

## **EXHIBIT 2**

### **FORM OF GRANT OF TEMPORARY CONSTRUCTION EASEMENT AND COVENANT FOR CONSTRUCTION OF CERTAIN PERMANENT IMPROVEMENTS**

Recording requested by  
and when recorded return to:

CITY OF TEMECULA  
Attention: Randi Johl, Director of  
Legislative Affairs, City Clerk  
41000 Main Street  
Post Office Box 9033  
Temecula, California 92590-2764

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

Assessor's Parcel No. 957-090-022 [X] Portion

**Documentary Transfer Tax \$0.00**

This Instrument is for the benefit of the City of Temecula and is exempt from Recording Fees (Govt. Code § 27383), Filing Fees (Govt. Code § 6103), and Documentary Transfer Tax (Rev & Tax Code § 11922).

**GRANT OF TEMPORARY CONSTRUCTION EASEMENT AND COVENANT  
FOR CONSTRUCTION OF CERTAIN PERMANENT IMPROVEMENTS**

This Grant of Temporary Construction Easement Agreement and Covenant for Construction of Permanent Improvements (TCE Agreement and Covenant) is entered into as of the date set forth below by and between Lam Ngo and Huyen Lam Tran, husband and wife as joint tenants (collectively Grantor below), and the CITY OF TEMECULA, a municipal corporation (City).

**RECITALS**

WHEREAS, Grantor is the record fee owner of that certain real property located at 31249 Indian Summer Road, Temecula, California identified as Riverside County Tax Assessor's Parcel Number 957-090-022 (Grantor's Property) described more particularly in EXHIBIT 1 attached hereto and incorporated herein by this reference.

WHEREAS, City seeks to construct certain public street, drainage, and related improvements in connection with the extension of Nicolas Road from Butterfield Stage Road to the Calle Girasol/Nicolas Road Connection, Project Number LD 19-4050 (Project).

WHEREAS, Grantor desires to grant to the City and the City desires to acquire from Grantor an approximate 83,324 square foot Temporary Construction Easement with a term of twelve (12) months on Grantor's Property to facilitate the City's construction of the Project, subject to the terms and conditions set forth herein.

WHEREAS, portions of Grantor's Property are located in the floodway and based on said location, it is necessary for the City to construct certain permanent improvements on Grantor's Property in connection with the Project, including but not limited to the installation of riprap slope-

erosion protection, which are more particularly described below. Grantor acknowledges receipt of a copy of the proposed plans for the Project and desires to authorize the City to construct said permanent improvements on Grantor's Property.

NOW THEREFORE, for good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Grantor and the City agree as follows:

1. Grant of Temporary Construction Easement. Grantor hereby grants to the City an approximate 83,324 square foot Temporary Construction Easement with a term of twelve (12) months (Temporary Construction Easement) on Grantor's Property to facilitate the construction of the public street and related improvements in connection with the Project. The Temporary Construction Easement is described more particularly on EXHIBIT A labeled "Legal Description Temporary Construction Easement" and depicted on Exhibit B labeled "Depiction of Temporary Construction Easement – APN: 957-090-022, Ngo/Tran Property". EXHIBIT A and EXHIBIT B are attached to this TCE Agreement and Covenant are incorporated herein by this reference.

2. Commencement of Temporary Construction Easement. The term of the Temporary Construction Easement will commence thirty (30) calendar days after the date on which the City notifies Grantor in writing that it will commence its construction of the Project. The day that is the 30th calendar day after the date of said notice is the "Commencement Date" of the Temporary Construction Easement.

3. Scope of Temporary Construction Easement.

a. The Temporary Construction Easement is for the use by the City, its contractors, subcontractors, employees and agents (collectively City Designees) for said twelve (12) month period and the purpose and scope of this Temporary Construction Easement is to facilitate the City's construction of the Project, including, without limitation, use of the Temporary Construction Easement for construction staging purposes, storage of equipment and material in connection with the City's construction of the Project.

b. City and City Designees also have the right to use the Temporary Construction Easement area to construct the permanent improvements described more particularly in Section 5 below within the area of the Temporary Construction Easement on Grantor's Property.

4. No Liens. The City agrees to keep the Temporary Construction Easement free of any liens including, without limitation, liens by contractors, subcontractors, or suppliers, engineers, architects, surveyors, or others that may have lien rights for work, arising out of the City's use of the Temporary Construction Easement in connection with the construction of the Project. If any such lien is filed on Grantor's Property in connection with the City's use of the Temporary Construction Easement, the City will, at its sole cost and expense, have the lien released and discharged of record in a matter satisfactory to the Grantor within thirty (30) calendar days of receiving notice of the lien. If the City fails to remove the lien within such thirty (30) day period, Grantor will have the right to remove the lien, and City, upon demand, will reimburse the Grantor for all costs and expenses, including without limitation attorneys' fees incurred by Grantor in connection with such removal.

5. Covenant Running with the Land – Covenant for Construction of Certain Permanent Improvements on Grantor’s Property. Grantor hereby covenants and agrees that in consideration for payment of compensation from the City and for other good and valuable consideration, the City and the City Designees also have the right to construct certain permanent improvements on portions of the Temporary Construction Easement area, including, without limitation, riprap slope -erosion protection, in the area described more particularly in EXHIBIT C, which is attached hereto and incorporated herein by this reference. Grantor agrees and acknowledges that City and City Designees will have no responsibility for maintenance of the permanent improvements described in EXHIBIT C hereto after the City’s construction of the Project and that Grantor is solely responsible for all costs of maintenance of said permanent improvements. This covenant for construction of certain permanent improvements described on EXHIBIT C hereto in the area of the Temporary Construction Easement is a covenant running with the land and is binding upon Grantor, Grantor’s heirs, executors, administrators, successors, and assigns and on any party that has an interest in Grantor’s Property. Grantor consents to and acknowledges that the Covenant for Construction of Certain Permanent Improvements contained in this TCE Agreement and Covenant will be recorded in the Official Records of the County of Riverside, California.

6. Termination of City’s Right to Use Temporary Construction Easement. The Temporary Construction Easement will expire on the earlier to occur of (a) twelve (12) months after the Commencement Date or (b) the date that the City records a Notice of Termination of the Temporary Construction Easement in the Official Records of the County. Upon the expiration of the Temporary Construction Easement, the City agrees to take such actions as the Grantor may reasonably request to evidence and give effect to the extinguishment of the City's use of the Temporary Construction Easement and the relinquishment of the City’s rights and interests in the Temporary Construction Easement pursuant to this TCE Agreement and Covenant.

7. Insurance. Prior to entry on the area of the Temporary Construction Easement, City will cause its contractor for the Project to procure and maintain a policy of general commercial liability insurance naming Grantor as additional named insured covering any and all claims, demands, and causes of action against Grantor arising out of or pertaining to the use of the Temporary Construction Easement by or activities of City’s contractor pursuant to this TCE Agreement and Covenant. Such insurance will be maintained in force during the term of the Temporary Construction Easement. The contractor shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the contractor, its agents, representatives, employees or subcontractors.

a. Minimum Scope of Insurance: Coverage shall be at least as broad as:

(1) General Liability Form No. CG 00 01 11 85 or 88.

(2) Insurance Services Office Business Auto Coverage form CA 00 01 06 92 covering Automobile Liability, code 1 (any auto). If the contractor owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.

(3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. If the contractor has no employees while performing under this contract, worker's compensation insurance is not required, but contractor shall execute a declaration that it has no employees.

b. Minimum Limits of Insurance: The contractor shall maintain limits no less than:

(1) General Liability: Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project/location or the general aggregate limit shall be twice the required occurrence limit.

(2) Automobile Liability: One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.

(3) Worker's Compensation as required by the State of California; Employer's Liability: One Million Dollars (\$1,000,000) per accident for bodily injury or disease.

(4) Deductibles and Self-Insured Retentions: Any deductibles or self-insurance retentions shall not exceed Twenty-Five Thousand Dollars (\$25,000).

c. Other Insurance Provisions: The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(1) City, Temecula Community Services District, Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees, and volunteers are to be covered as insureds as respect to liability arising out of activities performed by or on behalf of the contractor; products and completed operations of the contractor; premises owned, occupied or used by the contractor; or automobiles owned, leased, hired or borrowed by the contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, Temecula Community Services District, Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees, agents or volunteers.

(2) For any claims related to this Project, the contractor's insurance coverage shall be primary insurance as respect to City, Temecula Community Services District, Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, Temecula Community Services District, Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees, agents and volunteers shall be excess of the contractor's insurance and shall not contribute with it.

(3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to City, Temecula Community Services District, Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees, agents and volunteers.

(4) The contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(5) Each insurance policy required by this TCE Agreement and Covenant shall be endorsed to state in substantial conformance to the following: if the policy will be cancelled before the expiration date the insurer will notify in writing to City of such cancellation not less than thirty (30) days prior to the cancellation effective date.

(6) If insurance coverage is cancelled or, reduced in coverage or in limits the contractor shall within two business days of notice from the insurer, phone, fax, and/or notify City via certified mail, return receipt requested of the changes to or cancellation of the policy.

(7) Course of construction policies shall contain the following provisions: (1) additional insured shall be named as loss payee, and (2) the insurer shall waive all rights of subrogation against entity.

d. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-, VII or better, unless otherwise acceptable to City. Self-insurance shall not be considered to comply with these insurance requirements.

e. Verification of Coverage: Contractor shall furnish City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by City. All endorsements are to be received and approved by the City before work commences. As an alternative to City's forms, the contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

f. Subcontractors: Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

8. City's Obligations on Termination of Term of Temporary Construction Easement. The City agrees that, as of the termination date of the Temporary Construction Easement, the City will remove any construction equipment and materials stored in the area of the Temporary Construction Easement in connection with the Project. Further, the City will cause the City Designees to replace with material and like quality any hardscape, landscaping, and improvements located in the area of the Temporary Construction Easement that are damaged in connection with the City's use of the Temporary Construction Easement for the construction of the Project. Grantor acknowledges that the permanent improvements constructed in the area of the Temporary Construction Easement and described in EXHIBIT C will remain on Grantor's Property after the construction of the Project.

9. Maintenance of Permanent Improvements on Grantor's Property. Upon the expiration of the Temporary Construction Easement, Grantor shall, at Grantor's sole cost and expense, operate, maintain, repair and replace (as applicable) the permanent improvements

constructed on Grantor's Property within the Temporary Construction Easement area described on EXHIBIT C hereto and all installations connected thereto, in good condition and repair and otherwise in compliance with all applicable laws.

10. Notices. All notices and demands will be given in writing by certified mail, postage prepaid, and return receipt requested, or by personal delivery. Notices will be considered given upon the earlier of (a) personal delivery, (b) two (2) business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (c) one (1) business day following deposit with an overnight carrier service. A copy of all notices will be sent to Administrator for and on behalf of the Owners. The parties will address such notices as provided below for the respective party; provided that if any party gives notice in writing of a change of name or address, notices to such party will thereafter be given as demanded in that notice:

City: City of Temecula  
41000 Main Street  
Temecula, California 92590  
Attention: Aaron Adams, City Manager

Copy to: Richards, Watson & Gershon  
350 South Grand Avenue, 37th Floor  
Los Angeles, California 90071  
Attention: Peter M. Thorson, City Attorney

Grantor: Lam Ngo and Huyen Lam Tran  
13341 Wilson Street  
Garden Grove, California 92844

11. Miscellaneous Provisions.

a. Any amendments to this TCE Agreement and Covenant must be in writing and duly executed by both Grantor and the City.

b. This TCE Agreement and Covenant will be construed and interpreted under, and governed and enforced according to the laws of the State of California.

c. This TCE Agreement and Covenant contains the entire agreement between the Grantor and the City regarding the Temporary Construction Easement and construction of certain permanent improvements within the Temporary Construction Easement portion of the Grantor's Property.

d. Except as otherwise provided herein, the provisions of this TCE Agreement and Covenant will be binding on and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

e. This TCE Agreement and Covenant may be executed simultaneously in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

f. Each party has reviewed this TCE Agreement and Covenant and each has had the opportunity to have its respective counsel and real estate advisors review and revise this TCE Agreement and Covenant and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply in the interpretation of this TCE Agreement and Covenant or any amendments or exhibits thereto.

g. If any part, term or provision of this TCE Agreement and Covenant is held by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining provisions will not be affected, and the rights and obligations of each party will be construed and enforced as if this TCE Agreement and Covenant did not contain the particular part, term or provision held to be invalid.

[SIGNATURES TO FOLLOW]



IN WITNESS WHEREOF, the Grantor and the City have entered into this TCE Agreement and Covenant as of the date set forth below.

**GRANTOR**  
LAM NGO AND HUYEN LAM TRAN,  
husband and wife as joint tenants

Dated: \_\_\_\_\_

\_\_\_\_\_  
Lam Ngo

Dated: \_\_\_\_\_

\_\_\_\_\_  
Huyen Lam Tran

**CITY OF TEMECULA,**  
**a municipal corporation**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Aaron Adams, City Manager

ATTEST:

By: \_\_\_\_\_  
Randi Johl, JD, CMC  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Peter M. Thorson,  
City Attorney

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_)

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name of notary)

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.

Signature of Notary: \_\_\_\_\_ (Seal)

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_)

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name of notary)

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.

Signature of Notary: \_\_\_\_\_ (Seal)

**EXHIBIT 1**  
**LEGAL DESCRIPTION OF GRANTOR'S PROPERTY**

**LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF TEMECULA, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 3 OF [PARCEL MAP NO. 18022](#), IN THE CITY OF TEMECULA, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN [BOOK 112, PAGES 28 AND 29 OF PARCEL MAPS](#), RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

[APN: 957-090-022-2](#)

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**EXHIBIT A**  
**LEGAL DESCRIPTION OF TEMPORARY CONSTRUCTION EASEMENT**

**APN: 957-090-022**  
**NGO/TRAN PROPERTY**

That portion of Parcel 3 of Parcel Map No. 18022, in the City of Temecula, County of Riverside, State of California, as shown on the Map recorded in Book 112, Pages 28 and 29 of Parcel Maps, in the Office of the County Recorder of said Riverside County, described as follows:

**BEGINNING** at the southwesterly corner of said Parcel 3, said point being on the northerly Right of Way line of Nicolas Road (55.00 foot half-width);

Thence along the westerly line of said Parcel 3 North 09°10'13" West 167.45 feet;

Thence leaving said line North 49°11'16" East 327.72 feet;

Thence North 81°49'25" East 38.23 feet to the easterly line of said Parcel 3;

Thence along said easterly line South 08°10'35" East 342.97 feet to the southerly line of Parcel 3;

Thence along said southerly line South 81°36'16" West 311.31 feet to the **POINT OF BEGINNING**.

Containing 1.91 acres, or 83,324 Square Feet, more or less

This description was prepared  
by me or under my direction.

  
\_\_\_\_\_  
John R. Duquette, PLS 7566

Date: 9/2/20



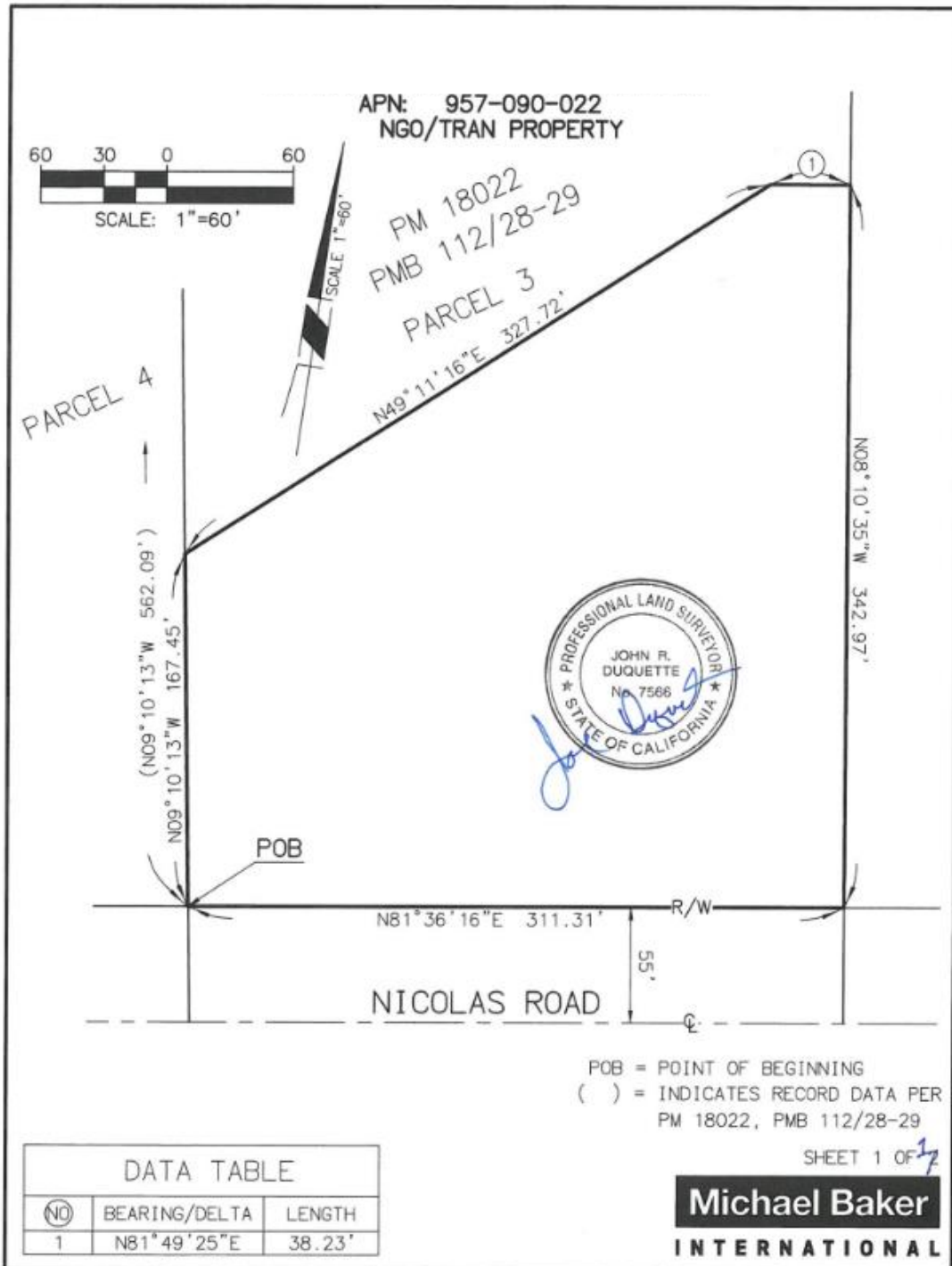
Michael Baker International  
40810 County Center Drive, Suite 200  
Temecula, CA 92591

September 2, 2020  
JN 175051  
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EXHIBIT A

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**EXHIBIT B**  
**DEPICTION OF TEMPORARY CONSTRUCTION EASEMENT**



**EXHIBIT C**

DESCRIPTION OF PERMANENT IMPROVEMENTS TO BE CONSTRUCTED WITHIN  
TEMPORARY CONSTRUCTION EASEMENT PORTION OF GRANTOR'S PROPERTY

