

REQUEST FOR COUNCIL ACTION



CITY COUNCIL MEETING DATE:

DECEMBER 1, 2020

TITLE:

**PUBLIC HEARING – ADOPT A
RESOLUTION DETERMINING PUBLIC
INTEREST AND NECESSITY FOR THE
ACQUISITION OF REAL PROPERTY
LOCATED AT 2301 SOUTH MAIN
STREET (PROPERTY OWNER: UNITED
CALIFORNIA BANK REALTY
CORPORATION)
(PROJECT NO. 146802)
(NON-GENERAL FUND)**

CLERK OF COUNCIL USE ONLY:

APPROVED

- ☐ As Recommended
- ☐ As Amended
- ☐ Ordinance on 1st Reading
- ☐ Ordinance on 2nd Reading
- ☐ Implementing Resolution
- ☐ Set Public Hearing For _____

CONTINUED TO _____

FILE NUMBER _____

/s/ Kristine Ridge

CITY MANAGER

RECOMMENDED ACTION

Adopt a resolution authorizing the condemnation of a portion of the real property located at 100 and 120 E. Warner Avenue / 2301 South Main Street (APNs 016-031-38 and 016-031-54), owned by United California Bank Realty Corporation, declaring the public necessity and interest thereof.

DISCUSSION

Warner Avenue is classified as an East-West Major Arterial in the City's General Plan Circulation Element and the County of Orange Master Plan of Arterial Highways. Improving the one-mile segment of Warner Avenue from Main Street to Wright Street has been a long-term priority project that is being constructed in several phases. Improvements include widening the street from a four-lane roadway to a six-lane arterial to address safety issues and provide adequate vehicular capacity; and installing parkways, raised median landscaping, storm drains, protected bike lanes, sound walls, street lights, and traffic signals. The City is acquiring properties for the development of Phase 1 of the Warner Avenue Improvements project, bounded by Main Street and Oak Street. Construction is anticipated to begin in early 2021.

To accommodate these improvements, acquisition of a portion of the parcel at 2301 South Main Street is required (Exhibit 1). The Public Works Agency has made a diligent effort to negotiate with the property owner, United California Bank Realty Corporation and their representatives, for the past 24 months. A good faith offer was made on July 9, 2020, in the amount of \$354,000 (Exhibit 2). The Public Works Agency has made, and will continue to make every effort to reach a settlement with the property owner. However, to maintain the Warner Avenue Improvements project schedule and meet the funding requirement to commence construction in early 2021, staff

is requesting adoption of a Resolution of Necessity (Exhibit 3) and initiation of condemnation proceedings while negotiations continue.

ENVIRONMENTAL IMPACT

On September 1, 2015, City Council approved the Warner Avenue Final Environmental Impact Statement (SCH No. 2012101004).

FISCAL IMPACT

Funds in the amount of \$354,000 are budgeted and available in the Warner Avenue Improvements Project (No. 14-6802) for property acquisition expenditures in FY 2020-21 as follows:

Fiscal Year	Accounting Unit – Account No.	Fund Description	Accounting Unit – Account No. Description	Amount
PROPERTY ACQUISITION				
FY 2020-21	03217663-66100	Measure M-Street Construction	Measure M2 Competitive Street, Land	\$265,500
FY 2020-21	05917668-66100	Select Street Construction (City of Tustin Contribution)	Warner Ave-Tustin CFD, Land	\$88,500
Total				\$354,000

Fiscal Impact Verified By: Kathryn Downs, CPA, Executive Director – Finance and Management Services Agency

Submitted By: Nabil Saba, P.E., Executive Director – Public Works Agency

Exhibits: 1. Location Map
2. Offer Letter
3. Resolution of Necessity

(NTS)



SANTA ANA



MAYOR
Miguel A. Pulido
MAYOR PRO TEM
Juan Villegas
COUNCILMEMBERS
Phil Bacerra
Nelida Mendoza
David Penaloza
Vicente Sarmiento
Jose Solorio



EXHIBIT 2
CITY MANAGER
Kristine Ridge
CITY ATTORNEY
Sonia R. Carvalho
CLERK OF THE COUNCIL
Daisy Gomez

CITY OF SANTA ANA

Public Works Agency – Design Engineering
20 Civic Center Plaza, M-36 • P.O. Box 1988
Santa Ana, California 92702
www.santa-ana.org

July 9, 2020

Via certified mail

United California Bank Realty Corporation
c/o Sean O'Connor
Sheppard Mullin Richter & Hampton LLP
650 Town Center Drive, 4th Floor
Costa Mesa, CA 92626-1993

SUBJECT: OFFER TO ACQUIRE PROPERTY AT:
100 & 120 E. Warner Avenue / 2301 S. Main Street, Santa Ana, CA 92707
APNs: 016-031-38 and 016-031-54

Dear Property Owner:

The City of Santa Ana ("City") is proceeding with its plans to construct the Warner Avenue Improvement Project - Phase 1 between Main Street to Oak Street. The City obtained a Preliminary Title Report that lists the United California Bank Realty as the vested owner, Attachment 1. No final determination has been made as to the ownership of the Property Interest. This offer is contingent upon presentation of conclusive evidence of title. If more than one person has an interest in the Property Interests that the City is seeking to acquire, all parties with such interest must accept this offer.

As you know, the City had the Property Interests appraised to determine its fair market value. The appraisal was conducted in accordance with commonly accepted appraisal standards and included consideration of the highest and best use of the land. Based on the appraisal, the City offer a **total compensation of \$354,000**.

The basis of this offer is explained more thoroughly in the attachments to this letter that are made a part of this offer by reference. This offer is conditioned upon the City Council ratifying this offer by a formal action taken at a regular public meeting authorizing the execution of a Purchase and Sale Agreement or adopting a Resolution of Necessity, or both.

If you are not satisfied with City's offer, you are encouraged to present to us any material you believe to be relevant to the value of the Property Interests, which material will be carefully considered by the City. If, in the City's opinion, the additional information warrants a change in the offer, the City's offer will be adjusted accordingly. If a voluntary agreement cannot be reached, the City may consider formal condemnation proceedings against the Property Interests through its power of eminent domain or abandon its intention to acquire the Property Interests, giving proper notice to you in either event. The City has made no decision to exercise its power of eminent domain to acquire the Property Interests and can only do so after it holds a hearing, at which all affected property owners have had an opportunity to appear and be heard.

The Purchase Price is the full amount established by the appraisal as the fair market value of the Property Interests and the just compensation for such acquisition. A written statement and a summary of the basis for the amount established as the Purchase Price is set forth in the attached Statement of Just Compensation, identified in Attachment 3.

SANTA ANA CITY COUNCIL

Miguel A. Pulido
Mayor
mpulido@santa-ana.org

Juan Villegas
Mayor Pro Tem, Ward 5
jvillegas@santa-ana.org

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vsarmiento@santa-ana.org

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pbacerra@santa-ana.org

Nelida Mendoza
Ward 6
nmendoza@santa-ana.org

75F-4

100 & 120 e. Warner Avenue / 2301 S. Main Street

July 9, 2020

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The California Relocation Assistance and Real Property Acquisition Guidelines provide that each Owner from whom the City purchases real property or an interest therein, or each tenant owning improvements on said Property Interest, be provided with information relating to the acquisition procedures pursuant to the Government Code, Paragraph 7267.2(a). This information is provided in Attachment 4.

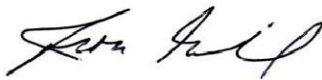
Please be advised that under Code of Civil Procedure Section 1263.025, the City of Santa Ana will reimburse an owner of property, up to the amount of \$5,000 for the owner to secure an independent appraisal of property subject to potential acquisition. Although you have the right to obtain your own appraisal and are entitled to receive up to \$5,000 for your appraisal as described above, please note that the City of Santa Ana is not obligated to accept your appraiser's value of the Property Interest. The City of Santa Ana, however, will review your appraisal and if appropriate, confer with the City's independent appraiser regarding the merits of your appraisal.

Please let us know prior to August 11, 2020 if the City's offer is acceptable. A written agreement concerning the acquisition of the Property Interest will be provided to you for your review and approval.

If for any reason you should see fit not to accept the City's offer, please be advised that this letter, the offer made herein, the enclosed summary statement, and all matters stated herein are made under the provisions of California Evidence Code §§1152 and 1154 and shall not be admissible in evidence in an eminent domain proceeding which may subsequently be instituted for acquisition of the Property Interests, or in any other action.

If you need additional information, please call the City's acquisition consultant, Mona Montano from Overland, Pacific & Cutler, LLC at (562)304-2000.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Gabriel".

Jason Gabriel, PE
Principal Civil Engineer

RESOLUTION NO. 2020-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA ANA FINDING AND DETERMINING THAT THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY REQUIRE THE ACQUISITION OF CERTAIN REAL PROPERTY LOCATED WITHIN THE CITY OF SANTA ANA AT 100 AND 120 EAST WARNER AVENUE / 2301 SOUTH MAIN STREET (APNs 016-031-38 AND 016-031-54) FOR THE WARNER AVENUE IMPROVEMENTS PROJECT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTA ANA AS FOLLOWS:

Section 1. On December 1, 2020, the City Council of the City of Santa Ana, after written notice duly provided to all those claiming ownership in the property described hereafter, as they appeared on the last equalized County assessment roll, held a hearing pursuant to California Code of Civil Procedure section 1245.235 for the purpose of allowing the owners thereof a reasonable opportunity to be heard on the following matters:

- A. Whether the public interest and necessity requires the project described above ("Project");
- B. Whether the Project is planned or located in a manner which is most compatible with the greatest public good and the least private injury;
- C. Whether the property proposed to be acquired is necessary for the Project;
- D. Whether the offer required by California Government Code section 7267.2 has been made;
- E. Whether the City has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the property described herein, as well as any other matter regarding the right to take said property by eminent domain; and
- F. Whether the City has statutory authority to acquire the property by eminent domain.

Section 2. The City Council has, as a result of its consideration and the evidence presented at the hearings on this matter, and in accordance with the California Environmental Quality Act ("CEQA") and the State CEQA Guidelines, determined that the proposed Project has been adequately evaluated in the previously prepared Final Environmental Impact Report (SCH No. 2012101004). On the basis of this review, the City Council finds that there is no evidence from which it can be fairly argued that the Project will have a significant adverse effect on the environment.

Section 3. Pursuant to Title XIV, California Code of Regulations, section 753.5(c)(1), the City Council has determined that, after considering the record as a whole, there is no evidence that the Project will have the potential for any significant adverse effect on fish and wildlife. The Project exists in an urban environment characterized by paved concrete, roadways, surrounding buildings and human activity. Therefore, the payment of Fish and Game Department filing fees is not required in conjunction with this Project.

Section 4. The City of Santa Ana hereby finds and determines each of the following:

- A. The public interest and necessity require the proposed Project.
- B. The proposed Project is planned or located in the manner that will be most compatible with the greatest public good and least private injury.
- C. The Property located at 100 and 120 East Warner Avenue / 2301 South Main Street (APNs 016-031-38 and 016-31-54), as described in Exhibit A, is necessary for the Project.
- D. The offer required by Section 7267.2 of the California Government Code was made.

Section 5. The City hereby finds, determines and declares that the public interest, convenience, and necessity require the acquisition by the City of the property described in Section 4 above, including any and all leaseholds and related improvements, for the purposes of Phase 1 of the City's Warner Avenue Improvements Project. The location of the Project is between Main Street and Oak Street for the widening of Warner Avenue. Included in the Project will be street pave-out, and the installation of concrete curbs, gutters, and sidewalks in a manner which will be most compatible to the greatest public good and the least private injury.

Section 6. The taking of the interest in the property described in Section 4 above is necessary for the public right of way and is authorized by Section 19 of Article I of the California Constitution; Section 200 of the Santa Ana Charter; Santa Ana Municipal Code section 41-781; California Code of Civil Procedure sections 1240.010, 1240.110; California Government Code sections 37350.5 and 40404; California Streets and Highways Code sections 5101, 5101.5, 5102; and other applicable law.

Section 7. The City hereby declares that it is the intention of the City of Santa Ana to acquire in its name, in accordance with the provisions of the laws of the State of California with reference to condemnation procedures, all interests in and to the property described in Section 4 above.

Section 8. If any of the property described in Section 4 above has been appropriated for some public use, the public use to which it is to be applied and taken under this proceeding is a more necessary and paramount public use.

Section 9. The property described in Section 4 above is located within the City of Santa Ana, County of Orange, State of California, and is more particularly described in Section 4 hereof.

Section 10. The City of Santa Ana is authorized to acquire by eminent domain as provided in the California Code of Civil Procedure.

Section 11. The City Attorney is hereby authorized and directed to prepare, institute and prosecute in the name of the City such proceedings, in the proper court having jurisdiction thereof, as may be necessary for the acquisition of the interests in the property described in Section 4 above. The City Attorney is also authorized and directed to obtain a necessary order of immediate possession and occupancy of such property, at the discretion of the City Attorney.

Section 12. This Resolution shall take effect immediately upon its adoption by the City Council, and the Clerk of the Council shall attest to and certify the vote adopting this Resolution.

ADOPTED this _____ day of _____, 2020.

Miguel A. Pulido
Mayor

APPROVED AS TO FORM:
Sonia A. Carvalho, City Attorney

By: John M. Funk
John M. Funk
Sr. Assistant City Attorney

AYES: Councilmembers: _____

NOES: Councilmembers: _____

ABSTAIN: Councilmembers: _____

NOT PRESENT: Councilmembers: _____

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Daisy Gomez, Clerk of the Council, do hereby the attached Resolution No. 2020-XXX to be the original resolution adopted by the City Council of the City of Santa Ana on _____.

Date: _____

Clerk of the Council
City of Santa Ana

EXHIBIT A



EXHIBIT 'A'
LEGAL DESCRIPTION
FOR
RIGHT OF WAY PURPOSES
WITHIN
ASSESSOR'S PARCEL Nos. 016-031-38/54

IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, BEING A PARCEL OF LAND, SITUATE WITHIN BLOCK 'A' AND ALSO WITHIN THE PACIFIC ELECTRIC RIGHT OF WAY, BOTH AS SHOWN OF THE 'MAP OF SOUTH SANTA ANA', FILED IN BOOK 5, PAGE 43, OF MISCELLANEOUS MAPS, RECORDS OF SAID COUNTY, SAID PARCEL LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE INTERSECTION OF A LINE, SAID LINE BEING PARALLEL WITH AND 60.00 FEET SOUTH OF THE CENTERLINE OF WARNER AVENUE, (FORMERLY DELHI ROAD) AS SHOWN ON ABOVE SAID MAP, WITH THE NORTHWESTERLY LINE OF THOSE LANDS DESCRIBED AS PARCEL 2 IN THE DOCUMENT RECORDED JANUARY 6TH, 1975 IN BOOK 11318, PAGE 1036, OFFICIAL RECORDS OF SAID COUNTY;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 88°30'10" EAST, 187.92 FEET;

THENCE, NORTH 88°38'27" EAST 46.57 FEET TO THE WESTERLY LINE OF THOSE LANDS DESCRIBED IN THE DOCUMENT RECORDED NOVEMBER 24TH, 2004 AS INSTRUMENT NUMBER 2004001052529, OFFICIAL RECORDS OF SAID COUNTY.

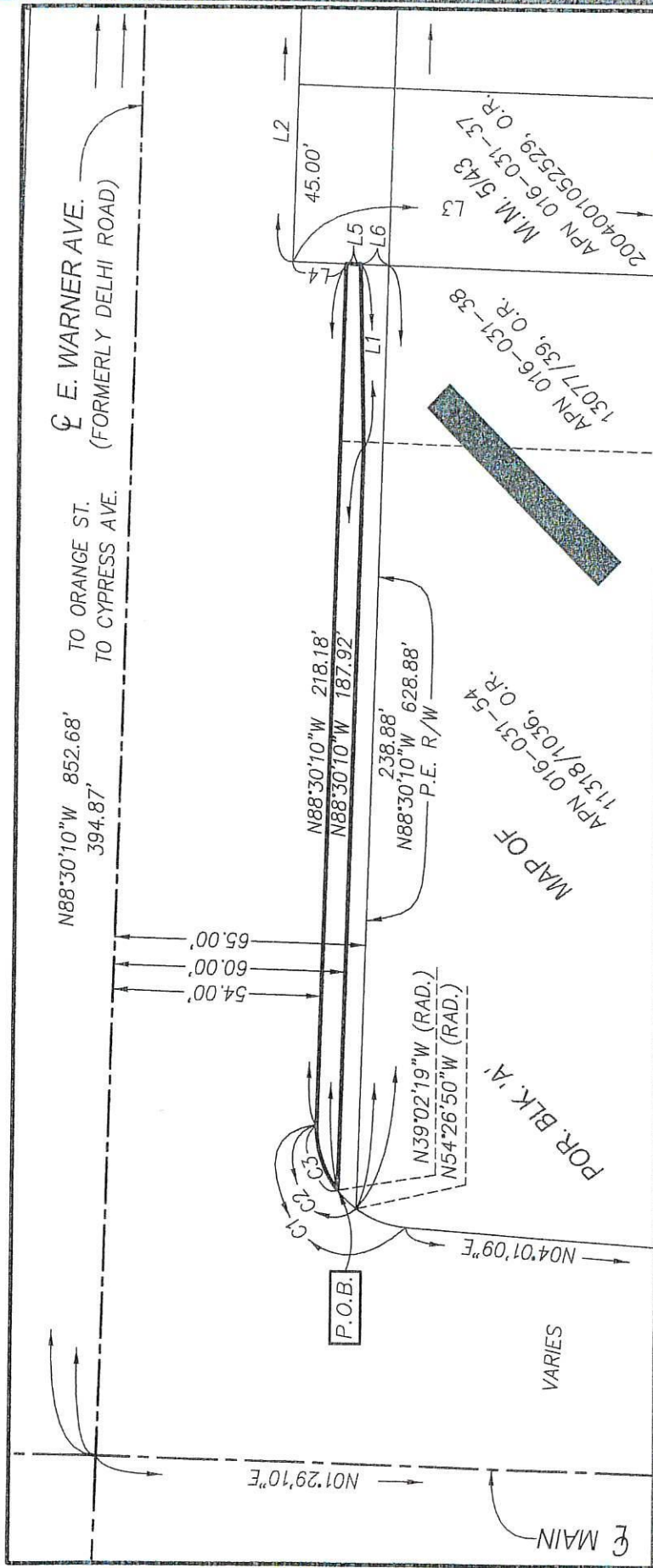
CONTAINING AN AREA OF APPROXIMATELY 1322 SQUARE FEET, MORE OR LESS;

SUBJECT TO COVENANTS, CONDITIONS, RESERVATIONS, RESTRICTIONS, RIGHTS OF WAY, AND EASEMENTS OF RECORD, IF ANY;

ALL AS SHOWN ON EXHIBIT 'B', SKETCH TO ACCOMPANY LEGAL DESCRIPTION, ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF;

ALAN D. FRANK
P.L.S. 7172
DATED: 2018-03-15





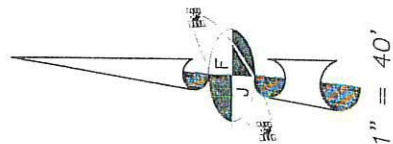
LINE TABLE

L1	N88°38'27"E	46.57'
L2	N88°30'10"W	95.00'
L3	N01°33'01"E	185.00'
L4	14.00'	
L5	3.68'	
L6	7.32'	

CURVE TABLE

C1	Δ=87°28'40"	R=25.00'	L=38.17'
C2	Δ=55°56'39"	L=24.41'	
C3	Δ=40°32'09"	L=17.69'	

A.P. No. 016-031-38/54
2301 S. MAIN ST.



JOHNSON-FRANK & ASSOC., INC.
LAND SURVEYING - MAPPING
5150 E. HUNTER AVENUE
ANAHEIM, CALIFORNIA 92807-2049
(714) 777-8877 FAX (714) 777-1641

EXHIBIT 'B'
SKETCH TO ACCOMPANY LEGAL DESCRIPTION

DATE 2018-03-15 SHEET 1 OF 1

EXHIBIT 'A'
LEGAL DESCRIPTION
FOR
TEMPORARY CONSTRUCTION EASEMENT PURPOSES
WITHIN
ASSESSOR'S PARCEL Nos. 016-031-38/54

IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, BEING A PARCEL OF LAND, SITUATE WITHIN BLOCK 'A' AND ALSO WITHIN THE PACIFIC ELECTRIC RIGHT OF WAY, BOTH AS SHOWN ON THE 'MAP OF SOUTH SANTA ANA', FILED IN BOOK 5, PAGE 43, OF MISCELLANEOUS MAPS, RECORDS OF SAID COUNTY, SAID PARCEL BEING NORTHERLY AND WESTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF MAIN STREET WITH THE CENTERLINE OF WARNER AVENUE (FORMERLY DELHI ROAD) AS SHOWN ON THE ABOVE REFERENCED MAP;

THENCE ALONG SAID CENTERLINE OF MAIN STREET, SOUTH 01°29'10" WEST 100.44 FEET;

THENCE PERPENDICULAR TO SAID CENTERLINE OF MAIN STREET, SOUTH 88°30'50" EAST, 58.65 FEET TO A POINT IN THE WESTERLY LINE OF THOSE LANDS DESCRIBED AS PARCEL 2 IN THE DOCUMENT RECORDED JANUARY 6TH, 1975 IN BOOK 11318, PAGE 1036, OFFICIAL RECORDS OF SAID COUNTY, SAID POINT BEING **THE POINT OF BEGINNING**;

THENCE SOUTH 85°54'36" EAST, 5.00 FEET TO A LINE, SAID LINE BEING PARALLEL WITH AND 5.00 FEET EASTERLY FROM THE EASTERLY RIGHT OF WAY OF MAIN STREET;

THENCE ALONG SAID PARALLEL LINE, NORTH 04°01'09" EAST, 34.69 FEET TO A LINE PARALLEL WITH AND 66.00 FEET SOUTH OF THE CENTERLINE OF WARNER AVENUE (FORMERLY DELHI ROAD);

THENCE ALONG LAST SAID PARALLEL LINE, SOUTH 88°30'10" EAST, 192.16 FEET TO A LINE PERPENDICULAR TO THE CENTERLINE OF WARNER AVENUE (FORMERLY DELHI ROAD);

THENCE SOUTH 01°29'50" WEST, 4.00 FEET TO A LINE PARALLEL WITH AND 70.00 FEET SOUTH OF THE CENTERLINE OF WARNER AVENUE (FORMERLY DELHI ROAD);

THENCE ALONG LAST SAID PARALLEL LINE SOUTH 88°30'10" EAST, 45.45 FEET TO THE WESTERLY LINE OF THOSE LANDS DESCRIBED IN THE DOCUMENT

RECORDED NOVEMBER 24TH, 2004 AS INSTRUMENT NUMBER 2004001052529,
OFFICIAL RECORDS OF SAID COUNTY.

CONTAINING AN AREA OF APPROXIMATELY 3142 SQUARE FEET, MORE OR LESS;

SUBJECT TO COVENANTS, CONDITIONS, RESERVATIONS, RESTRICTIONS, RIGHTS
OF WAY, AND EASEMENTS OF RECORD, IF ANY;

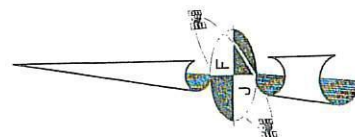
ALL AS SHOWN ON EXHIBIT 'B', SKETCH TO ACCOMPANY LEGAL DESCRIPTION,
ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF;

ALAN D. FRANK

P.L.S. 7172

DATED: 2018-03-15





A.P. No. 016-031-38/54
2301 S. MAIN ST.
TEMPORARY
CONSTRUCTION
EASEMENT

LAND SURVEYING - MAPPING
5150 E. HUNTER AVENUE
ANAHEIM, CALIFORNIA 92807-2049
(714) 777-8877 FAX (714) 777-

DATE 2018-03-15 SHEET 1 OF 1