

DOC # 2010-0279661

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County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder

When Recorded Mail To:

Riverside City Attorney's Office

3900 Main Street

Riverside, CA 92522

Ref: CA#L08-0206.3



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This instrument is for the benefit of the City of Riverside and is exempt from recording fees (Government Code § 27383<sup>1</sup>)

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**PARTIAL JUDGMENT AND FINAL ORDER OF CONDEMNATION  
RE ASSESSOR'S PARCEL NUMBER 225-051-028  
CASE NO. 30-2009-00125565-CU-EI-CJC**

<sup>1</sup> Government Code § 27383: "No fee shall be charged by the recorder for services rendered to the State, to any municipality, county in the State or other political subdivision thereof, except for making a copy of a paper or record."

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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

JUN 08 2010

ALAN CARLSON, Clerk of the Court

BY G HERNANDEZ

1 GREGORY P. PRIAMOS, City Attorney, SBN 136766  
2 HERIBERTO F. DIAZ, Deputy City Attorney, SBN 132821  
3 CITY OF RIVERSIDE  
4 City Hall, 3900 Main Street  
5 Riverside, California 92522  
6 Telephone (951) 826-5567  
7 Facsimile (951) 826-5540  
8 ediaz@riversideca.gov

Attorneys for Plaintiff, City of Riverside

(Fee Exempt Gov't Code § 6103)

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE

CITY OF RIVERSIDE, a California charter city and  
municipal corporation,

Plaintiff,

vs.

MARK JOHNSON AND DOREEN JOHNSON,  
TRUSTEES OF THE MARK AND DOREEN  
JOHNSON REVOCABLE TRUST; et al,

Defendants.

) Case No. 30-2009-00125565-CU-EI-CJC  
) Assigned for all purposes to the  
) Honorable Jamoa A. Moberly  
) Dept. C12

) **PARTIAL JUDGMENT AND FINAL**  
) **ORDER OF CONDEMNATION RE**  
) **ASSESSOR'S PARCEL NUMBER 225-**  
) **051-028**

**BY FAX**

This Partial Judgment and Final Order of Condemnation is hereby made following  
disposition, through the court proceedings described below, of all parties and property interests  
alleged in the Complaint in Eminent Domain.

IT IS HEREBY FOUND AND DETERMINED:

1. Pursuant to its Charter of the City of Riverside, California Government Code  
sections 37350.5, 39792, 40401, and 40404, the Eminent Domain Law commencing with  
California Code of Civil Procedure section 1235.010, and Article I, section 19, of the  
Constitution of the State of California, plaintiff the City of Riverside ("City") is authorized to  
acquire real property or interests therein for public uses and purposes, to wit: construction of an  
underpass at the Union Pacific railroad tracks and Magnolia Avenue, between Elizabeth Street  
and Sunnyside Drive ("Project").

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1           2.     After a duly noticed public hearing and an opportunity to be heard in compliance  
 2 with Code of Civil Procedure section 1245.235, on October 7, 2008, the City adopted Resolution  
 3 Number 21722 authorizing plaintiff to acquire the property described in the complaint on file  
 4 herein, including Riverside County Assessor's Parcel Number 225-051-028, by eminent domain.  
 5 In compliance with sections 1245.220 and 1245.230 of the Code of Civil Procedure, the City  
 6 found and determined that: (a) the public interest and necessity require the proposed project, (b)  
 7 the proposed project is planned and located in the manner that will be the most compatible with  
 8 the greatest public good and least private injury, (c) the acquisition and taking of permanent  
 9 easements and lesser interests in the property sought to be acquired are necessary for the Project,  
 10 and (d) the offer required by section 7267.2 of the Government Code has been made to the  
 11 owners of record of the subject property interests.

12           3.     Plaintiff commenced this eminent domain action to condemn the following  
 13 property interests: fee simple absolute in and to Assessor's Parcel Number 225-051-028.

14           4.     Plaintiff named the following defendants in this action having an interest in and to  
 15 Assessor's Parcel Number 225-051-028:

<u>DEFENDANT</u>	<u>INTEREST</u>
Shirley R. Pensig, Trustee of the Shirley R. Pensig Trust of 1985	Owner
Carl L. Grant	Easement Holder
Virginia M. Grant	Easement Holder
J. Henry Allen	Lessor
Helen B. Allen	Lessor
James W. Scott	Easement Holder
Amy Scott	Easement Holder
Shirley R. Simon	Trustor
Security Allied Services	Trustee
Gibraltar Savings	Beneficiary

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PARTIAL JUDGMENT AND FINAL ORDER OF CONDEMNATION  
 RE ASSESSOR'S PARCEL NUMBER 225-051-028



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Abdelhakim Abutineh	Lessee
Hanan Abutineh	Lessee
Ibrahim Abutineh	Lessee
Sirria Abutineh	Lessee
Long Beach Automotive Distributors, Inc. dba Pacific Supply	Lessee
Ram Pizza, Inc.	Lessee
Verdugo Trustee Service Corporation	Trustee
Citibank (West), FSB	Beneficiary

5. On November 10, 2008, plaintiff deposited a total of Three Million Seventy Thousand Dollars (\$3,070,000.00) with the Treasurer of the State of California condemnation fund as a deposit of probable just compensation for Assessor's Parcel Number 225-051-028. On April 14, 2009, the court made and entered an order permitting Shirley R. Pensig, Trustee of the Shirley R. Pensig Trust of 1985, ("Pensig") to withdraw Three Million Seventy Thousand Dollars (\$3,070,000.00) from funds on deposit with the State Treasurer. No funds remain on deposit for Assessor's Parcel Number 225-051-028.

6. Pensig filed an answer to the complaint in eminent domain on January 5, 2009.

7. Prior to the transfer of this matter to Orange County Superior Court, the following defendants filed disclaimers of interest in the Riverside County Superior Court (Case No. RIC513720) on the dates indicated below and are entitled to no compensation:

<u>DEFENDANT</u>	<u>DATE OF FILING</u>
Long Beach Automotive Distributors, Inc. dba Pacific Supply	December 29, 2008
Citibank N.A. (f/k/a Citibank (West), FSB)	June 29, 2009



1           8.       The following defendants have been regularly served with process herein and  
2 having failed to appear or answer within the time allowed by law, had their defaults taken by the  
3 Riverside County Superior Court (Case No. RIC513720) on the dates indicated below:

<u>DEFENDANT</u>	<u>DATE OF FILING</u>
Carl L. Grant	October 26, 2009
Virginia M. Grant	October 26, 2009
J. Henry Allen	October 26, 2009
Helen B. Allen	October 26, 2009
James W. Scott	October 26, 2009
Amy Scott	October 26, 2009
Shirley R. Simon	October 26, 2009
Gibraltar Savings, a Federal Savings and Loan Association	October 26, 2009
Abdelhakim Abutineh	October 26, 2009
Hanan Abutineh	October 26, 2009
Ibrahim Abutineh	October 26, 2009
Sirria Abutineh	October 26, 2009
Ram Pizza, Inc.	April 15, 2009
Verdugo Trustee Service Corporation	April 15, 2009

19           9.       Concurrently with this Partial Judgment and Final Order of Condemnation, a  
20 Stipulation re Settlement and For Entry of Partial Judgment and Final Order of Condemnation  
21 ("Stipulation") is made and entered as to defendant Shirley R. Pensig, Trustee of the Shirley R.  
22 Pensig Trust of 1985 ("Pensig"). Pursuant to said Stipulation, Pensig is to be paid the sum of  
23 Three Million Four Hundred Seventy-five Thousand Dollars (\$3,475,000.00) outside of these  
24 court proceedings, from which the sum of Forty-seven Thousand Dollars (\$47,000.00) will be  
25 paid directly to Paul Avery Pensig.

26           10.       The interest of Pensig and Paul Avery Pensig in the real property designated in  
27 the complaint as Assessor's Parcel Number 225-051-028 to be condemned herein is fee simple.  
28



1 11. By execution of the Stipulation herein, Pensig waives the right to jury trial,  
2 Statement of Decision, Notice of Entry of Judgment in Condemnation, Notice of Entry of Final  
3 Order of Condemnation as to Assessor's Parcel Number 225-051-028, and the right to and time  
4 for appeal.

5 12. Pursuant to said Stipulation, Pensig expressly waives the right to challenge the  
6 City's right to acquire the property by eminent domain, the right to further and greater  
7 compensation, and the right to an award of interest, attorney fees and costs, to the extent they  
8 may be allowable by law.

9 13. Pursuant to said Stipulation, Pensig makes a knowing waiver of any and all rights  
10 created by California Civil Code section 1542.

11 14. Pursuant to said Stipulation, the total amount of just compensation to be paid by  
12 plaintiff to Pensig is Three Million Four Hundred Seventy-five Thousand Dollars  
13 (\$3,475,000.00). Said amount is inclusive of fair market value and interest thereon, attorney  
14 fees, and all costs of suit, including those costs defined in California Code of Civil Procedure  
15 section 1268.70, and litigation expenses including, but not limited to, those defined California  
16 Code of Civil Procedure section 1235.140.

17 15. An Order of Prejudgment Possession ("OPP") became effective as to the interests  
18 of Pensig in and to Assessor's Parcel Number 225-051-028 on May 15, 2009. Pursuant to the  
19 OPP, plaintiff exercised its rights and has commenced work on the project.

20 16. The use for which an interest in and to Assessor's Parcel Number 225-051-028 is  
21 being acquired is a use authorized by law and the acquisition of said interest is necessary to said  
22 use.

23 WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

24 1. The total compensation, award, and damages to be paid as a result of the  
25 condemnation of the interests of defendant Shirley R. Pensig, Trustee of the Shirley R. Pensig  
26 Trust of 1985, is the total amount of Three Million Four Hundred Seventy-five Thousand  
27 Dollars (\$3,475,000.00). Probable compensation in the amount of Three Million Seventy  
28 Thousand Dollars (\$3,070,000.00) has been withdrawn by defendants in this proceeding. The



1 balance of Four Hundred Five Thousand Dollars (\$405,000.00) shall be paid by plaintiff  
2 pursuant to this judgment. In accordance with the Stipulation herein, plaintiff shall deduct and  
3 pay to Paul Avery Pensig the sum of Forty-seven Thousand Dollars (\$47,000.00) as his sole and  
4 separate property from funds remaining to be paid under the Partial Judgment.

5 2. Payment hereunder shall be deemed to expressly include all costs of suit pursuant  
6 to California Code of Civil Procedure section 1268.710 and all litigation expenses including, but  
7 not limited to, those defined in California Code of Civil Procedure section 1235.140. Payment  
8 hereunder shall further be deemed to be the total just compensation and damages, if any, to  
9 which defendant Shirley R. Pensig, Trustee of the Shirley R. Pensig Trust of 1985, shall be  
10 entitled by reason of the condemnation of Assessor's Parcel Number 225-051-028.

11 3. Defendant Shirley R. Pensig, Trustee of the Shirley R. Pensig Trust of 1985's,  
12 portion of taxes as to Assessor's Parcel Number 225-051-028 is cancelled as of the effective  
13 date of possession herein, May 15, 2009.

14 4. Payment to defendant Shirley R. Pensig, Trustee of the Shirley R. Pensig Trust of  
15 1985, of the amount herein above specified shall constitute payment in full for the taking of a  
16 fee simple interest in Assessor Parcel Number 225-051-028 and for all damages of any kind and  
17 nature whatsoever suffered by said defendants by reason of such taking.

18 WHEREFORE THE COURT NOW MAKES THE FOLLOWING ORDER OF  
19 CONDEMNATION:

20 The interests of defendants Shirley R. Pensig, Trustee of the Shirley R. Pensig Trust of  
21 1985, Long Beach Automotive Distributors, Inc., dba Pacific Supply, Citibank N.A., Carl L.  
22 Grant, Virginia M. Grant, J. Henry Allen, Helen B. Allen, James W. Scott, Amy Scott, Shirley  
23 R. Simon, Gibraltar Savings, a Federal Savings and Loan Association, Abdelhakim Abutineh,  
24 Hanan Abutineh, Ibrahim Abutineh, Sirria Abutineh, Ram Pizza, Inc., and Verdugo Trustee  
25 Service Corporation in and to Assessor's Parcel Number 225-051-028 are hereby condemned for  
26 the public use and purpose described in the complaint herein, to wit, construction of an  
27 underpass at the Union Pacific railroad tracks and Magnolia Avenue, between Elizabeth Street  
28 and Sunnyside Drive, plaintiff to take title to the interest(s) of said defendants in said real



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property together with all improvements thereon in which said defendant has an interest, free and clear of any and all liens, encumbrances, easements, and leaseholds of whatever kind or nature. The interests condemned to the City of Riverside in and to Assessor's Parcel Number 225-051-028 are legally described in Exhibit I hereto.

DATED: 6/9/2010

*Jamoa A Moberly*  
JUDGE OF THE SUPERIOR COURT  
JAMOA A. MOBERLY

L08-0206.3





# EXHIBIT

1

## EXHIBIT 1



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EXHIBIT A

MAGNOLIA AVENUE GRADE SEPARATION  
FEE SIMPLE INTEREST  
APN: 225-051-028

THAT CERTAIN REAL PROPERTY IN THE CITY OF RIVERSIDE, COUNTY OF RIVERSIDE,  
STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

PARCEL 1:

THAT PORTION OF THE EAST HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST  
QUARTER OF SECTION 34, TOWNSHIP 2 SOUTH, RANGE 5 WEST, SAN BERNARDINO  
BASE AND MERIDIAN, AS SHOWN BY UNITED STATES GOVERNMENT SURVEY,  
DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF MAGNOLIA AVENUE, AS  
DESCRIBED IN THE DEED RECORDED IN BOOK 289, PAGE 346 OF DEEDS, RECORDS OF  
RIVERSIDE COUNTY, DISTANT THEREON, NORTH 27° 38' EAST 133.5 FEET FROM ITS  
INTERSECTION WITH THE NORTHERLY LINE OF THE RIGHT OF WAY OF LOS ANGELES  
AND SALT LAKE RAILROAD COMPANY;

THENCE ALONG SAID NORTHWESTERLY LINE OF MAGNOLIA AVENUE, NORTH 27° 38' EAST  
192.7 FEET TO THE MOST SOUTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND  
CONVEYED TO NELLIE C. MCCLEERY BY DEED RECORDED FEBRUARY 20, 1928 IN BOOK  
751 PAGE 506 OF DEEDS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

THENCE AT A RIGHT ANGLE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF  
SAID CERTAIN PARCEL OF LAND, A DISTANCE OF 130 FEET OF THE MOST WESTERLY  
CORNER THEREOF;

THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF THE LAND  
DESCRIBED IN THE DEED TO JAMES W. SCOTT AND WIFE AMY, RECORDED AUGUST 25,  
1972 AS INSTRUMENT NO. 114324 A DISTANCE NO. 56.97 FEET TO THE MOST  
WESTERLY CORNER OF SAID LAND OF SCOTT;

THENCE NORTHWESTERLY ALONG THE NORTHEASTERLY LINE OF LAND  
DESCRIBED IN THE DEED TO J. HENRY ALLEN AND WIFE HELEN B., RECORDED  
AUGUST 25, 1972 AS INSTRUMENT NO. 114323, A DISTANCE OF 74.73 FEET TO THE  
WESTERLY LINE OF SAID EAST HALF OF THE NORTHEAST QUARTER OF THE  
NORTHWEST QUARTER OF SECTION 24;

THENCE SOUTHERLY ALONG SAID WESTERLY LINE TO A DIRECT LINE WHICH  
EXTENDS NORTHWESTERLY FROM THE POINT OF BEGINNING, SAID DIRECT LINE BEING  
AT RIGHT ANGLES TO SAID NORTHWESTERLY LINE OF MAGNOLIA AVENUE;

THENCE SOUTHEASTERLY ALONG SAID DIRECT LINE TO THE POINT OF BEGINNING.

PARCEL 2:

APN 225-051-028 Deed legal

SHEET 1 OF 2



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*RENSICK #7*

*16482*

AN EASEMENT TO MAINTAIN IN PERPETUITY A BUILDING AND LANDSCAPING ENCROACHMENTS 4-1/2 INCHES IN WIDTH LYING SOUTHERLY AND SOUTHWESTERLY TO THE FOLLOWING DESCRIBED LINE:

**EASEMENT "A"**

COMMENCING AT A POINT ON THE NORTHWEST LINE OF MAGNOLIA AVENUE AS DESCRIBED IN THE DEED RECORDED IN BOOK 299, PAGE 348 OF DEEDS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, DISTANT THEREON NORTH 27° 36' 00" EAST, 133.50 FEET FROM ITS INTERSECTION WITH THE NORTHERLY LINE OF THE RIGHT OF WAY OF THE LOS ANGELES AND SALT LAKE RAILROAD COMPANY TO THE SOUTHEAST CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED TO J. HENRY ALLEN AND WIFE HELEN B. ALLEN RECORDED ON JUNE 29, 1979 AS INSTRUMENT NO. 136306 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, SAID SOUTHEAST CORNER HEREON DESIGNATED AS POINT "A";

THENCE WESTERLY AT THE RIGHT ANGLES TO MAGNOLIA AVENUE, ALONG THE SOUTHERLY LINE OF SAID PARCEL OF LAND A DISTANCE OF 29.00 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUOUSLY ALONG SAID SOUTHERLY LINE, A DISTANCE OF 88.00 FEET TO THE TERMINUS OF SAID DESCRIBED LINE.

**EASEMENT "B":**

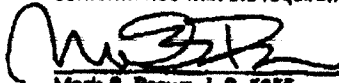
COMMENCING AT POINT "A" AS SAID POINT DESCRIBED IN EASEMENT (A) ABOVE;

THENCE WESTERLY AT THE RIGHT ANGLES TO MAGNOLIA AVENUE, ALONG THE SOUTHERLY LINE THAT SAID PARCEL OF LAND DESCRIBED IN THE DEED TO J. HENRY ALLEN AND WIFE HELEN B. ALLEN, RECORDED ON JUNE 29, 1979 AS INSTRUMENT NO. 136306 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, A DISTANCE OF 145.75 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUOUSLY ALONG THE SAID SOUTHERLY LINE, A DISTANCE OF 14.25 FEET TO THE TERMINUS OF SAID DESCRIBED LINE.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 0.630 ACRES, MORE OR LESS.

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyors Act.

 7/3/07 Prep. Ecb  
Mark S. Brown, L.S. 5856 Date  
License Expires 8/30/07



APN 225-061-028 Deed legal

SHEET 2 OF 2

PENDING #7



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**PROOF OF SERVICE**

*STATE OF CALIFORNIA, COUNTY OF RIVERSIDE*

I am a resident of the county aforesaid; I am over the age of 18 years and not a party to the within above-entitled action; my business address is 3900 Main Street, Riverside, California 92522.

On May 17, 2010, I served the within STIPULATION RE SETTLEMENT AND FOR ENTRY OF PARTIAL JUDGMENT AND FINAL ORDER OF CONDEMNATION AS TO DEFENDANT SHIRLEY R. PENSIG, TRUSTEE OF THE SHIRLEY R. PENSIG TRUST OF 1985 on the interested parties in said action addressed as follows:

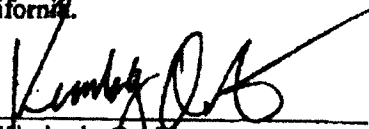
Roscoe D. Keagy, Esq.  
Richard R. Freeland, Esq.  
ASARO KEAGY FREELAND & MCKINLEY  
3170 Fourth Avenue, 4<sup>th</sup> Floor  
San Diego CA 92103  
Tel: 619-297-3170  
Fax: 619-299-4268

Attorneys for defendant:  
Shirley R. Pensig, Trustee of the Shirley R.  
Pensig Trust of 1985

(XX) VIA MAIL - In accordance with the regular mail collection and processing practices of this business office, with which I am familiar, by means of which mail is deposited with the United States Postal Service at Riverside, California, that same day in the ordinary course of business, I deposited such sealed envelope for collection and mailing on this same date following ordinary business practices.

I declare under penalty of perjury, under the laws of the State of California that the foregoing is true and correct.

Executed on May 17, 2010, at Riverside, California.

  
\_\_\_\_\_  
Kimberly Dehert

to provide a true and correct copy of the original document to the court and to the parties to the proceeding.

DEPUTY CLERK OF COURT  
COUNTY OF RIVERSIDE  
STATE OF CALIFORNIA



2010-0279661  
06/17/2010 08:08A  
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LARRY W. WARD  
COUNTY OF RIVERSIDE  
ASSESSOR-COUNTY CLERK-RECORDER

Recorder  
P.O. Box 751  
Riverside, CA 92502-0751  
(951) 486-7000

www.riversideacr.com

**CERTIFICATION**

Pursuant to the provisions of Government Code 27361.7, I certify under the penalty of perjury that the following is a true copy of illegible wording found in the attached document:

(Print or type the page number(s) and wording below):

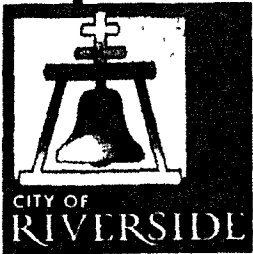
Pg 7 Jamoa A. Moberly

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Date: ~~6-17-10~~ 6-17-10  
Signature: Tiffany Burton  
Print Name: Tiffany Burton



MEMORANDUM

CITY ATTORNEY'S OFFICE

RECEIVED

JUL 12 2010

*[Handwritten signature]*

**TO:** City Clerk  
**FROM:** Kimberly Oehlert  
**DATE:** July 9, 2010  
**RE:** CITY V PENSIG (MAGNOLIA AVENUE GRADE SEPARATION PROJECT); CA L08-0206.3,  
ORANGE COUNTY SUPERIOR COURT CASE NO. 30-2009-00125565-CU-EI-CJC

Enclosed is the original recorded Partial Judgment and Final Order of Condemnation re Assessor's Parcel Number 225-051-028. Please retain this document as the City's official record.

If you have any questions regarding the foregoing, please do not hesitate to call me.

Kimberly Oehlert  
Legal Assistant  
Ext. 5768