

IMPLEMENTATION AGREEMENT  
AUTHORIZING THE COACHELLA VALLEY ASSOCIATION  
OF GOVERNMENTS TO MANAGE AND ADMINISTER THE  
REGIONAL TRANSPORTATION PROGRAM

THIS AGREEMENT is made and entered into on the 11th day of May, 1989 pursuant to Government Code Section 6500 et seq., other pertinent provisions of law, and the Coachella Valley Association of Governments Joint Powers Agreement entered into on or about November, 1973, and as amended and restated on June 26th, 1989, by and between five or more of the following public agencies:

- (a) County of Riverside
- (b) City of Coachella
- (c) City of Indio
- (d) City of La Quinta
- (e) City of Indian Wells
- (f) City of Palm Desert
- (g) City of Rancho Mirage
- (h) City of Cathedral City
- (i) City of Palm Springs
- (j) City of Desert Hot Springs

## R E C I T A L S

A. Each member and party to this Agreement is a governmental entity established by law with full powers of government and legislative, administrative, and other related fields. The purpose of this Agreement is to authorize the Coachella Valley Association of Governments pursuant to that Joint Powers Agreement, entered into on or about November, 1973, and as restated and amended on June 26,, 1989, to manage and administer the Transportation Uniform Mitigation Fee Program and ordinances and resolutions pertaining to same.

B. Each member and party to this agreement finds that future development within the Coachella Valley to the year 2010 will result in traffic volumes in excess of capacity on the regional system of streets, arterials and highways.

C. The parties find that failure to expand the capacity of the existing circulation system will cause unacceptable levels of congestion on the streets, arterials and highways of the regional system.

D. The parties find that existing and future sources of revenue are inadequate to fund substantial portions of the regional transportation system improvements needed to avoid unacceptable levels of congestion and related adverse impacts.

E. The parties find and declare that the Coachella Valley Area Transportation Study has determined the extent to which the new development of land will generate traffic volumes impacting the roadway system by the year 2010 and have determined that the Transportation Uniform Mitigation

Fee Ordinance (Exhibit A) establishes a fair and equitable method to fund costs of transportation improvements necessary to accommodate the traffic volumes generated by future development of land within each city and county and within the Coachella Valley.

F. The parties find and determine that exactions from development will construct only a portion of local and regional facilities and that adoption of the Transportation Uniform Mitigation Fee Ordinance is necessary to insure the additional revenues needed to construct the improvements and accommodate traffic generated by land development.

G. It has been determined by the parties hereto that it is in the best interests of the respective parties to join together to administer the funds provided by the Transportation Uniform Mitigation Fee and to authorize the Coachella Valley Association of Governments to manage and administer the Transportation Uniform Mitigation Fee funds and improvements along with any other funds that are made available for regional streets and highways in the Coachella Valley.

H. The parties hereto recognize that, in order to serve the purposes stated herein, additional funding, other than that received from the above described fee, must be obtained. Each party has agreed to cooperate in obtaining additional financing, including, but not limited to, debt financing.

I. It is anticipated by the parties hereto that the Coachella Valley Association of Governments (hereafter "CVAG") shall administer the funds and the program generated for regional streets and highways in the Coachella Valley by

exercising the powers granted herein. It is further anticipated that the life of this Agreement is twenty-two (22) years, up to and including the year 2010.

I

PURPOSE AND POWERS.

1.1. Purpose of the Agreement.

Each member to this Agreement has the common power to plan for, acquire, construct, maintain, repair, manage, operate, impose fees for and incur indebtedness for and control facilities for the purpose of planning and constructing transportation facilities.

The purpose of this Agreement is to jointly exercise the foregoing common powers to oversee and implement the Transportation Uniform Mitigation Fee, manage the funds generated from such fees and any other funds designated to the planning, funding, design and construction of regional streets and highways in the Coachella Valley in accordance with the applicable laws of the State of California.

1.2. Powers.

CVAG through its Executive Committee is hereby authorized to perform all necessary functions to fulfill the purposes of this Implementation Agreement. The agency shall have the power in its own name to do any of the following:

a. To exercise jointly the common powers of its members in studying and planning ways and means to provide for the planning, design, financing and construction of transportation facilities throughout Coachella Valley;

b. To make and enter into contracts;



c. To contract for the services of engineers, attorneys, planners, financial consultants and separate and apart therefrom to employ such other persons, as it deems necessary;

d. To incur debts, liabilities, obligations, issue bonds, invest and reinvest or sell or exchange securities;

e. To adopt rules, regulations, policies, bylaws and procedures governing the operation of CVAG in accordance with the enumerated purposes contained herein;

f. To apply for an appropriate grant or grants under any federal, state, or local programs for assistance in developing the transportation program;

g. To receive gifts, contributions and donations of property, funds, services and other forms of financial assistance from persons, firms, corporations and any governmental entity;

h. To acquire, hold, and dispose of property by lease, lease purchase or sale;

i. To acquire property by eminent domain subject to conditions as set forth in Section 1.3 of this Agreement;

j. To lease, acquire, construct, manage, maintain, and operate any buildings, works, or improvements;

k. To sue and be sued in its own name;

l. To determine project priorities, to set design standards for projects, and to coordinate with the parties to oversee in construction of improvements;

m. To annually update the 5-year Capital Improvement Plan and set or adjust the appropriate standards for determining the amount of the mitigation fee; and

n. To the extent not herein specifically provided for, to exercise any powers in furtherance of the purpose of this Agreement in the manner of and according to the methods provided under applicable laws.

### 1.3 Power of Eminent Domain.

For the purpose of exercising eminent domain, to acquire property in furtherance of the purposes of this Agreement, the "legislative body" of CVAG shall be the Executive Committee of CVAG. Resolutions of Necessity may be adopted by a two-thirds vote of the Executive Committee with each member agency having one vote. The power of eminent domain as authorized herein is subject to veto by the jurisdictions within whose boundaries eminent domain is being exercised. A jurisdiction must exercise its veto by resolution, within sixty (60) days from the date of receipt of notification of the intent to exercise eminent domain within its boundaries.

## II.

### ADMINISTRATION OF UNIFORM TRANSPORTATION

#### MITIGATION FEE FUND

### 2.1. Imposition of Uniform Transportation Mitigation Fee.

On or before the effective date of this Agreement (or in the case of a new party, on or before that party becomes signatory to this Agreement), it is anticipated that

each party will adopt a Uniform Transportation Mitigation Fee in an amount equal to or more than the fee as recommended by CVAG requiring the payment of a mitigation fee as a condition of discretionary project approval, or other permit process, for the purposes of defraying the actual or estimated cost of constructing regional transportation improvements. Adoption of a Uniform Transportation Mitigation Fee is not required in order to be a party to this Agreement. However, if a party fails to adopt the fee or fails to impose such fee, or repeals the enabling ordinance or fee requirement, or otherwise disables itself from the collection and remittance of said fee to CVAG, such action shall result in forfeiture of that agency's share of the local portion of Measure A monies upon the effective date of said action. Said action shall not be deemed withdrawal of that party from this Agreement.

## 2.2. Annual Review of Fees.

The Executive Committee of CVAG shall annually review and, if necessary, amend the amount of the recommended mitigation fee to insure that it is a fair and equitable method of distributing the costs of the improvements necessary to accomodate traffic volumes generated by future growth.

The legislative body of each party shall annually undertake review of the mitigation fee and shall, if necessary, modify the fee to be imposed by the parties hereto to insure that it is a fair and equitable method of distributing the costs of the improvements necessary to

accommodate traffic volumes generated by future growth. Said fee imposed shall be equal to or greater than the amount as recommended by CVAG. The revised fee shall be imposed within one hundred and twenty (120) days.

### 2.3. Collection of Fees.

Each party to this Agreement that adopts the Transportation Uniform Mitigation Fee agrees to collect said fee imposed pursuant to its Transportation Uniform Mitigation Fee Ordinance and Resolution and remit the collected fees to CVAG to be placed in the CVAG Transportation Mitigation Trust Fund, along with any interest therefrom, on a quarterly basis.

In the event that any dispute arises as to the amount of fees assessed any person under the fee ordinance, any aggrieved person may appeal the decision regarding the fee to CVAG's Executive Committee, which decision shall be final. In the event that any party hereto becomes a party to litigation regarding the legality of the fee ordinance and resolution, or the fees imposed pursuant to the fee ordinance and resolution, the Executive Committee, where it deems appropriate, may defend such action or lend other assistance to said party in said action.

### 2.4. Holding of Fees.

The Executive Committee shall deposit, invest, account for and expend the fees in accordance with Gov. Code section 53077 and/or any other applicable statutes as enacted by the State of California.

The Executive Committee shall make annual findings for any funds remaining in the account longer than five years and refund any uncommitted funds plus interest pursuant to Government Code Section 66001, or as subsequently amended.

2.5. Annual Budget.

The Executive Committee shall adopt, upon the approval of a quorum of the members of the General Assembly, an annual budget, for the ensuing fiscal year, pursuant to procedures developed by the Committee.

2.6. Disbursements.

The Executive Director shall request warrants from the Treasurer in accordance with budgets approved by the General Assembly subject to quarterly review by the Executive Committee. Treasurer shall pay such claims or disbursements and such requisition for payment in accordance with rules, regulations, policies, procedures and bylaws adopted by the Executive Committee.

2.7. Accounts.

All funds of the Trust Fund shall be placed in a separate account or accounts. The receipt, transfer, or disbursement of such funds, during the term of this Agreement, shall be accounted for in accordance with generally accepted accounting principles applicable to governmental entities and pursuant to Gov. Code Section 6505 et seq. and any other applicable laws of the State of California. There shall be strict accountability of all funds. All revenues and expenditures shall be reported monthly to the Executive Committee.

2.8. Expenditures Within Approved Annual Budget.

All expenditures shall be made within the approved annual budget. No expenditures in excess of those budgeted shall be made without the approval of a majority of a quorum of the Executive Committee.

2.9. Audit of Trust Fund.

The records and accounts of the Trust Fund shall be audited annually by an independent certified public accountant and copies of such audit report shall be filed with the County Auditor, State Controller and each party to CVAG no later than fifteen (15) days after receipt of said audit by the Executive Committee.

2.10. Audit of Imposition and Collection of Fees.

The records and accounts, with respect to fee imposition and collection, of any party who imposes a mitigation fee shall be audited once within any six (6) month period at the request of the Executive Committee of CVAG or a majority of parties to this implementation agreement. Said audit shall be conducted by an independent certified public accountant and copies of such audit report shall be filed with each party to CVAG no later than fifteen (15) days after receipt of said audit by the Executive Committee.

III.

ADMISSION AND WITHDRAWAL OF PARTIES

3.1. Admission of New Parties

It is recognized that public entities, other than the original parties, may wish to participate in this Implementation Agreement. Additional Coachella Valley public

entities may become parties to this Implementation Agreement upon such terms and conditions as provided by the General Assembly or Executive Committee and with the consent of two-thirds (2/3) of the existing parties to this Implementation Agreement, evidenced by the execution of a written addendum to this Agreement, and signed by all of the parties including the additional party.

### 3.2. Withdrawal

It is fully anticipated that each party hereto shall participate in this Implementation Agreement until the purposes set forth in this Agreement are accomplished. The withdrawal of any party unless otherwise provided by the General Assembly or Executive Committee, shall be conditioned as follows:

- A. In the case of a withdrawal from this Agreement, following a properly noticed public hearing, written notice shall be given to CVAG, within 1 year and 90 days prior to the effective date of withdrawal;
- B. Withdrawal shall not relieve the party of its proportionate share of any debts or other liabilities incurred by CVAG prior to the date of the parties' notice of withdrawal.
- C. Withdrawal shall result in the forfeiture of that party's rights and claims relating to distribution of property and funds upon termination of this Agreement, as set forth in Section 4 below;
- D. Withdrawal from this Implementation Agreement shall not be deemed withdrawal from membership in CVAG.

E. Withdrawal shall result in the forfeiture of that party's rights and claims relating to distribution and use of the local portion of revenues generated from the  $\frac{1}{2}$  cent sales tax imposition pursuant to the provisions of County Tax Measure A only as it applies to a jurisdiction's area within the boundaries of the Coachella Valley Association of Governments.

3.3. Re-admission of Party.

Public entities that withdraw from this Agreement may be re-admitted as parties to this Agreement upon such terms and conditions as provided by the General Assembly or Executive Committee.

3.4. Subsequent Adoption or Re-imposition of Fee.

If a party who failed to adopt or impose the transportation mitigation fee, later adopts or re-adopts and imposes such fee in compliance with Section 2 of this Agreement, that party may, subject to such terms and conditions as provided by the General Assembly or Executive Committee, receive that agency's share of the local portion of Measure A monies.

IV.

TERMINATION AND DISPOSITION OF ASSETS

4.1. Termination.

CVAG shall continue to exercise the joint powers herein until the termination of this Agreement and any extension thereof or until the parties shall have mutually rescinded this Agreement; providing, however, that this Agreement shall continue to exist for the purposes of



disposing of all claims, distribution of assets and all other functions necessary to conclude the affairs of the subject program of this Agreement.

Termination shall be accomplished by written consent of all of the parties, or shall occur upon the withdrawal from the Implementation Agreement of a sufficient number of the agencies enumerated herein so as to leave less than five of the enumerated agencies as remaining parties to this Implementation Agreement.

#### 4.2. Distribution of Property and Funds.

In the event of the termination of this Implementation Agreement, any property interest remaining in the Transportation Uniform Mitigation Fund following the discharge of all obligations shall be disposed of as the Executive Committee shall determine. The Executive Committee shall consider, to the extent legally possible, the objective of returning to each party a proportionate return on the contributions made to such properties by such parties, less previous returns, if any, and provided that said property interests shall be utilized to construct major arterial transportation facilities which accomplish the purposes of this Agreement.

### V.

#### MISCELLANEOUS

##### 5.1. Effective Date.

This Agreement shall be effective and CVAG shall be authorized to proceed under this Implementation Agreement

when this Agreement has been executed by any five or more of the public agencies enumerated herein.

5.2. Partial Invalidity.

If any one or more of the terms, provisions, sections, promises, covenants or conditions of this Implementation Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, sections, promises, covenants and conditions of this Implementation Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

5.3. Amendments.

This Implementation Agreement may be amended from time to time with the approval of not less than two-thirds (2/3) of the members to the Implementation Agreement, with the exception that any amendment with respect to the veto power over eminent domain must be by unanimous approval of CVAG member jurisdictions.

5.4 Arbitration.

Any controversy or claim between any two or more parties to this Agreement, or between any such party or parties and CVAG, with respect to disputes, demands, differences, controversies, or misunderstandings arising in relation to interpretation of this contract, or any breach thereof, shall be submitted to and determined by arbitration. The party desiring to initiate arbitration shall give notice of its intention to arbitrate to every other party to this

Agreement and CVAG. Such notice shall designate as "respondents" such other parties as the initiating party intends to have bound by any award made therein. Any party not so designated but which desires to join in the arbitration may, within ten (10) days of service upon it of such notice, file a response indicating its intention to join in and to be bound by the results of the arbitration, and further designating any other parties it wishes to name as a respondent. Within twenty (20) days of the service of the initial demand for arbitration, the initiating party and the respondent shall each designate a person to act as an arbitrator. The two designated arbitrators shall mutually designate a third person to serve as arbitrator.

The three arbitrators shall proceed to arbitrate the matter in accordance with the provisions of Title 9 of Part 3 of the Code of Civil Procedure, Section 1280 et. seq. The parties to this Agreement agree that the decision of the arbitrators will be binding.

#### 5.5. Execution.

The Board of Supervisors of the County of Riverside and the City Councils of the cities enumerated herein have each authorized execution of this Agreement as evidence by the authorized signatures below respectively.

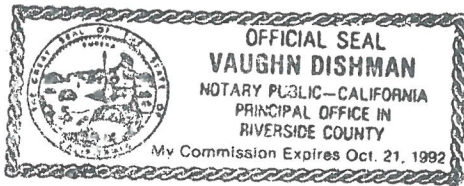
COUNTY OF RIVERSIDE

By Patricia A. Larson  
 Supervisor Patricia Larson  
 Authorized representative  
 of the Board of Supervisors

STATE OF CALIFORNIA           )  
   ) ss  
 COUNTY OF RIVERSIDE        )

On June 26, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared Patricia Larson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as authorized representative of the Board of Supervisors of the County of Riverside and acknowledged to me that the County of Riverside executed it.

WITNESS my hand and official seal.



Vaughn Dishman  
 NOTARY PUBLIC

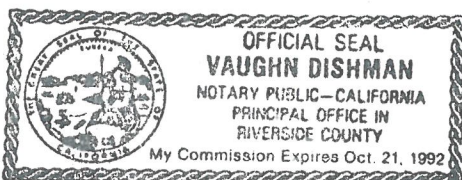
CITY OF COACHELLA

By Charles Ellis  
 Mayor ~~Yolanda Caba~~ CHARLES ELLIS

STATE OF CALIFORNIA           )  
   ) ss  
 COUNTY OF RIVERSIDE        )

On June 26, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared ~~Yolanda Caba~~ Charles Ellis, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as Mayor <sup>PRO TEM</sup> of the City of Coachella and acknowledged to me that the City of Coachella executed it.

WITNESS my hand and official seal.



Vaughn Dishman  
 NOTARY PUBLIC

CITY OF INDIO

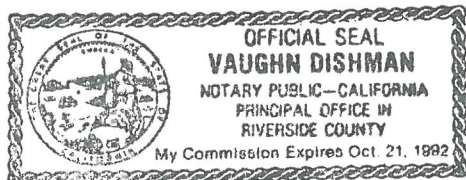
By *Darwin D. Oakley*  
Mayor Darwin Oakley

STATE OF CALIFORNIA           )  
  ) ss  
COUNTY OF RIVERSIDE        )

On June 26, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared Darwin Oakley, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as Mayor of the City of Indio and acknowledged to me that the City of Indio executed it.

WITNESS my hand and official seal.

*Vaughn Dishman*  
NOTARY PUBLIC



CITY OF LA QUINTA

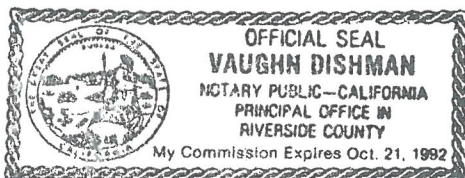
By *John J. Pena*  
Mayor John Pena

STATE OF CALIFORNIA           )  
  ) ss  
COUNTY OF RIVERSIDE        )

On June 26, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared John Pena, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as Mayor of the City of La Quinta and acknowledged to me that the City of La Quinta executed it.

WITNESS my hand and official seal.

*Vaughn Dishman*  
NOTARY PUBLIC





CITY OF INDIAN WELLS

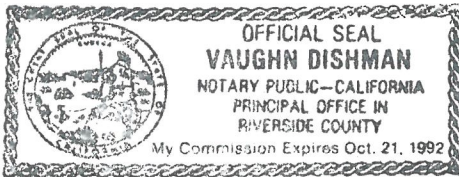
By *Richard R. Oliphant*  
Mayor Richard Oliphant

STATE OF CALIFORNIA       )  
                                  ) ss  
COUNTY OF RIVERSIDE     )

On June 26, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard Oliphant, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as Mayor of the City of Indian Wells and acknowledged to me that the City of Indian Wells executed it.

WITNESS my hand and official seal.

*Vaughn Dishman*  
NOTARY PUBLIC



CITY OF PALM DESERT

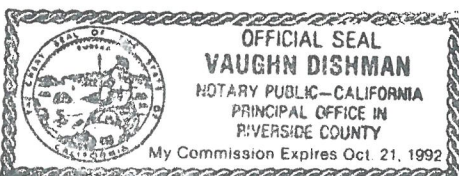
By *Roy Wilson*  
Mayor Roy Wilson

STATE OF CALIFORNIA       )  
                                  ) ss  
COUNTY OF RIVERSIDE     )

On June 26, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared Roy Wilson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as Mayor of the City of Palm Desert and acknowledged to me that the City of Palm Desert executed it.

WITNESS my hand and official seal.

*Vaughn Dishman*  
NOTARY PUBLIC



CITY OF RANCHO MIRAGE

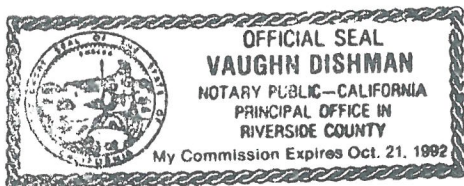
By *Jeff S. Bleaman*  
Mayor Jeff Bleaman

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF RIVERSIDE )

On *June 26*, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared Jeff Bleaman, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as Mayor of the City of Rancho Mirage and acknowledged to me that the City of Rancho Mirage executed it.

WITNESS my hand and official seal.

*Vaughn Dishman*  
NOTARY PUBLIC



CITY OF CATHEDRAL CITY

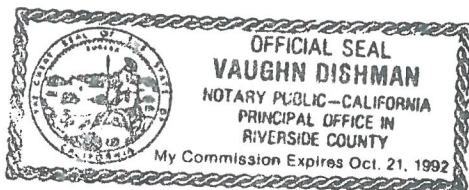
By *Robert A. Hillery*  
Mayor ~~George Hardie~~  
*ROBERT A. HILLERY*

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF RIVERSIDE )

On *June 26*, 1989, before me, the undersigned, a ~~George Hardie~~ *ROBERT A. HILLERY*, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as Mayor ~~of~~ *PROTEM* the City of Cathedral City and acknowledged to me that the City of Cathedral City executed it.

WITNESS my hand and official seal.

*Vaughn Dishman*  
NOTARY PUBLIC



CITY OF PALM SPRINGS

By Sharon Apfelbaum  
Mayor Sonny Beno

SHARON APFELBAUM

STATE OF CALIFORNIA )

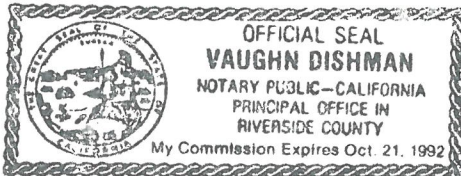
COUNTY OF RIVERSIDE )

ss

On June 26, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared Sonny Beno, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as Mayor of the City of Palm Springs and acknowledged to me that the City of Palm Springs executed it.

SHARON APFELBAUM

WITNESS my hand and official seal.



Vaughn Dishman  
NOTARY PUBLIC

ATTEST:

CITY OF DESERT HOT SPRINGS

By Daniel Been  
Mayor Daniel Been

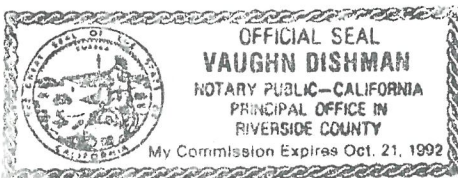
STATE OF CALIFORNIA )

COUNTY OF RIVERSIDE )

ss

On June 26, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared Daniel Been, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as Mayor of the City of Desert Hot Springs and acknowledged to me that the City of Desert Hot Springs executed it.

WITNESS my hand and official seal.



Vaughn Dishman  
NOTARY PUBLIC