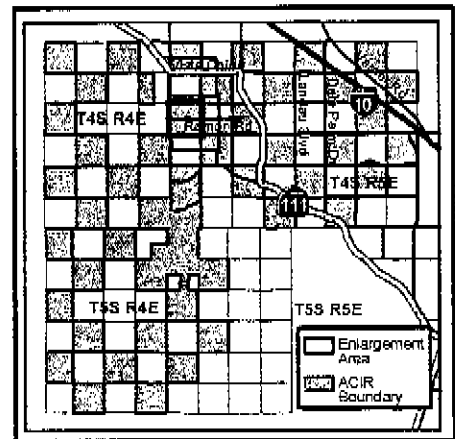
Projection: Lambert Conformal Conic  
 Datum: North American 1983  
 Coordinate System: State Plane California Zone VI  
 Map Location: \\info5\gs01\Project\_Files\mxd\Planning\Section 14\T4SR4E Section 14 Gateways.mxd  
 Map Origination Date: 1/22/2007

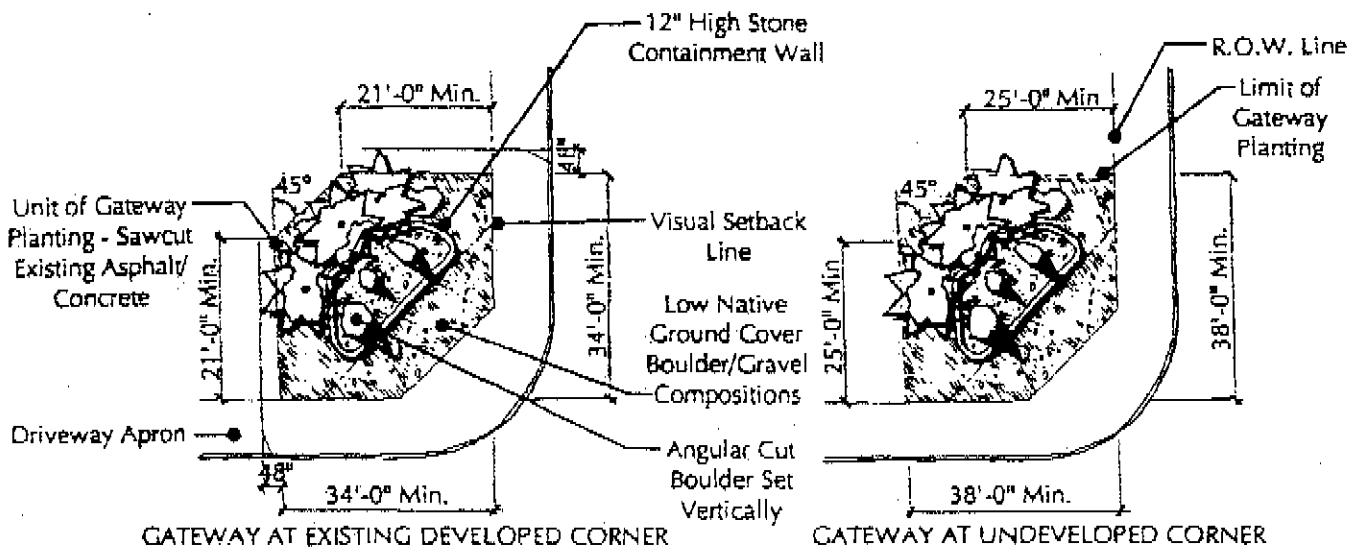
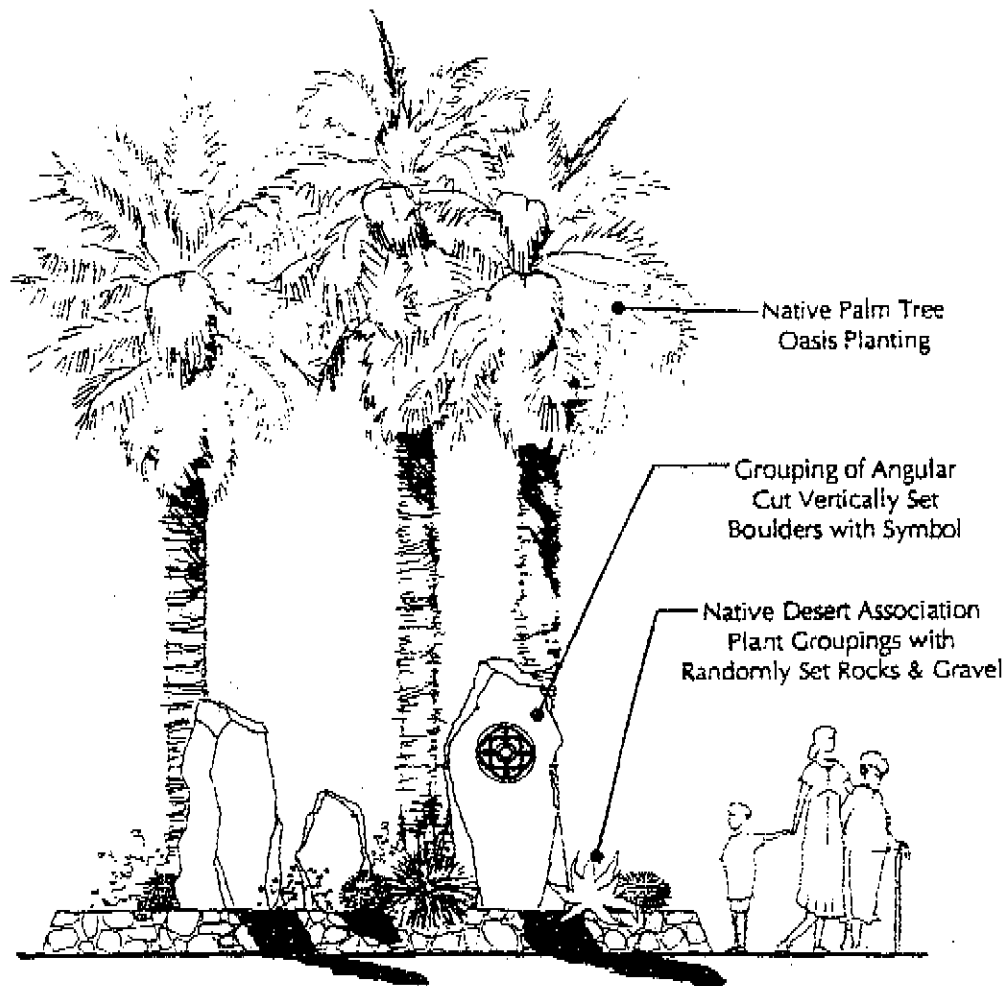
This map does not cover questions of location, boundary, or area to the accuracy of a survey map.

Data Source:

-  - The material contained herein includes proprietary and copyrighted data of Geographic Data Technology, Inc./Taleo AGIS
-  - This map contains geographic information owned by the County of Riverside.

- All other layers provided by ACBOI Planning & Development Department  
 - Aerial Imagery provided by CVAG, Sept 2005





Source: Gruen Associates

SECTION 14  MASTER DEVELOPMENT PLAN

FIGURE 5-18  
Type 1 Gateway Concept Plan

**Doug Hyde Sculpture Studio**  
2030 W Stringfield Road  
Prescott, AZ 86305  
(928) 776-1485 fax (928) 717-1199  
dyhydesculpturestudio@cableone.net

### **TYPE 1 GATEWAY PROPOSAL**

The Salt and Pepper granite boulders from Palm Springs area with the grinding holes represent the old ways. Flatten area on boulders for Bronze plaque information. The granite or columns represent modern growth, tri-angle shaped.

On the columns will be two water jet carved medallions of the Agua Caliente logo. They are made with a variety of stone to produce the best representation in color of the logos.

On the third side would be a basket design.

The vehicle traffic will be able to see the logo-emblems and the foot traffic will be able to see The Basket. A place will be flattened on the granite boulder for a Bronze statement.

Doug Hyde Sculpture Studio Inc. proposes the following.

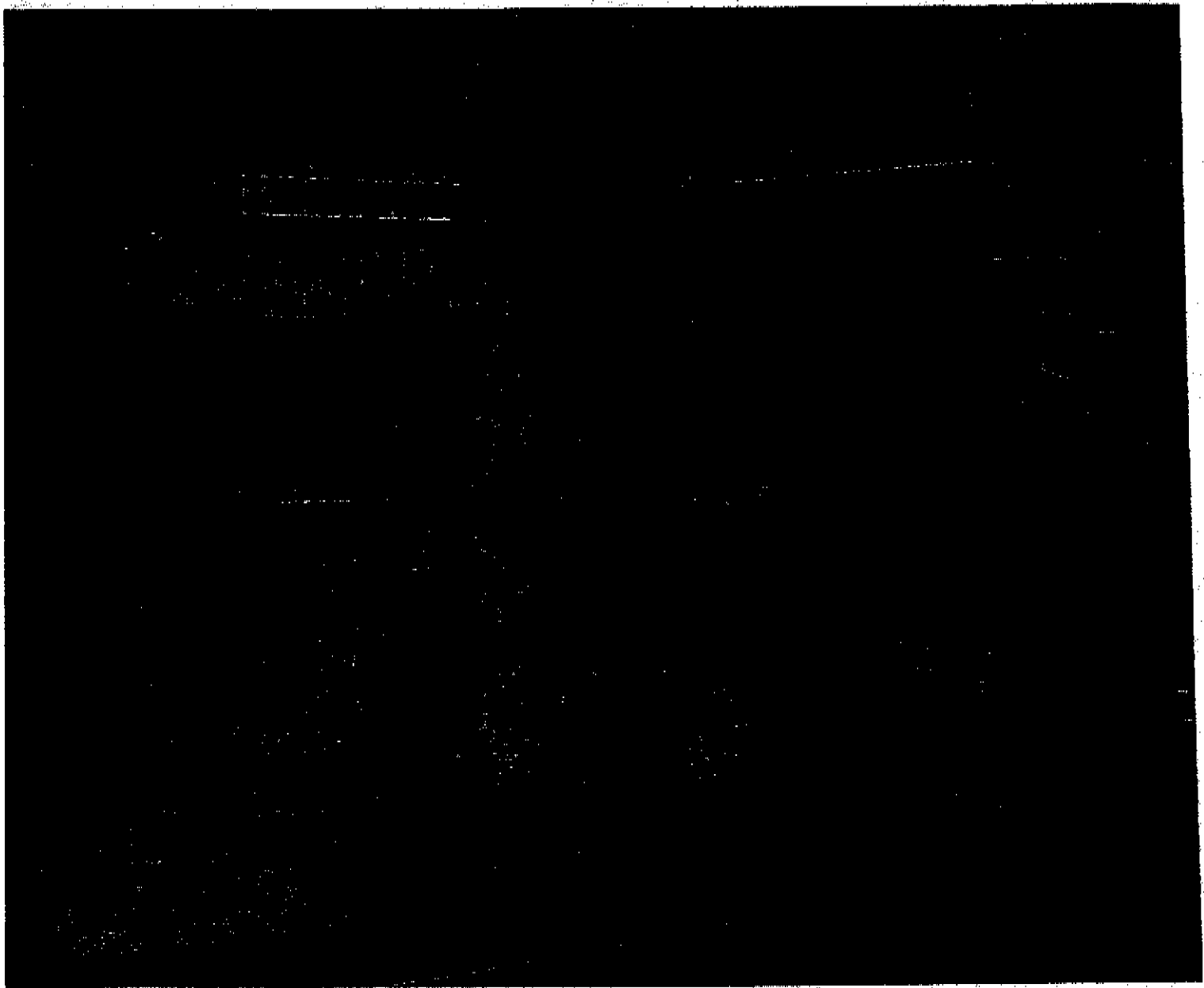
1. 4 – Triangle shaped columns of block 66” high with each side 48” wide.
2. Veneer for the columns in Absolute Black granite 3cm – mechanically Anchored to the block columns.
3. 4 – “Salt and Pepper” granite boulders with angular notch cut to go around the stone columns. Approximate size 24” x 24” x 30” with bottom cut and “matate” holes ground in the boulders +/- 3 per boulder.
4. 8 – Tribe Medallions water jet cut per drawing provided. Granite and Limestone materials (Orange/Brown = Juperana Star granite, Black = Absolute Black Granite, White = Texas Crème Limstone and Yellow = Selina Gold Limestone.)

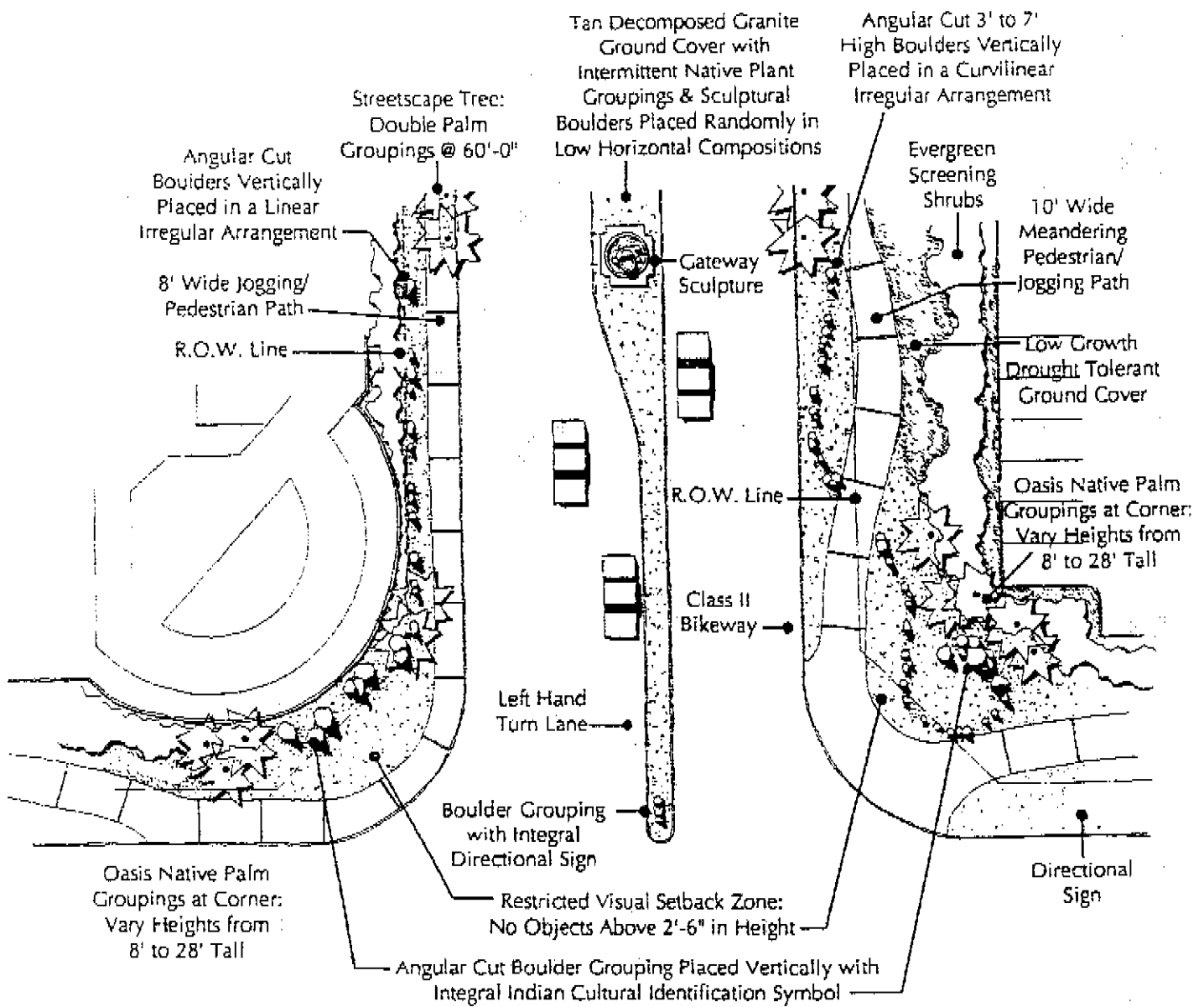
5. **4 – Basket Medallions water jet cut per drawing provided. Granite and Limestone materials (Orange/Brown = Juperana Star granite, Black = Absolute Black granite.)**
6. **All material installed as per MIA standard procedure.**
7. **Lead time for procurement of material, fabrication, approximately 16 weeks from date confirmed and approved shop drawings.**
8. **Price includes shop drawings, material, fabrication and delivery to job site.**











Source: Gruen Associates

SECTION 14  MASTER DEVELOPMENT PLAN

FIGURE 5-19  
Type 2 Gateway Concept Plan



*Doug Hyde*  
*Sculpture Studios Inc.*

**TYPE 2 GATEWAY**

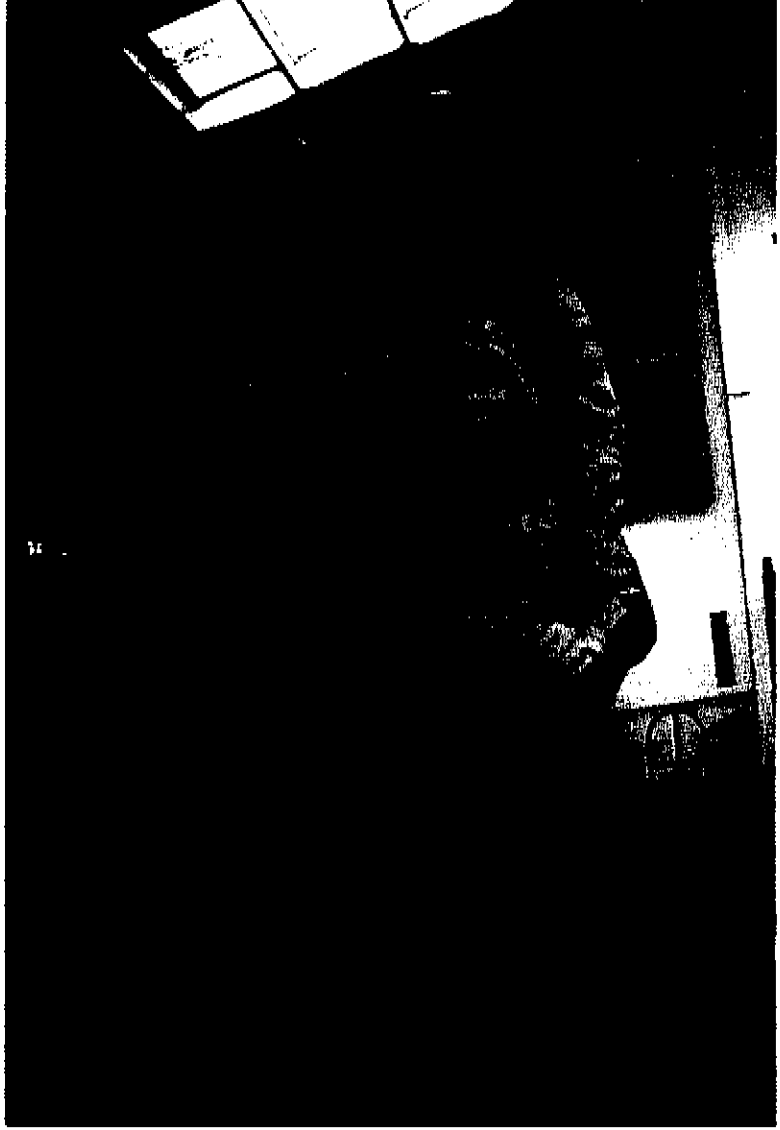
**TITLE:** "Basketmaker" or "Young Basketmaker"

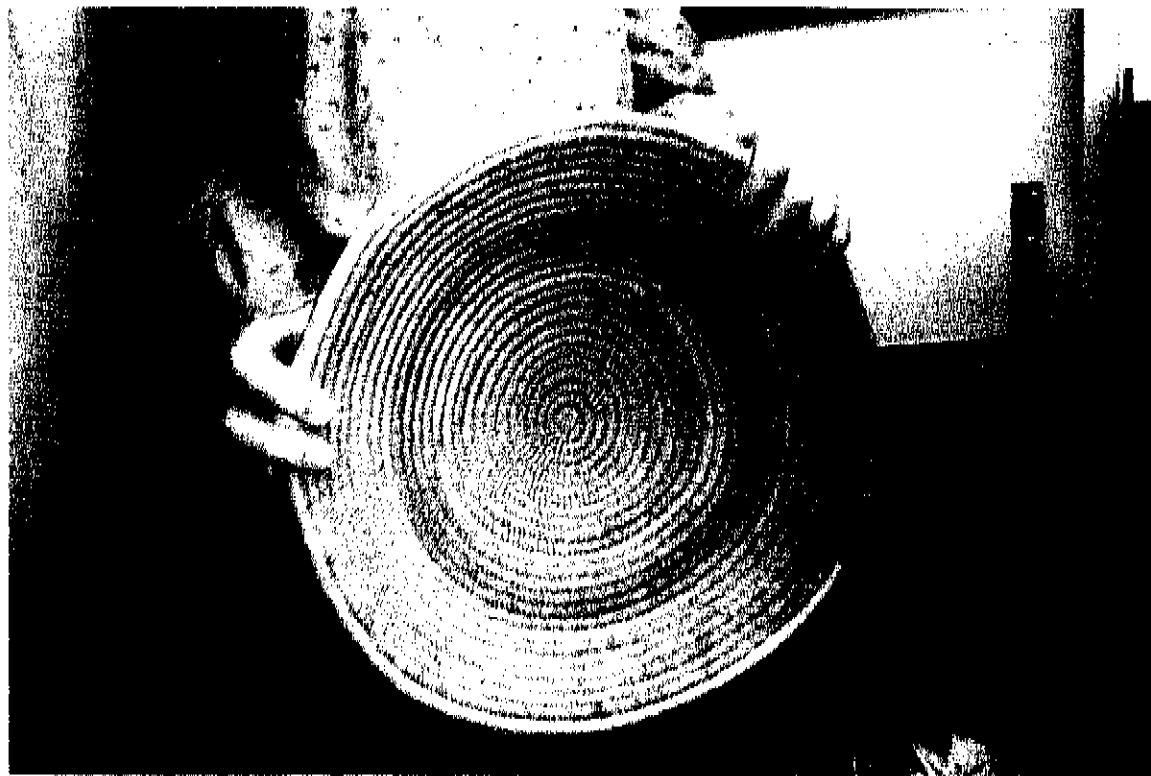
**MEDIUM:** Bronze

**DIMENSIONS:** 12 feet high  
8 feet wide  
6.5 feet deep

**TIME:** 9 to 12 months to complete and install









**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

**AGUA CALIENTE BAND OF CAHUILLA INDIANS  
Tribal Planning and Development Department  
777 E. Tahquitz Canyon Way, Suite 301  
Palm Springs, CA 92262**

Space above this Line Reserved for Use by Recorder

---

**AGREEMENT FOR TRANSFER OF ARTWORK OWNERSHIP AND  
REIMBURSEMENT OF THE PUBLIC ART IN-LIEU FEE FOR THE ARTWORK**

This AGREEMENT FOR TRANSFER OF ARTWORK OWNERSHIP AND REIMBURSEMENT OF THE PUBLIC ART IN-LIEU FEE FOR THE ARTWORK ("Agreement") is entered into as of \_\_\_\_\_, 2009 by and between the AGUA CALIENTE BAND OF CAHUILLA INDIANS ("Tribe"), a federally-recognized Indian Tribe governing itself according to a Constitution and By-Laws and exercising sovereign authority over the lands of the Agua Caliente Indian Reservation ("Reservation"), and the CITY OF PALM SPRINGS, a municipal corporation ("City").

**RECITALS:**

- A. The City has established a Public Art Fee Program which authorizes the placement of works of art on appropriate private property which encourages public access and viewing of the artwork.
- B. Under the Public Art Fee Program, artwork may be provided or an "in-lieu" fee may be paid.
- C. The Tribe has commissioned a work of art that complies with the Section 14 Master Plan Type One Gateway Concept Plan.
- D. The Tribe desires to transfer ownership of the work of art to the City, and have such artwork placed on the Reservation at the northwest corner of Ramon Road and Sunrise Way in accordance with this Agreement, the Section 14 Master Plan, and the City of Palm Springs Public Art Program as established by Chapters 2.24 and 3.37 of the Palm Springs Municipal Code ("Public Art Ordinance").
- E. The Tribe also desires to formally request reimbursement in the amount equal to the public art in-lieu fee paid by the Ralphs Shopping Center located at the northwest corner of Ramon Road and Sunrise Way as compensation for the work of art.

NOW THEREFORE, to comply with the requirements of the Section 14 Master Plan and the Public Art Ordinance, and for good and valuable consideration, the parties hereto hereby agree as follows:

1. Tribal Representative. The Chief Planning and Development Officer or his designee ("Contract Officer"), shall be the Tribe's designated representative with respect to this Agreement. The Contract Officer shall have the authority to give approvals or consents required hereunder and to otherwise act on behalf of the Tribe for purposes of this Agreement.

2. Agreement to Commission Work of Art. The Tribe commissioned Doug Hyde Sculpture Studio ("Artist") and received a work of art described as one of the four Section 14 Master Plan Type One Gateway Elements, as shown on Exhibit "A" ("Artwork"). The Tribe has held sole responsibility with respect to the contract entered into for the commissioning of the Artwork ("Contract") including responsibility for all payments totaling \$62,500.

3. Transfer of Ownership. This Agreement serves as formal acknowledgement of transfer of ownership of the Artwork to the City.

4. Duties of Ownership. Upon transfer of ownership, the City shall install the Artwork at the southeast corner of the property generally known as the Ralphs Shopping Center, as shown on Exhibit "B" ("Site"). The City shall provide for the installation of the Artwork on the Site including, without limitation, constructing any improvements necessary for displaying the Artwork.

5. Reimbursement of the "In-Lieu" Public Art Fee. In return for the transfer of ownership of the Artwork from the Tribe to the City, the Tribe shall be reimbursed an amount equal to the in-lieu public art fee of \$28,049 that was collected as a Condition of Approval for the Ralphs Shopping Center, less any expenses incurred by the City for the installation of the Artwork.

6. Default.

(a) Cure Rights. In the event of any default or breach of any of the covenants or conditions contained in this Agreement by the City, the Tribe shall have all rights and remedies permitted at law or in equity including, without limitation, the remedy of specific performance. Additionally, in the event that the City has not cured any curable default hereunder within thirty (30) days after written notice from the Tribe of such default, the Tribe shall have the right to cure such default and charge the City with the cost thereof, including all costs incurred in connection with enforcing this Agreement or in collecting such amounts from the City.

(b) Location and Removal of Artwork. In the event that the Artwork is removed from the Site, ownership of the Artwork will revert back to the Tribe and this Agreement shall be terminated.

7. Identification. The Artwork shall be identified by a plaque stating, at a minimum, the Artist's name, the title, the date the Artwork was completed, and stating that the Artwork was funded by the Agua Caliente Band of Cahuilla Indians and the City of Palm Springs Public Arts Program. The Tribe shall be responsible for the creation and installation of the identification plaque.

8. Maintenance. The City shall be responsible for all maintenance necessary as recommended by the Artist with respect to the Artwork to preserve such Artwork in first class condition. The City shall repair and/or replace any damage to the Artwork within fourteen (14) calendar days of such damage being discovered. In the event any graffiti is discovered on the Artwork, the City shall remove such graffiti on the day it is discovered. So long as the Artwork remains on the Site, the City shall keep, maintain, repair and replace the Artwork in a good, clean and first class condition and of the highest quality. Materials used to restore, repair or replace any portion of the Artwork shall be of equal or better quality than the original materials used in the Artwork. When necessary, the City shall consult the Tribe and the Artist to determine the best methods of such restoration or repair. All such maintenance, repair, replacement and restoration shall be at the sole cost of the City. In addition to all other remedies provided by law, in the event the City fails to maintain the Artwork, upon reasonable notice, the Tribe may contract the Artist to perform all necessary repairs, maintenance or secure insurance, and charge the City for the costs thereof.

9. Indemnification. The City hereby agrees to indemnify, defend and hold harmless the Tribe, its agents, and employees from and against any and all actions, suits, claims, damages, losses, costs, penalties, obligations, errors, omissions or liabilities (collectively "Claims or Liabilities") arising out of or in any way connected with any act, omission or negligence of the City, its agents, employees or contractors, or from the existence of the Artwork on the Site, or related to this Agreement, including, without limitation, bodily injury to or death of persons, injury or damage to property and attorneys' fees, but excluding such Claims or Liabilities resulting solely from the willful misconduct of the City, its officers, agents, representatives or employees who are directly responsible to the City.

10. Rights to Artwork. All copyrights to the Artwork shall be transferred to the City together with the Artwork. Artist and the City shall share copyright to the Artwork with the Tribe in accordance with the terms and conditions set forth in Exhibit "C" attached hereto ("Copyright Agreement").

11. Attorneys' Fees. In the event that any action or proceeding is instituted for the interpretation or enforcement of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the other party, all costs and expenses related to such action or proceeding, including, without limitation all attorneys' fees and expert witness fees, both at trial and on appeal.

12. Integration. This Agreement and other documents expressly incorporated herein by reference contain the entire and exclusive understanding and agreement between the parties relating to the matters contemplated hereby and all prior or contemporaneous negotiations, agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

13. Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made by written instrument or

endorsement thereon and in each such instance executed on behalf of each party hereto.

14. Counterparts. This Agreement may be executed in counterparts which, when taken together, shall constitute one executed document as though all signatures appeared on one copy.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

[SIGNATURES ON NEXT PAGE]

**AGUA CALIENTE BAND OF CAHUILLA INDIANS**

By:   
Chief Planning & Development Officer

Date: 3/16/09

**CITY OF PALM SPRINGS**

By: \_\_\_\_\_  
City Manager

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

**ATTEST:**

By: \_\_\_\_\_  
City Clerk

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Agency Counsel

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

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

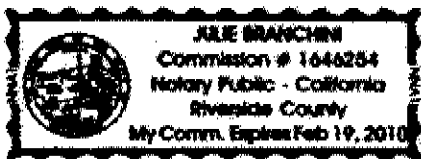
State of California

County of Riverside }

On March 16, 2009 before me, Julie Branchini, notary public  
Date Here Insert Name and Title of the Officer

personally appeared Thomas J. Davis  
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 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 Julie Branchini  
Signature of Notary Public

Please Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Agreement for transfer of artwork ownership

Document Date: 03/16/09 Number of Pages: 5

Signer(s) Other Than Named Above: City of Palm Springs - City Mgr., City Clerk, agency  
\* Not notarizing above Signatures Counsel

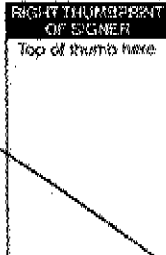
**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Thomas J. Davis  
 Individual  
 Corporate Officer — Title(s): Chief Planning & Dev. officer  
 Partner —  Limited  General  
 Attorney in Fact  
 Trustee  
 Guardian or Conservator  
 Other: \_\_\_\_\_



Signer Is Representing: ACCT

Signer's Name: \_\_\_\_\_  
 Individual  
 Corporate Officer — Title(s): NA  
 Partner —  Limited  General  
 Attorney in Fact  
 Trustee  
 Guardian or Conservator  
 Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

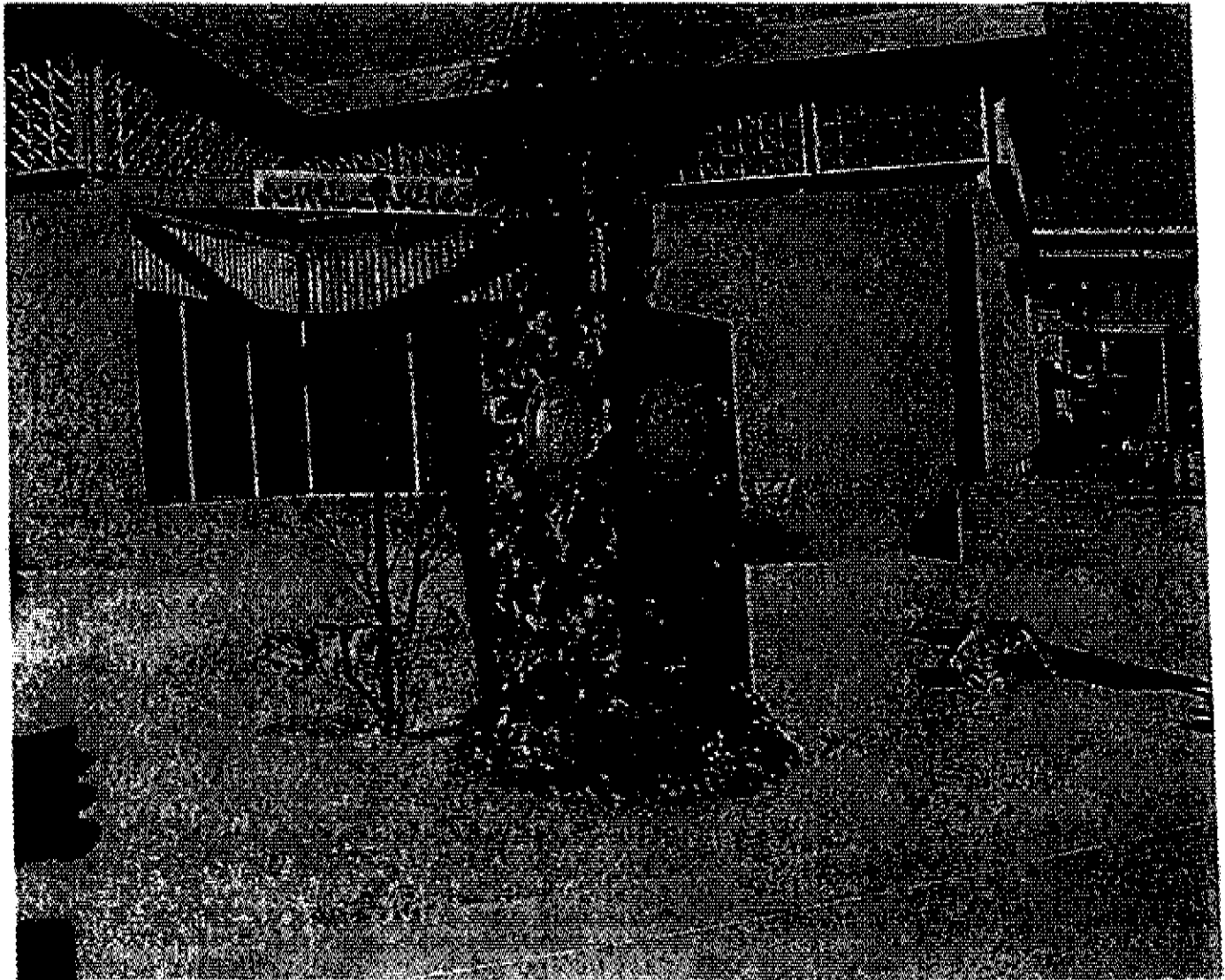
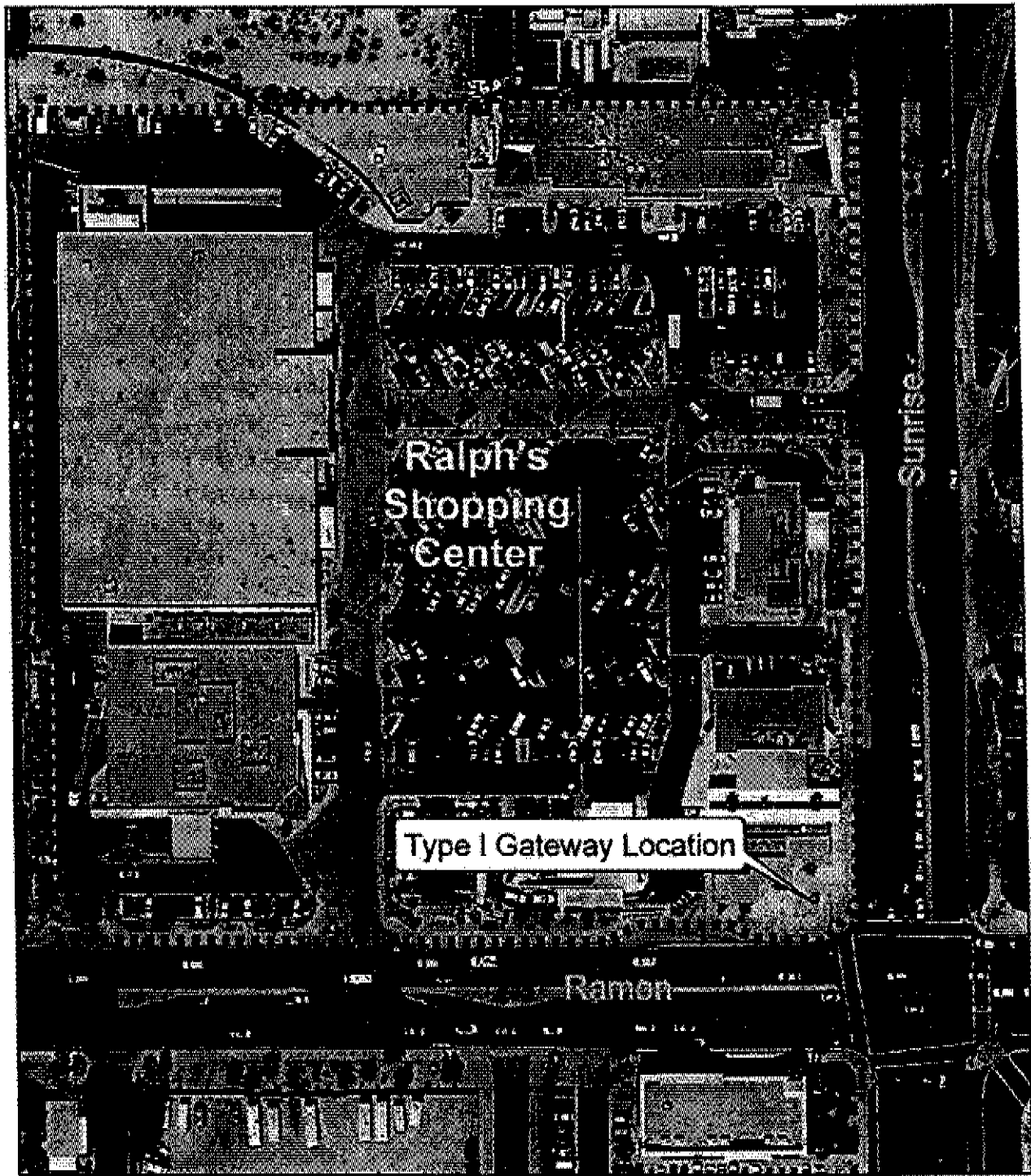


EXHIBIT A



**AGUA CALIENTE INDIAN RESERVATION  
TOWNSHIP 4 SOUTH RANGE 4 EAST  
SUNRISE/RAMON TYPE I GATEWAY ELEMENT**



EXHIBIT B



EXHIBIT "C"

(COPYRIGHT AGREEMENT)

This COPYRIGHT AGREEMENT ("Agreement") is entered into as of \_\_\_\_\_, 2009 by and between the AGUA CALIENTE BAND OF CAHUILLA INDIANS ("Tribe"), the CITY OF PALM SPRINGS ("City"), and Doug Hyde Sculpture Studio, ("Artist").

The Tribe has commissioned a work of art ("Artwork") created by the Artist and more particularly described in that certain Consulting Services Agreement dated December 14, 2008, by and between the Tribe and Doug Hyde Sculpture Studio. The Artist hereby acknowledges the Consulting Services Agreement. Artist has delivered the completed Artwork to the Tribe and the Tribe has accepted the Artwork.


Pursuant to the Consulting Services Agreement, the Artist has transferred all rights under applicable copyright laws to the Artwork to the Tribe. Artist and Tribe hereby agree to share copyright to the Artwork and hereby transfer, convey and assign to the City the right to make reproductions, photographs and other two dimensional, less than full-scale, non-exact reproductions of the Artwork for both commercial and non-commercial purposes.

The Artist warrants that the Artwork is one part of a unique and single-edition suite of pieces, and that the Artist will not execute or authorize another to execute another work of substantially the same design as the Artwork. The covenants and warranties of the Artist shall be binding on the Artist's heirs and assigns.

Due to the nature of the Artwork and the Site on which it is to be placed and the public interest of the City, Artist and his/her agents, heirs, successors and assigns hereby waive any and all rights they may have under the California Art Preservation Act, as set forth in California Civil Code Section 987. The Artist, his/her agents, heirs, successors and assigns also agree to not attempt to defeat this waiver by cooperating with any other person or organization which seeks to bring an action under California Civil Code Section 989.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

**AGUA CALIENTE BAND OF CAHUILLA INDIANS**

By:   
Chief Planning & Development Officer

Date: 3/16/09

**CITY OF PALM SPRINGS**

By: \_\_\_\_\_  
City Manager

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

**ARTIST**

By:   
Doug Hyde Sculpture Studio

Date: 3-5-09

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

**CITY OF PALM SPRINGS  
City Clerk  
P.O. Box 2743  
Palm Springs, CA 92263-2743**

Space Above this Line Reserved for Use by Recorder

---

**AGREEMENT FOR PLACEMENT OF ARTWORK ON PRIVATE PROPERTY AND  
GRANT OF EASEMENT**

This AGREEMENT FOR PLACEMENT OF ART ON PRIVATE PROPERTY ("Agreement") is entered into as of \_\_\_\_\_, 2009 by and between the CITY OF PALM SPRINGS, a municipal corporation ("City") and LUNDIN DEVELOPMENT, COMPANY and SUNRISE PLACE NO. 2, LTD ("Owner").

**RECITALS:**

A. The City has established a Public Arts Program as established by Chapters 2.24 and 3.37 of the Palm Springs Municipal Code ("Public Art Ordinance") which authorizes the placement of works of art on appropriate private property which encourages public access and viewing of the artwork.

B. Under the Public Art Fee Program, artwork may be acquired through the Public Arts Fund, either on City or private property, whether on loan, as a gift or purchase.

C. The City has acquired a work of art and desires to have such work of art placed on the Owner's property in accordance with this Agreement and the City of Palm Springs Public Art Program.

NOW THEREFORE, to comply with the requirements of the Public Art Ordinance, and for good and valuable consideration, the parties hereto hereby agree as follows:

1. Grant of Easement for Display of Public Art. Owner hereby grants and conveys to the City of Palm Springs an easement for permanent use of the Site (as shown in Exhibit "B") for purposes of locating and displaying the Artwork and allowing the public access to the Site to view and enjoy the Artwork at reasonable times and in a reasonable manner ("Contract"), as described in Exhibit "B".

2. Maintenance. The City shall provide all maintenance necessary as recommended by the artist with respect to the Artwork to preserve such Artwork in first

class condition. City agrees to maintain the access paths, landscaping and other improvements to the Site. City shall repair and/or replace any damage to the Artwork within a reasonable time after such discovery. When necessary, City shall consult the artist or another competent Artwork conservationist or restoration specialist to determine the best methods of such restoration or repair.

3. Identification. The Artwork shall be identified by a plaque stating the artist's name, the title, the date the Artwork was completed and stating that the Artwork was funded through the City of Palm Springs Public Arts Program. The plaque will be placed in an appropriate location near the Artwork that facilitates viewing by the public.

4. City Representative. The City Manager, or his designee, a Contract Officer of the City ("City Manager"), shall be the City's designated representative with respect to this Agreement. Under the direction of the City Council, the City Manager shall have the authority to give approvals or consents required hereunder and to otherwise act on behalf of the City for purposes of this Agreement.

5. Owner and Representative. The Owner is the owner of certain property ("Property") generally known as Sunrise Place No. 2, LTD., as shown on Exhibit "B" attached hereto and incorporated herein. The Owner has agreed to Grant an Easement for the placement of Artwork on a portion of the Owner's property which portion is generally depicted and described as the "Site" on Exhibit "B".

6. Location and Removal of Artwork. In addition to any other remedies provided herein, in the event that the Artwork is destroyed, removed from the Site or improperly maintained by the City, the Owner may require that the City replace the Artwork with substitute Artwork of a comparable quality and value as determined at the sole discretion of the City, with consent of the Owner and the Agua Caliente Band of Cahuilla Indians ("Tribe").

7. Insurance. The City shall procure and maintain, at its sole cost and expense, in a form and content consistent with industry standards, with an insurer qualified to do business in California and rated "A" or better in the most recent edition of Best Rating Guide with a financial class category of Class VII or better, unless such requirements are waived by the Risk Manager of the City, during the entire term of this Agreement and at all times while the Artwork is located on the Site.

8. Indemnification. The City hereby agrees to indemnify, defend, and hold harmless the Owner from and against any and all actions, suits, claims, damages, losses, costs, penalties, obligations, errors, omissions or liabilities (collectively "Claims or Liabilities") arising out of or in any way connected with any act, omission or negligence of City, its agents, employees, or contractors, or from the existence of the Artwork on the Site, or related to this Agreement, including, without limitation, bodily injury to or death of persons, injury or damage to property and attorneys' fees, but excluding such Claims or Liabilities resulting from the negligence or willful misconduct of the Owner, its officers, agents, representatives, or employees.

9. Compliance with the Law. City hereby agrees to comply with all applicable statutes, ordinances, orders, laws, rules and regulations, and the requirements of all federal, state and municipal governments and appropriate departments, commissions, boards and offices thereof, which may be applicable to the display of Artwork on the Site or to the use or manner of use of the Site. Without in any way limiting the foregoing, City agrees to comply with The Visual Artists Rights Act of 1990 (17 U.S.C. 101, *et seq.*).

10. Successors and Assigns. The rights and obligations of Owner under this Agreement shall be applicable to Owner's successors and assigns.

11. Integration. This Agreement and other documents expressly incorporated herein by reference contain the entire and exclusive understanding and agreement between the parties relating to the matters contemplated hereby and all prior or contemporaneous negotiations, agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

12. Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto.

13. Counterparts. This Agreement may be executed in counterparts which, when taken together, shall constitute one executed document as though all signatures appeared on one copy.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

**“OWNER”**

OWNER: Lundin Development  
Company  
MANAGER: Sunrise Place No. 2, LTD.

By: \_\_\_\_\_  
Name: Leonard H. Lundin  
Its: Managing Partner

By: \_\_\_\_\_  
Name: Gregory W. Bever  
Its: Managing Partner

**“CITY”**

CITY OF PALM SPRINGS,  
a municipal corporation

**ATTEST:**

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_

**EXHIBIT "A"**  
**(ARTWORK)**



**Completed Sculpture**

**EXHIBIT "A"**  
**(ARTWORK)**



**Sculpture Base**



## EXHIBIT "B"

### PUBLIC ART EASEMENT

Being a portion of Parcel 5 of Parcel Map 29638, recorded in Parcel Map Book 204, Pages 10-13, inclusive, official records of Riverside County Recorder, located in the City of Palm Springs, California, in said county, and more particularly described as follows:

Commencing at the Northeast corner of Parcel 5, of said tract, thence South  $00^{\circ}06'42''$  East, along the east property line of Parcel 5, a distance of 146.10 feet,

Thence leaving said east property line, South  $89^{\circ}32'17''$  West, a distance of 10.28 feet, to the **True Point of Beginning**;

Thence continuing South  $89^{\circ}32'17''$  West, a distance of 19.00 feet

Thence South  $46^{\circ}49'38''$  West, a distance of 19.08 feet;

Thence South  $0^{\circ}27'43''$  East, a distance of 18.67 feet;

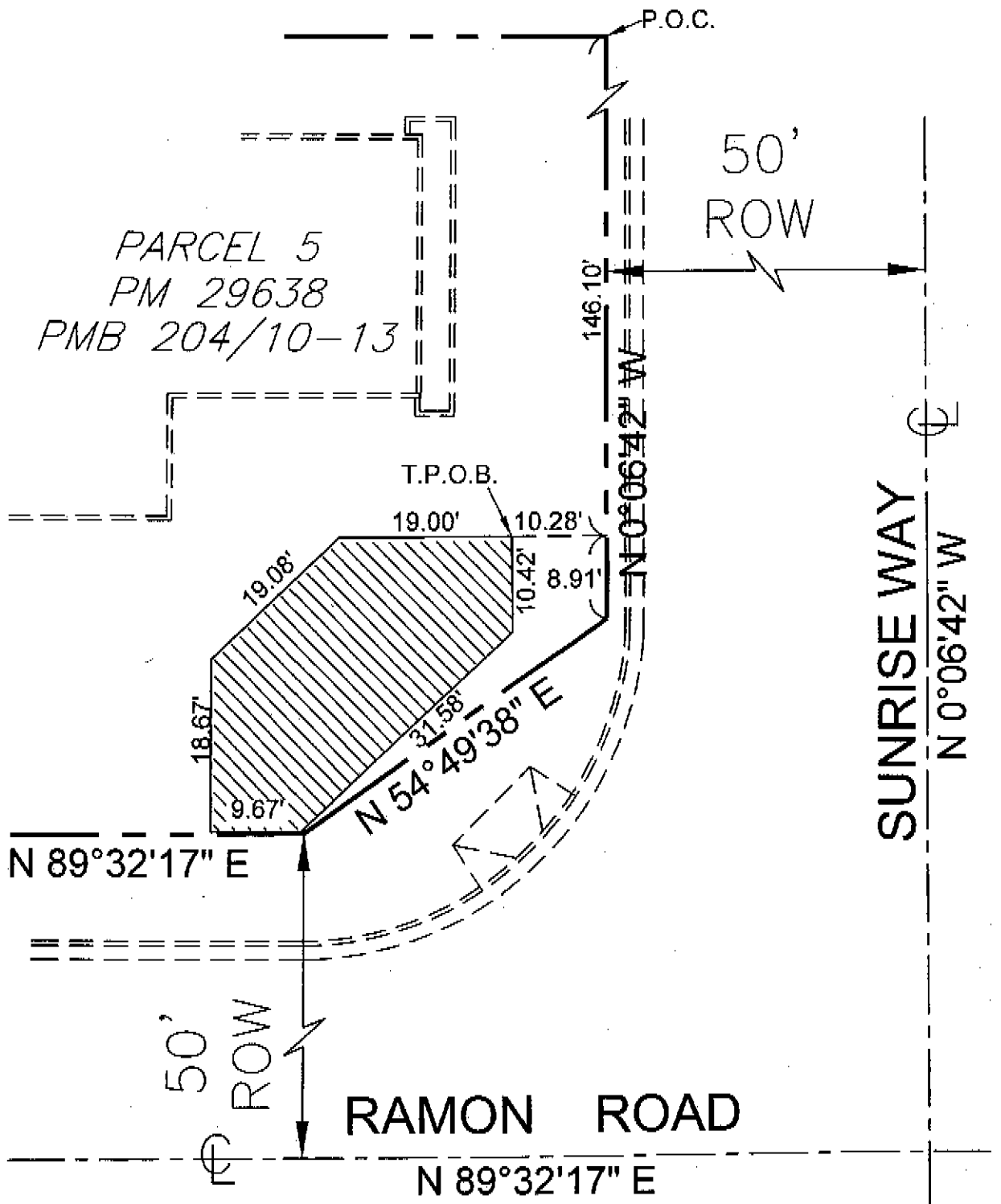
Thence North  $89^{\circ}32'17''$  East, a distance of 9.67 feet;

Thence North  $46^{\circ}49'38''$  East, a distance of 31.58 feet;

Thence North  $00^{\circ}27'43''$  West, a distance of 10.42 feet, to the **True Point of Beginning**.

Said easement contains 708 square feet (more or less).

# EXHIBIT "B"



PARCEL MAP 29638, PM BOOK 204, PAGE 10-13, R.C.R.

34

PUBLIC ART EASEMENT

DESIGN BY:

FUP

SCALE:

NTS

FILE NO.:

R 09-007B

CHECKED BY:

DATE  
04/06/09

SHEET NO.:

1 OF 1

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF )

On \_\_\_\_\_, \_\_\_\_\_, before me,

personally appeared \_\_\_\_\_,  
personally known to me (or 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.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

(SEAL)