

AVENUE 416 FRESNO COUNTY LINE TO ROAD 56 WIDENING PROJECT

Owner: Dino Partners L. P.,
a California Limited Partnership
APN: 012-060-013

**AGREEMENT FOR PURCHASE
OF REAL PROPERTY**
Fee and Temporary Construction Easement

THIS AGREEMENT is made and entered into by and between the COUNTY OF TULARE, hereinafter referred to as COUNTY, and **Dino Partners L. P., a California Limited Partnership**, hereinafter referred to as OWNER.

Whereas, OWNER has conditionally delivered to COUNTY, an executed Grant Deed conveying the real property (hereinafter referred to as the PROPERTY) described therein to COUNTY with regard to the following:

- A. COUNTY requires the PROPERTY, a property not now appropriated to a public use, for constructing or improving a public roadway project known as the Avenue 416 Fresno County to Road 56 Widening Project, a public use. Said PROPERTY is described in Exhibit "A" and depicted in Exhibit "B" attached hereto.
- B. Because COUNTY may exercise the power of eminent domain to acquire, OWNER is compelled to sell; and because COUNTY requires the property for the Public Project, COUNTY is compelled to buy. As such, the acquisition of the PROPERTY is an involuntary conversion of the PROPERTY from private to public use.
- C. Both OWNER and COUNTY recognize the expense, time, effort, and risk to both OWNER and COUNTY in resolving a dispute over compensation for the PROPERTY by eminent domain litigation; and the compensation set forth herein is in compromise and settlement, in lieu of such litigation.
- D. To facilitate project construction related activities, COUNTY also desires to purchase a Temporary Construction Easement over and across portions of OWNER's Real Property. Said Temporary Construction Easement (TCE) is described in Exhibit "A-1" and depicted in Exhibit "B-1" attached hereto and which shall commence on date of possession in paragraph 5 below and expire upon satisfactory completion of said construction project or a period of 2 years, whichever occurs first. Said easement is subject to extensions as stated in paragraph 6 below.
- E. The parties have herein set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for said Grant Deed and TCE and shall relieve COUNTY of all further obligation or claims of whatever kind or nature on this account, or on account of the construction of the proposed public improvement in the manner proposed, including, but not limited to, claims arising out of its location, grade, or restriction of private access rights. OWNER acknowledges that COUNTY has informed OWNER as to the plans for the construction of the proposed public

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improvement in the manner proposed.

The parties do hereby agree as follows:

1. DEMISE OF PROPERTY

OWNER agrees to sell to COUNTY and COUNTY agrees to purchase from OWNER pursuant to the terms and conditions set forth in this AGREEMENT, the real property interests identified herein and collectively referred to as the PROPERTY, whereas said PROPERTY is required for the construction of the **Avenue 416 Fresno County to Road 56 Project**, hereinafter referred to as the "PROJECT".

2. PURCHASE PRICE AND ESCROW

COUNTY shall pay OWNER the sum of \$560.00, the "Purchase Price", for the PROPERTY and TCE, which the parties agree includes and is allocated as follows:

The sum of \$ 0.00 for fee title;

The sum of \$ 560.00, for the use of a Temporary Construction Easement conveyance term of 2 years

The sum of \$ 0.00, for damages. OR Cost to Cure Damages (reconnect water pipeline to new pipeline at right of way)

Total compensation of \$560.00.

The Escrow Agent shall deliver the Purchase Price to OWNER when title to the property rights vest in COUNTY free and clear of all recorded and unrecorded liens, encumbrances, assessments, easements, leases (recorded and/or unrecorded), and taxes unless otherwise indicated in the Escrow Instructions.

This transaction shall be handled through an escrow at Chicago Title Company, hereinafter "Escrow Agent", under Escrow Number N/A, hereinafter "Escrow", located at N/A.

2.1 WAIVER OF ESCROW/ASSIGNMENTS OF PROCEEDS

Owner and County acknowledge the property to be transferred is the underlying fee title to property previously granted to Tulare County by way of an easement for road purposes. In addition a Temporary Construction Easement is being granted. Since no new encumbered permanent rights are to be acquired Owner and County reserve the right to forego an escrow and County will pay the purchase price directly to Owner. Owner and County agree by initialing the paragraph to forego escrow.

County

MS

Owner

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3. DELIVERY OF DOCUMENTS/ESCROW

The Grant Deed, Temporary Construction Easement and Escrow Instructions shall be executed and delivered by OWNER to COUNTY for the purpose of placing them into Escrow. COUNTY shall not be deemed to have accepted delivery of the PROPERTY until such time as the Grant Deed is recorded in the Official Records of the County of Tulare, California. The Temporary Construction Easement, if used, may or may not be recorded, as determined by COUNTY. COUNTY shall pay all costs to close Escrow, including escrow fees, reconveyance fees, document preparation fees, delivery charges, and recording fees as may be incurred in this transaction.

4. PAYMENT OF MORTGAGE OR DEED OF TRUST

Upon demand by a mortgagee under a mortgage, or a beneficiary under a deed of trust, recorded against the PROPERTY, made in writing to COUNTY prior to the close of Escrow, COUNTY may, through Escrow, make payable to the mortgagee or beneficiary entitled there under, an amount not to exceed the Purchase Price under this AGREEMENT. If this section is made applicable by the demand above described, then the mortgagee or beneficiary shall, at the close of Escrow, furnish the OWNER with good and sufficient receipt showing the monies thus tendered through Escrow credited against the indebtedness secured by said mortgage or deed of trust.

5. POSSESSION

OWNER agrees and hereby grants to COUNTY and its authorized agents and contractors permission to enter upon the PROPERTY described herein for purposes of performing activities related to and incidental to the construction of the PROJECT, inclusive of the right to remove and dispose of any improvements, prior to the OWNER receiving the Purchase Price. Such possession and use of the PROPERTY by COUNTY may commence on the date of full execution of this agreement by all parties.

6. OPTION TO EXTEND TEMPORARY CONSTRUCTION EASEMENT

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OWNER agrees that upon the expiration of the TCE, if any, COUNTY has the option to extend the term of the TCE as to the entire TCE area, or any portion thereof, for up to N/A months. The rate for the extended use of the TCE area shall be \$0.00 per year. COUNTY shall provide OWNER with the written notice of its intent to extend the term of the TCE at least thirty (30) days prior to the expiration of the TCE.

7. RESTORATION OF TEMPORARY CONSTRUCTION EASEMENT AREA

Upon completion of the project, COUNTY shall restore, replace or cause to be replaced said TCE area to a similar or like condition to that existing on the date of this Agreement. COUNTY agrees to coordinate its construction activities in a way that minimizes interference with OWNER's operations on OWNER's real property outside the FEE and TCE area (Remainder).

8. RECONSTRUCTION OF OWNER'S REMAINDER PROPERTY

OWNER further understands and agrees that included in the amount shown in Clause 2 above are monies being paid to OWNER to perform the following work:

See Exhibit "C" – Special Provisions

COUNTY will also, at time of project construction and at no expense to OWNER, construct new driveway approach, as necessary, to serve the property remainder.

9. LEASE WARRANTY

OWNER warrants there are no oral or written leases on any portion of the PROPERTY except with N/A, and OWNER further agrees to hold COUNTY harmless and reimburse COUNTY for any and all of its losses and expenses occasioned by reason of any lease of said Land by any tenant of OWNER.

10. COUNTY'S USE AND LIABILITY

COUNTY shall indemnify, defend, and hold harmless OWNER, its directors, officers, affiliates, agents, and employees from and against any and all claims, demands, actions, losses, liabilities, damages, and costs, caused by COUNTY's activities allowed by this Agreement except and in proportion to the extent caused by an act or omission of OWNER or OWNER's agents, representatives, employees, consultants and/or contractors. The foregoing indemnity shall also be inapplicable to any adverse condition or defect on or affecting the PROPERTY not caused by COUNTY or its employees, agents, contractors, or subcontractors but discovered or impacted during their activities; provided, however, that COUNTY's indemnification obligations shall apply to the extent such adverse condition or defect is exacerbated by COUNTY's actions.

Furthermore and subject to the work outlined in Clause 8 above, COUNTY agrees to assume responsibility for any damages to OWNER's Remainder Property caused by reason of COUNTY's use of the PROPERTY under this AGREEMENT, and will, at COUNTY's option, either repair or pay for such damage.

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11. NOTICES

Any notice that either party may or is required to give the other shall be in writing, and shall be either personally delivered or sent by regular U.S. Mail, to the following address:

TO COUNTY:

General Services
Property Management
5953 So. Mooney Boulevard
Visalia, CA 93277

TO OWNER:

Dino Partners, L. P.,
Att: Mike Jackson
10693 E. Davis Ave
Kingsburg Ca, 93631

12. SEVERABILITY

If any provision in this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force without being impaired.

13. GOVERNING LAW

This AGREEMENT shall be governed by and construed in accordance with the laws of the State of California.

14. PUBLIC PURPOSE

COUNTY requires the PROPERTY for the PROJECT, and COUNTY can seek to acquire the PROPERTY through the exercise of its power of eminent domain.

15. AUTHORITY AND EXECUTION

This AGREEMENT, which is valid, only when executed by COUNTY, constitutes the complete understanding and agreement of the parties hereto and no oral representation shall in any manner vary the terms hereof or be binding.

16. ESCROW

While OWNER and COUNTY anticipate that escrow will close as provided herein, in the event that a dispute arises during the course of said escrow between OWNER, COUNTY and/or the escrow holder, or between OWNER and any third-party claimant to any or all of the proceeds of said escrow, and it becomes necessary for COUNTY to file a condemnation action then:

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A. COUNTY shall remain in possession and the compensation provided for in this agreement shall draw interest as prescribed at the apportionment rate calculated by the Controller as the rate of earning by the Surplus Money Investment Fund for each six-month period. OWNER shall be entitled to receive interest on the sum received as compensation pursuant to this agreement for OWNER's interest in the Property beginning at the date of possession provided for in Paragraph 5 herein.

B. OWNER waives all claims and defenses challenging COUNTY's right to acquire the PROPERTY by eminent domain in the event that COUNTY files any subsequent eminent domain proceeding, and agrees that the COUNTY has the right to acquire the PROPERTY by eminent domain and that the public interest and necessity require the project; the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; the PROPERTY is necessary for the project; and an offer in an amount no less than the full amount of the COUNTY's approved appraisal was made to OWNER. OWNER agrees that the total amount of compensation that shall be awarded is the sum provided in Paragraph 2 plus interest as provided in Paragraph 16 A herein.

17. OWNER'S INDEMNIFICATION

OWNER covenants and agrees to indemnify and hold COUNTY harmless from any and all claims that third parties may make or assert with respect to the title to the property and any improvements therein. The OWNER's obligation to indemnify COUNTY shall not exceed the purchase price.

18. INDEMNITY AND WHOLE HARMLESS CLAUSE RELATING TO HAZARDOUS SUBSTANCES

OWNER warrants that, to the best of OWNER's knowledge, the PROPERTY (including surface and subsurface soils, groundwater on and underneath the Property) is free of petroleum products, and other hazardous materials (including, without limitation, "hazardous substances," "hazardous materials," or "toxic substances" as defined by Section 311 of the Clean Water Act (33 U.S.C. section 1251, et seq.), Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601 et seq.) and "Hazardous waste and substances" as defined by Sections 25117 and 25316 of the California Health and Safety Code. County reserves the right, however, to require OWNER to remediate, and/or pay remediation costs relating to, hazardous substance which OWNER knew or should have known existed or was present at the Subject Property, and failed to disclose. OWNER agrees to indemnify and hold COUNTY harmless against any and all claims arising out of the existence of hazardous substances or hazardous waste in the soil or ground water.

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19. ENTIRE AGREEMENT

The performance of this AGREEMENT constitutes the entire consideration for the conveyances from OWNER and shall relieve COUNTY of all further obligation or claim on this account, or on account of the location, grade or construction of the proposed public improvement and related facilities and/or structures.

No addition or modification of any term or provision shall be effective unless set forth in writing and signed by both OWNER and COUNTY.

This AGREEMENT shall bind the respective heirs, personal representatives, successors, and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as follows:

OWNER:

Dated this 16 day of Dec, 2016

Dino Partners, L. P. a California Limited Partnership

BY _____

BY [Signature]

Title _____

Title Manager

COUNTY OF TULARE

Dated this _____ day of _____, 20__

BY _____
Chairman, Board of Supervisors

Recommended By:

[Signature: Robert Newby]
Robert Newby
Property Manager

Approved as to Form:
County Counsel

[Signature: Jennifer Nielsen]
By: Deputy County Counsel
#2014888



ATTEST: MICHAEL C. SPATA
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

AVENUE 416 FRESNO COUNTY LINE TO ROAD 56 WIDENING PROJECT

EXHIBIT "A"

N/A

No right of way acquired

AVENUE 416 FRESNO COUNTY LINE TO ROAD 56 WIDENING PROJECT

EXHIBIT "B"

N/A

No right of way acquired

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EXHIBIT "A-1"

Temporary Construction Easement

Exhibit "A- 1"

Avenue 416
Temporary Construction Easement
APN: 012-060-013
Owner: Home Vineyard Co.

That portion of the Southwest quarter, of the Southwest quarter, of Section 9, Township 16 South, Range 23 East, Mount Diablo Base and Meridian, in County of Tulare, State of California, according to the official plat thereof, more particularly described as follows;

Commencing for reference at the Southeast corner of said Southwest quarter of the Southwest quarter;

Thence, North 0°03'46" West, along the East line, of said Southwest quarter, of the Southwest quarter, 99.55 feet, to the Northeast corner of that certain parcel of land conveyed to the County of Tulare, per Grant Deed recorded September 30, 2011, as Document No. 2011-0057547, Tulare County Records;

Thence, South 89°56'14" West, along the Northerly line of said County of Tulare parcel, 20.00 feet, to a point situated on the West right of way line of Road 42, and the TRUE POINT OF BEGINNING of the portion to be described;

Thence, continuing along said Northerly line, North 88°28'00" West, 799.33 feet, which line is hereinafter described as "Course A";

Thence, continuing along said Northerly line, North 85°33'14" West, 25.13 feet;

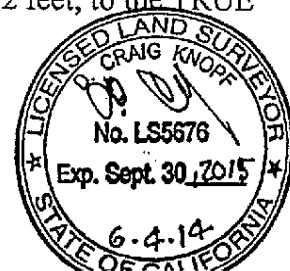
Thence North 1°05'05" East, 13.72 feet, to a point situated on a line which is parallel with and distant 15.00 feet North, measured at right angles from, "Course A" herein above described;

Thence, South 88°28'00" East, along said parallel line, 809.11 feet, to a point situated on a line which is parallel with and distant 35.00 feet West, measured at right angles from, said East line, of the Southwest quarter, of the Southwest quarter;

Thence, North 0°03'46" West, along said parallel line, 178.89 feet;

Thence, at right angles, North 89°56'14" East, 15.00 feet, to a point on said West right of way line of Road 42;

Thence, South 0°03'46" East, along said West right of way line, 194.32 feet, to the TRUE POINT OF BEGINNING.



Said description contains 15,037 square feet (0.35 acres) more or less

The bearings and distances in this description are based on the California State Plane Coordinate System, NAD83, Zone 4. All distances are grid distances. To convert the grid distances to ground distances, divide the grid distances by the combined scale factor of 0.99993092. All areas listed are ground areas.

*Quad Knopf, Inc. 05/29/14
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AVENUE 416 FRESNO COUNTY LINE TO ROAD 56 WIDENING PROJECT

EXHIBIT "B-1"

Temporary Construction Easement

LEGEND

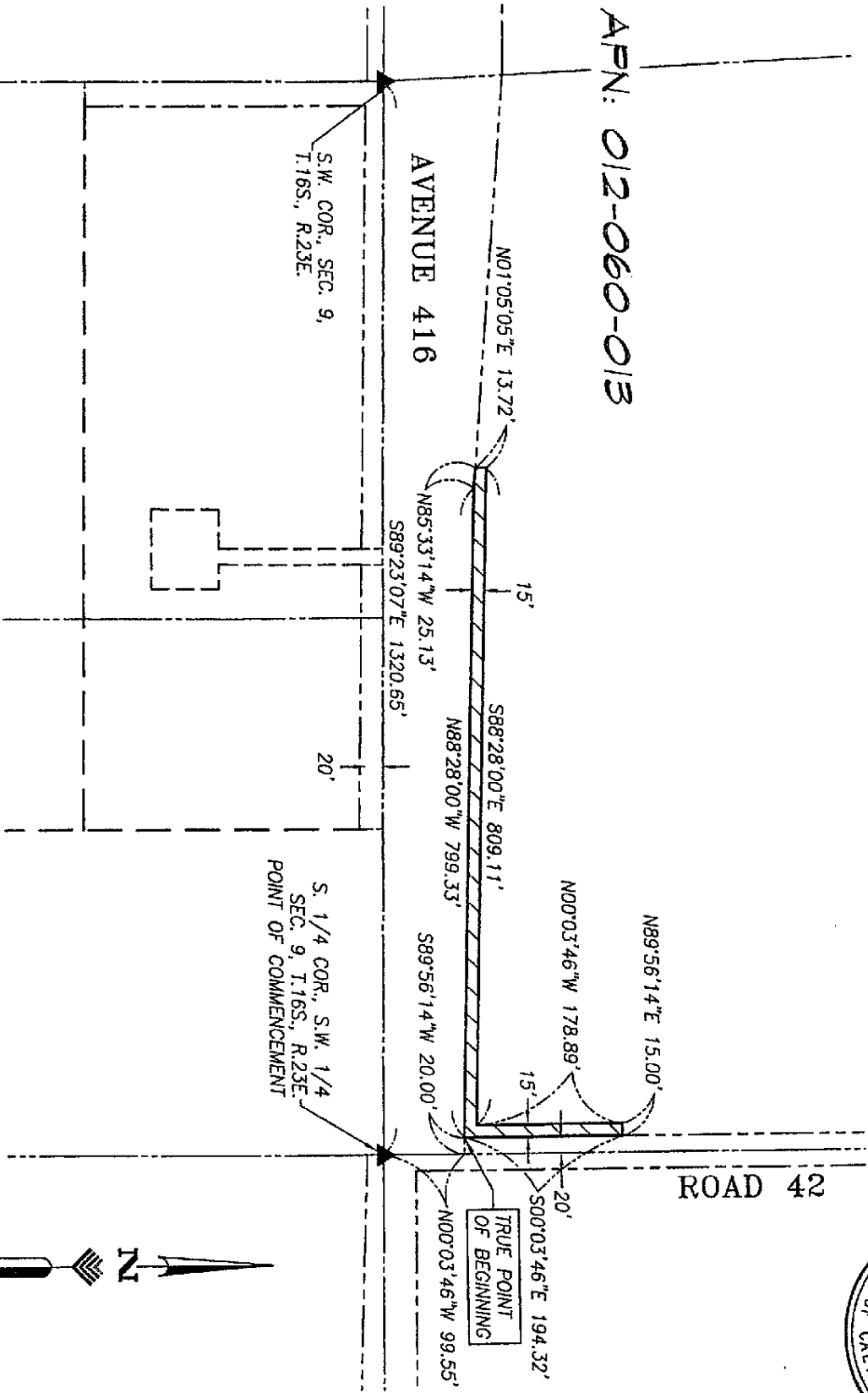
TEMPORARY CONSTRUCTION EASEMENT
AREA 15,037 S.F., 0.35 ACRES



**TULARE COUNTY
RESOURCE MANAGEMENT
AGENCY**
5961 SOUTH MOONEY BLVD.
VISALIA, CA 93277



APN: 012-060-013



S. 1/4 COR., S.W. 1/4
SEC. 9, T.16S., R.23E.
POINT OF COMMENCEMENT

S.W. COR., SEC. 9,
T.16S., R.23E.

SCALE: 1" = 200'

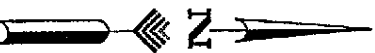


Exhibit "B-1"

SHEET 1 OF 1

NOTE:
THE BEARINGS AND DISTANCES ON THIS MAP ARE BASED ON THE CALIFORNIA STATE
PLANE COORDINATE SYSTEM, NAD83, ZONE 4. ALL DISTANCES ARE GRID DISTANCES.
TO CONVERT GRID DISTANCES TO GROUND DISTANCES DIVIDE THE GRID DISTANCE BY
THE COMBINED SCALE FACTOR OF 0.99993092. ALL AREAS ARE GROUND AREAS.

FILE NAME: L:\Projects\2011\110179\ACAD\Legals\Exhibit B\Completed\110179---APN 012-060-013 - 7-2 TCE and ROW.dwg - LAST SAVE: 5/29/2014 4:51:32 PM PDT - BY: Jocelyn L



TEMPORARY CONSTRUCTION EASEMENT
AVENUE 416
HOME VINYARD CO.
APN 012-060-013

AVENUE 416 FRESNO COUNTY LINE TO ROAD 56 WIDENING PROJECT

**EXHIBIT "C"
Special Provisions**

Owner: Dino Partners, L. P., a California
Limited Partnership

APN: 012-060-013

Construction Contract Work

It is mutually agreed and understood that at no expense to the grantor(s) and at the time of construction, the COUNTY will provide the following:

- 1.
- 2.

Improvements

It is mutually agreed and understood that the purchase price recited in Paragraph 2 includes compensation to Grantor for the following improvements:

- 1.

Total Severance Damages is \$0.00