

**RESOLUTION 12-10**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX  
AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN EASEMENT AGREEMENT WITH  
FAIRFAX CENTER PROPERTIES, LLC FOR THE CONSTRUCTION AND MAINTENANCE OF A  
PUBLIC SIDEWALK ON PASTORI AVENUE**

WHEREAS, the Town was awarded a grant funded through the Federal Non-Motorized Transportation Pilot Project (NTPP) for the specific purpose of improving pedestrian, bicycle and other non-motorized transportation; and

WHEREAS, the Town Council has an adopted strategic plan that places creating and improving pedestrian, bicycle and other non-motorized transportation as the highest priority; and

WHEREAS, the project provides a critical link from the north side of Town to the south side from Willow Ave. and Sir Francis Drake Blvd. to Pastori and Center Blvd. including access to the new location of the Good Earth Natural Foods store; and

WHEREAS, the project involves the installation of a new sidewalk on Pastori Ave. from Center Blvd. to Sir Francis Drake Blvd. on the west side of Pastori Ave; and

WHEREAS, part of the land that is needed to construct the new sidewalk is on private property which requires a public easement over this private property for the Town to construct and maintain the sidewalk in perpetuity.

WHEREAS, the owner of the private property, Fairfax Center Properties, LLC, has agreed to grant the Town the easement in exchange for the Town's agreement to construct the sidewalk.

**NOW, THEREFORE, BE IT RESOLVED**, that the Town Council of the Town of Fairfax, hereby authorizes the Town Manager to enter into the Easement Agreement with Fairfax Center Properties, LLC related to the property described in Exhibit A (Legal Description) attached hereto.

**BE IT FURTHER RESOLVED** that the Town Manager is authorized to accept the property interest contained in the Easement Agreement and to record said Agreement in the official records of the County of Marin.

The foregoing Resolution was duly introduced and adopted at a regular meeting of the Town Council of the Town of Fairfax held in said Town on the 1st day of February, 2012, by the following vote:

AYES:  
NOES:  
ABSENT:

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Pam Hartwell-Herrero, MAYOR

Attest:

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Judy Anderson, Town Clerk

**AGENDA ITEM # 11**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

Town of Fairfax  
142 Bolinas Road  
Fairfax, California 94930

APN: 002-131-12

[Space Above For Recorder's Use Only]

Recording Fee: Exempt pursuant to California  
Government Code Section 27383

### EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "**Agreement**") is made as of \_\_\_\_\_, 2012, by and between FAIRFAX CENTER PROPERTIES, LLC ("**Grantor**"), and the TOWN OF FAIRFAX, a municipal corporation ("**Grantee**").

#### RECITALS:

This Agreement is entered into with reference to the following facts:

- A. Grantor is the owner of certain real property located at 720 Center Boulevard, Fairfax, California, which is not improved with a public sidewalk.
- B. The Town has received funding through the Non-motorized Transportation Pilot Program to improve pedestrian access to the downtown area by constructing a new sidewalk on Pastori Avenue between Sir Francis Drake Boulevard and Center Boulevard.
- C. Grantor has agreed to convey an easement (the "**Easement**") to the Town on that certain property described more particularly on Exhibit A hereto (the "**Property**") in exchange for Grantee's covenant to construct and maintain a public sidewalk on the Property, all in accordance with the terms hereof.
- D. The grant of the Easement and the construction of a sidewalk thereon pursuant to this Agreement are in the best interests of the Town of Fairfax (the "**Town**"), and the health, safety and welfare of residents and taxpayers of the Town, and are in accord with the public purposes and provisions of applicable state and local laws.

## AGREEMENT:

NOW, THEREFORE, for valuable consideration, received and acknowledged as good and sufficient, the parties hereto agree as follows:

1. GRANT OF EASEMENT. The Grantor does hereby grant and convey to the Grantee an easement for the construction and maintenance of a public sidewalk (the “**Easement**”) on the real property described on Exhibit A attached hereto and hereby incorporated (the “**Property**”). The Easement shall constitute a binding servitude upon the Property for the benefit of the Grantee, and to that end the Grantor hereby covenants on behalf of itself and its heirs, successors, and assigns, with the Grantee, its successors and assigns, such covenants being deemed to run as a binding servitude, in perpetuity, upon the property, to do and to refrain from doing upon the Property such activities that will impede the use of the Easement for sidewalk purposes, and hereby declare and impose the restrictions described herein upon the use and enjoyment of the Property.

2. PUBLIC’S RIGHTS; GRANTEE RIGHT TO ENTER. Grantor acknowledges that the Easement shall be used for public sidewalk purposes and that members of the public shall have the right to use the sidewalk at all times. The Grantee shall also have the right to enter onto the Property and the property immediately adjacent to the Property that is owned by Grantor to perform any maintenance thereon at reasonable times approved by Grantor as may be necessary to keep the Easement in good condition and repair. All costs of maintenance performed by the Grantee hereunder shall be paid by the Grantee.

3. CONSTRUCTION OF SIDEWALK. The Grantee hereby agrees to undertake the construction of the sidewalk on the Easement within one year of the date hereof. Construction of the sidewalk, including but not limited to landscaping, irrigation and construction safety and lighting features, shall be in accordance with plans approved prior to the commencement of construction by the Grantor, whose approval shall not be unreasonably withheld, delayed or conditioned. The cost of developing and constructing the sidewalk shall be borne by Grantee, and Grantee shall maintain the Easement in clean condition during the construction of the sidewalk. If construction of the sidewalk is not completed within one year of the recordation of this Agreement, the Agreement shall terminate and Grantee shall record a quitclaim deed relinquishing all rights hereunder within thirty (30) days of termination.

4. MAINTENANCE. Grantee shall be solely responsible for the repair and maintenance of the sidewalk, landscaping and irrigation on the Easement after it is constructed and hereby covenants to keep and maintain the Easement in a clean condition at all times. Grantee shall maintain liability insurance with its customary coverage and limitations for any occurrence on the easement arising from Grantee’s negligence or intentional misconduct.

5. RUNNING WITH THE LAND. The easements, rights of way, covenants, conditions and restrictions provided herein are interests in the Property. All rights and obligations provided in this Agreement shall be appurtenant to and shall run with the Property and the benefits and burdens of this Agreement shall bind and benefit all parties having or acquiring any right, title or interest in all or any portion of the Property.

6. ATTORNEYS' FEES. Should Grantor or Grantee institute any action or proceeding to enforce this Agreement, or for damages by reason of any alleged breach of this Agreement, or for a declaration of rights hereunder, the prevailing party in any such action or proceeding shall be entitled to receive from the non-prevailing party all costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the prevailing party in connection with such action or proceeding.

7. SEVERABILITY. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect, provided that the invalidity or unenforceability of such provision does not materially adversely affect the benefits accruing to any party hereunder.

8. ENTIRE AGREEMENT. This Agreement, including the exhibits attached hereto, contains the entire agreement between the parties hereto pertaining to the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the parties hereto pertaining to such subject matter. Furthermore, this Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by the parties hereto.

9. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the undersigned have executed this Easement Agreement as of the day and year set forth above.

GRANTOR:

Fairfax Center Properties, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

GRANTEE:

Town of Fairfax, a municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California )  
County of Marin )<sup>ss</sup>

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

Place Notary Seal Above

Signature \_\_\_\_\_  
Signature of Notary Public

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California )  
County of Marin )<sup>ss</sup>

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_

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County of Marin         ) <sup>SS</sup>

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Signature \_\_\_\_\_  
Signature of Notary Public

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

Exhibit "A"  
Legal Description  
Sidewalk Easement to the Town of Fairfax

Lying within the Town of Fairfax, County of Marin, State of California and being a portion of Parcel Two of the Lands of Fair-Anselm Center, a corporation organized under the laws of the State of California, as described by Deed recorded on June 9, 1958 in Book 1194, at Page 178, Official Records of Marin County and as shown on that certain Record of Survey filed in Book 2001 of Maps, at Page 78, Marin County Records, said portion is more particularly described as follows:

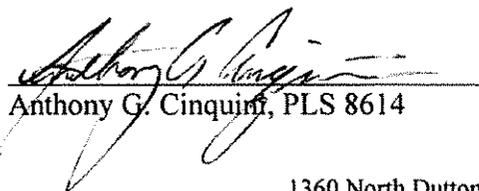
Beginning at the westerly intersection of Sir Francis Drake Boulevard and Pastori Avenue, also being the most northerly corner of said Lands of Fair-Anselm Center as shown on said Record of Survey; thence along the common line of Pastori Avenue and said Lands, South 10°06'35" West 270.04 feet to the southeast corner of said Lands, said southeast corner also being the northwesterly intersection of Pastori Avenue and Center Boulevard as shown on said Record of Survey; thence along the common line of said Lands and Center Boulevard, along a non-tangent curve to the left, from which the radius point bears South 29°40'00" West, with a radius of 1,027.85 feet, through a central angle of 00°25'33", for an arc length of 7.64 feet to a point of cusp; thence leaving said common line, along a non-tangent curve to the left, from which the radius point bears North 45°43'50" West, with a radius of 6.50 feet, through a central angle of 34°07'28", for an arc length of 3.87 feet; thence North 10°08'42" East 37.37 feet; thence North 06°17'56" East 15.16 feet; thence North 10°08'42" East 162.00 feet; thence along a curve to the left with a radius of 75.00 feet, through a central angle of 21°26'24", for an arc length of 28.06 feet; thence North 17°04'57" East 5.96 feet; thence along a non-tangent curve to the left, from which the radius point bears South 74°13'23" West, with a radius of 78.50 feet, through a central angle of 10°29'43", for an arc length of 14.38 feet to the northerly line of said Lands, also being the southerly line of said Sir Francis Drake Boulevard as shown on said Record of Survey; thence along the common line of said Lands and Sir Francis Drake Boulevard, North 88°51'35" East 19.22 feet to the Point of Beginning.

Containing 2,022 Square Feet more or less

Being a portion of APN 002-131-12

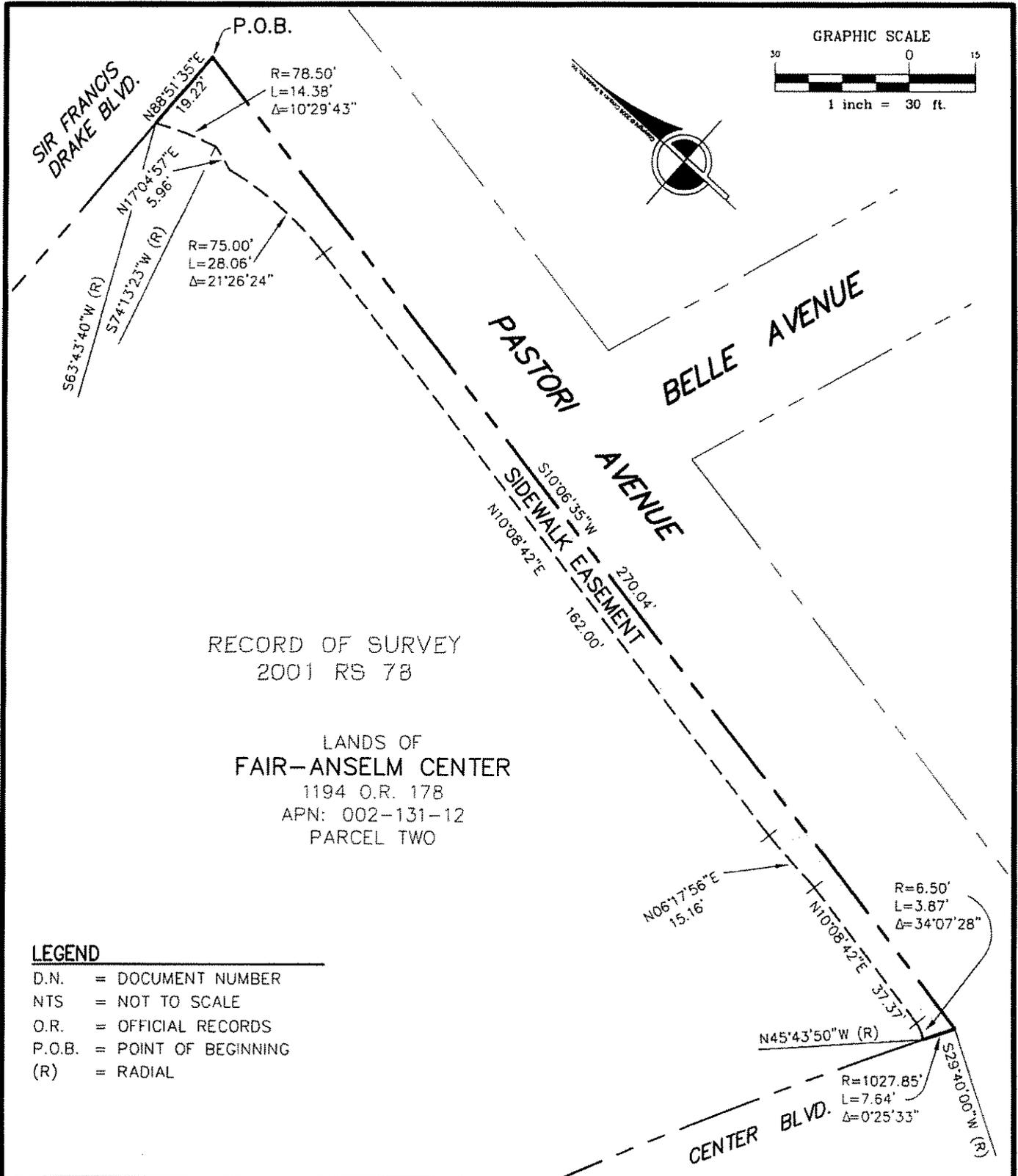
Basis of Bearings: South 75°44'03" East between found ¾" iron pipes tagged RCE 12094 marking the common line between said Lands of Fair-Anselm Center and Sir Francis Drake Boulevard, shown as S 75°44'03" E 455.40 feet on said Record of Survey filed in Book 2001 of Maps, at Page 78, Marin County Records.

Prepared by Cinquini & Passarino, Inc.

  
Anthony G. Cinquini, PLS 8614



6 JAN 2012  
Date



OWNER AND MAILING ADDRESS	PROPERTY AREAS	TOWN OF FAIRFAX		
FAIR ANSELM CENTER	ORIGINAL PARCEL: <u>2.62 Acres</u> SIDEWALK EASEMENT <u>2,022 SqFt</u>	SIDEWALK EASEMENT FAIR ANSELM CENTER TO TOWN OF FAIRFAX		
A.P. No. <u>002-131-12</u>		Scale: <u>1"=30'</u>	Date: <u>1/6/12</u>	
O.R. No. <u>1194 O.R. 178</u>	CITY ACQUISITION DEED O.R. _____	DWN. CHK.	APPROVED	FILE NO.

**CERTIFICATE OF ACCEPTANCE**  
(California Government Code Section 27281)

This is to certify that the interest in real property conveyed by that certain Easement Agreement dated as of \_\_\_\_\_, 2012, by and between Fairfax Center Properties, LLC, and the Town of Fairfax, a municipal corporation (the "Town"), is hereby accepted by the undersigned officer on behalf of the Town pursuant to the authority conferred by Resolution 12-10 of the Town Council of the Town of Fairfax adopted on February 1, 2012, and the Grantee consents to the recordation thereof by its duly authorized officer.

Dated as of: \_\_\_\_\_, 2012.

\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Town Clerk