

**PURCHASE AND SALE AGREEMENT, SETTLEMENT
AGREEMENT, GENERAL RELEASE, AND JOINT ESCROW
INSTRUCTIONS BETWEEN THE CITY OF TEMECULA AND
MARK MCMILLIN, LLC IN CONNECTION WITH THE
OVERLAND DRIVE EXTENSION PROJECT, PW16-06**

This Purchase and Sale Agreement, Settlement Agreement, General Release and Joint Escrow Instructions Between the City of Temecula and Mark McMillin, LLC, a California limited liability company in connection with the Overland Drive Extension Project, PW16-06 ("Agreement") is entered into by and between MARK MCMILLIN, LLC, a California limited liability company ("Seller") and the CITY OF TEMECULA, a municipal corporation ("City") and constitutes an agreement to purchase and sell real property between the Parties and the Parties' joint escrow instructions directed to First American Title Insurance Company ("Escrow Holder"). The Agreement is effective on the date it is fully executed ("effective date"). The City and Seller are referred to in this Agreement collectively as the "Parties".

RECITALS

A. Seller is the record fee owner of the real property commonly known as 27511 Commerce Center Drive in the City of Temecula, and identified as Riverside County Tax Assessor's Parcel Number 921-480-032 ("Property"). The Property is approximately 19,602 square feet in size and is improved with an approximate 6,820 square foot multi-tenant light industrial building, driveway, and parking improvements.

B. On May 11, 2011, the City extended a written offer to Seller pursuant to Government Code Section 7262.7 to purchase the following subject property interests from the Property for a public use, namely for the construction of the Overland Drive Extension Project, PW 16-06 ("Project"):

- An approximate 840 square foot permanent easement for public street purposes and all uses necessary or convenient thereto described on Exhibit "A" labeled "Legal Description Easement for Road Purposes" and depicted on Exhibit "B" labeled "Easement for Road Purposes – Lot 16" ("Permanent Easement").
- An approximate 2,445 square foot temporary construction easement with a term of 18 (eighteen) months to facilitate the construction of Phase I of the Project. The temporary construction easement is described more particularly on Exhibit "A-1" labeled "Legal Description Temporary Construction Easement" and depicted on Exhibit "B-1" labeled "Temp. Construction Easement – Lot 16" ("TCE").

C. On February 11, 2014, the Parties entered into a Possession and Use Agreement. Pursuant to the Possession and Use Agreement, Seller irrevocably granted to the City possession and use of the Permanent Easement and TCE for the construction of the Project. The City deposited with Escrow Holder into Escrow File No. RRI 4583645 ("Escrow") the sum of \$91,847 ("Deposit") as the probable amount of just compensation for the Permanent Easement

and use of the TCE based on an independent appraisal that used a date of value of February 7, 2011. In consideration for Seller's irrevocable grant to the City of possession and use of the Permanent Easement and TCE, the City consented to the Owner's withdrawal and release of the \$91,847 from Escrow. Owner withdrew said \$91,847 from Escrow in 2014.

D. Pursuant to Section 10.a. of the Possession and Use Agreement, the Parties acknowledged that the City is authorized to acquire real property by eminent domain for a public use, including public street purposes and all uses necessary or convenient thereto, pursuant to the authority conferred upon the City of Temecula by California Constitution Article 1, Section 19, California Government Code Sections 37350, 37350.5, 37351, 40401 and 40404 and California Code of Civil Procedure Section 1230.010 *et seq.* (Eminent Domain Law), including, but not limited to, Code of Civil Procedure Section 1240.410. The Parties also acknowledge that the Project is a public use for which the City has the authority to exercise the power of eminent domain. The Parties further acknowledged that the City Council of the City of Temecula, as the City's governing body, has sole discretion to make the findings required by Code of Civil Procedure Section 1240.030 for the adoption of a resolution of necessity pursuant to the Eminent Domain Law. (Code of Civil Procedure Section 1245.220). If Seller and the City had not reached an agreement for the City's purchase of the Permanent Easement and use of the TCE, City staff would have recommended to the City Council that it consider the adoption of a resolution of necessity authorizing the initiation of eminent domain proceedings to acquire the Permanent Easement and TCE in accordance with the Eminent Domain Law. The City Council, however, has the exclusive and sole discretion to adopt a resolution of necessity. The adoption of any such resolution of necessity would require the City's compliance with applicable law, including Government Code Section 7260 *et seq.* and the Eminent Domain Law.

E. The Project extended Overland Drive from Commerce Center Drive to Enterprise Circle West. On May 24, 2019, the City recorded as Document Number 2019-0185146 a Notice of Termination of City's Use of the Temporary Construction Easement Pursuant to Possession and Use Agreement. The Notice of Termination provided notice that the City's contractor completed construction of the Project, and the City no longer required possession of the 2,445 square foot TCE area. Said Notice of Termination further provided notice of the extinguishment of the approximate 2,445 square foot TCE and the relinquishment of the City's rights and interests in said TCE.

F. Pursuant to Section 9 of the Possession and Use Agreement, McMillin confirmed that it wished to defer the continuance of good faith negotiations for the City's purchase of the 840 square foot permanent easement and compensation for the 2,445 square foot TCE until after the City completed construction of the Project. The Parties have negotiated in good faith and have reached an agreement regarding the City's purchase of the Permanent Easement and the use of the TCE for the Project, subject to the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the above Recitals, which are incorporated herein by this reference, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Seller agree to the following:

1. **Purchase and Sale.** On the Close of Escrow (as defined in Section 2 below), Seller agree to sell the Permanent Easement to the City and the City agrees to purchase the

Permanent Easement from Seller on the terms and conditions set forth in this Agreement. As noted in Recital C, the City's use of the TCE terminated in 2019.

2. **Escrow.** The Escrow opened by the City in connection with the Possession and Use Agreement remains open. Accordingly, within five business days after the effective date of this Agreement, the City will forward to Escrow Holder a copy of the fully-executed Agreement. The Parties can execute the Agreement in counterparts as set forth in Section 19.f. below. Close of Escrow means the date on which the Grant of Easement is delivered and recorded in the Official Records of the County of Riverside. The Close of Escrow will occur after the performance of all duties and obligations under this Escrow that are required to take place prior to Close of Escrow.

3. **Total Compensation.** The total compensation that the City will pay to Seller as an all-inclusive settlement for the City's purchase of the Permanent Easement and use of the TCE in connection with the Project is the sum of \$141,347.00 (One Hundred Forty-One Thousand Three Hundred Forty-Seven Dollars) ("Total Compensation"). The Total Compensation is the total payment for the fair market value of the Permanent Easement and TCE, claims for severance damages, cost-to-cure damages, inverse condemnation, precondemnation damages, loss of business goodwill under Code of Civil Procedure Section 1263.510, attorneys' fees, interest, loss of rents, any improvements in the area of the Permanent Easement and TCE, loss of parking, and any other damages of every kind and nature suffered by the Seller by reason of the City's acquisition of the Permanent Easement and use of the TCE for the Project, construction of the Project, and all costs and expenses whatever in connection therewith.

4. **Title and Title Insurance.** Upon receiving a copy of the fully-executed Agreement, Escrow Holder will obtain and issue a title commitment for the Permanent Easement. Escrow Holder will also request two copies each of all instruments identified as exceptions on said title commitment. Upon receipt of the foregoing, Escrow Holder will deliver these instruments and the title commitment to the City and Seller. Escrow Holder will insure the City's easement interest in the Permanent Easement, which is described above in Section B of the Recitals and on Exhibit "A" labeled "Legal Description Easement for Road Purposes" and depicted on Exhibit "B" labeled "Easement for Road Purposes – Lot 16" to this Agreement at the Close of Escrow by a CLTA Owner's Standard Coverage Policy of Title Insurance (or an ALTA Extended Coverage Form of Title Policy if the City elects such coverage as provided below in Section 4.b.) in the amount of the Purchase Price (the "Policy"). The City will pay for the cost of the Policy.

a. The Policy provided for pursuant to this Section will insure the City's interest in the Permanent Easement free and clear of all liens, encumbrances, restrictions, and rights-of-way of record, subject only to the following permitted conditions of title ("Permitted Title Exceptions"):

i. General and special real property taxes for the then current tax fiscal year that are a lien not then due and payable.

ii. The applicable zoning, building and development regulations of any municipality, county, state or federal jurisdiction affecting the Permanent Easement; and

iii. Those non-monetary exceptions approved by the City within ten business days after the date the City receives the title commitment and legible copies of all instruments noted as exceptions therein. If the City conditionally disapproves any such exceptions, then Seller will use good faith efforts to seek to cause such exceptions to be removed by the Close of Escrow. In no event shall Seller be required to file any legal action to seek to remove any exception conditionally disapproved by the City. If such conditionally disapproved non-monetary exceptions are not removed by the Close of Escrow, the City may, at the City's option, either accept the Permanent Easement subject to such encumbrances, or request Escrow to disburse the additional compensation to be paid to Seller (\$49,500), terminate the Escrow and proceed with an eminent domain proceeding in accordance with applicable law. In the event escrow is terminated, then within ten (10) business days of the written notice of termination to Escrow, Escrow shall disburse to Seller the Remaining Compensation. In no event shall City be relieved from paying Seller the agreed-upon purchase price. City shall be responsible for all escrow fees including, but not limited to, any charges for cancellation of escrow. At the Close of Escrow, the City's interest in the Permanent Easement will be free and clear of all monetary encumbrances.

b. The City will have the option of obtaining an ALTA Extended Coverage Form Policy of Title Insurance (referred to below as the "ALTA Extended Policy") or a CLTA Standard Coverage Form Owners Policy of Title Insurance. If the City, in its sole discretion, determines to obtain an ALTA Extended Policy, the City will, at its expense, procure an ALTA survey. The City will also pay for the cost of any such ALTA Extended Policy.

5. Deposit of Funds in Escrow.

a. *Deposit of Remaining Compensation.* The City covenants and agrees to deposit into Escrow the total sum of \$49,500 ("Remaining Compensation") within five business days of receiving written notice from Escrow Holder regarding the confirmation of the completion of the conditions required herein for the Close of Escrow. The Remaining Compensation is the difference between the \$141,347 Total Compensation and the \$91,847 Deposit previously withdrawn by Seller in connection with the City's possession and use of the Permanent Easement and TCE pursuant to the terms of the Possession and Use Agreement.

6. Deposit of Documents in Escrow by Seller.

a. *Grant of Permanent Easement.* Seller will, within 15 business days after the date this Agreement is fully executed by the Parties, deposit with Escrow Holder the Grant of Easement granting to the City the Permanent Easement ("Grant of Permanent Easement") duly executed and acknowledged by Seller. The form of the Grant of Permanent Easement is attached as Exhibit "C" to this Agreement and is incorporated in this Agreement by this reference. The City will accept said executed Grant of Permanent Easement prior to recording.

b. *Proof of Seller's Authorization.* Seller will deliver to Escrow such proof of authorization to enter into this transaction as Escrow Holder may reasonably require to issue the Policy.

7. **Authorization to Record Documents and Disburse Funds.** Escrow Holder is hereby authorized to record the documents and disburse the Remaining Compensation and documents called for hereunder upon the Close of Escrow, provided each of the following conditions has then been fulfilled:

a. Escrow Holder can issue in favor of the City the Policy, showing the City's easement interest in the Permanent Easement in favor of the City, subject only to the Permitted Title Exceptions. Escrow Holder will use proceeds from the Remaining Compensation to obtain a full reconveyance of any valid monetary liens encumbering the Permanent Easement, so that the Permanent Easement is free and clear of any valid monetary liens and encumbrances at the Close of Escrow. Escrow Holder will obtain final approval from Seller regarding the disbursement of the proceeds prior to disbursing any such proceeds to the holder(s) of the monetary liens encumbering the Permanent Easement.

b. The City will have deposited with Escrow Holder the Remaining Compensation and escrow charges.

c. Escrow Holder will have received the City's notice of approval or satisfaction or waiver of all of the contingencies to the City's obligations hereunder, as provided for below in Section 13; and

d. Seller will have deposited in Escrow the executed Grant of Easement and other documents as required by Section 6.

Unless otherwise instructed in writing, Escrow Holder is authorized to record at the Close of Escrow any instrument delivered through this Escrow if necessary or proper for issuance of the Policy, including the Grant of Easement.

8. **Escrow Charges and Prorations.**

a. The City will pay for the cost of the CLTA Owner's Standard Coverage Policy of Title Insurance (or at the City's option the cost of the ALTA Extended Policy), Escrow costs and Escrow Holder's customary out-of-pocket expenses for messenger services, long distance telephone, etc. The City will pay for recording the Grant of Easement, any documentary or other local transfer taxes, and any other recording fees. If the Escrow fails to close, the City will pay all escrow cancellation charges.

b. Escrow Holder is authorized to pay from the Remaining Compensation any unpaid delinquent taxes and/or penalties and interest thereon, and for any delinquent or non-delinquent assessments or bonds recorded against the Permanent Easement.

c. All prorations will be determined on the basis of a 365-day year. The provisions of this Section 8 will survive the Close of Escrow.

9. **Due Diligence.** The Parties agree and acknowledge that the City has completed the construction of the Project in the area of the Permanent Easement and the City's use of the TCE terminated in 2019. Accordingly, it is not necessary for the City to conduct any further due diligence testing and inspections in connection with the City's purchase of the Permanent Easement.

10. **Warranties and Representations of Seller.** Seller, where applicable, hereby represents and warrants to the City the following to Seller's actual knowledge with no duty of inquiry or investigation, it being expressly understood and agreed that all such representations and warranties are to be true and correct in all material respects as of the effective date of this Agreement. If Seller acquires additional knowledge regarding the matters that are the subject of the warranties or representations contained in this Section 10 that would cause any of such warranties or representations to be incorrect in any material respect prior to the Close of Escrow, Seller will give prompt written notice thereof to the City. Within seven business days following receipt of such notice, the City may elect to cancel this Agreement and receive a refund of the funds deposited in escrow, except for any escrow cancellation charges. As of the Close of Escrow, the warranties and representations contained in this Section 10 will be true and correct in all material respects, subject to any matters disclosed in writing by Seller to the City as provided in this Section:

a. Seller Mark McMillin, LLC is the record fee owner of the Property and no other party has a fee interest in any portion of the Permanent Easement.

b. To Seller's actual knowledge with no duty of inquiry or investigation, Seller has no notice of any pending or threatened action or proceeding arising out of the condition of any portion of the Permanent Easement or alleged violation of environmental, health or safety statutes, ordinance, or regulations.

c. To Seller's actual knowledge with no duty of inquiry or investigation, Seller has not received any written notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on any portion of the Permanent Easement are or have been in violation of any Environmental Laws as described below in Section 14, or informing Seller that any portion of the Permanent Easement is subject to investigation or inquiry regarding Hazardous Substances (as defined in Section 14) on any portion of the Permanent Easement or the potential violation of any Environmental Law.

d. To Seller's actual knowledge with no duty of inquiry or investigation, neither this Agreement nor anything provided to be done hereunder, including the grant of the Permanent Easement to the City, violates any contract, agreement or instrument to which Seller is a party, or which affects any portion of the Permanent Easement, and the Seller's grant of Permanent Easement to the City pursuant to this Agreement does not require the consent of any party not a signatory hereto.

e. To Seller's actual knowledge with no duty of inquiry or investigation, there is no pending, threatened, or potential litigation, action, or proceeding against Seller, or any other party before any court or administrative tribunal that involves any portion of the Permanent Easement.

f. To Seller's actual knowledge with no duty of inquiry or investigation, except as disclosed in the title commitment referred to in Section 4, there are no claims or liens presently claimed against any portion of the Permanent Easement for work performed or commenced on behalf of Seller by contractors, subcontractors, suppliers, engineers and/or architects and surveyors who might have lien rights prior to the date of this Agreement.

g. Seller has the full right and power to execute, deliver, and perform its obligations under this Agreement, and when executed and delivered, Seller will be lawfully bound by the terms of the Agreement. Seller has not further encumbered the Permanent Easement since the effective date of the City's right to possession and use of the Permanent Easement pursuant to the Possession and Use Agreement and will not allow the Permanent Easement to be further encumbered prior to the Close of Escrow.

h. To Seller's actual knowledge with no duty of inquiry or investigation, neither this Agreement nor anything provided to be done hereunder, including the grant of the Permanent Easement violates any Agreement to which Seller is a party and this Agreement and the Grant of Easement herein contemplated does not require the consent of any party not a signatory hereto.

i. Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code.

11. **Representations and Warranties of the City.** The City hereby represents and warrants to Seller the following, it being expressly understood and agreed that all such representations and warranties are to be true and correct as of the Close of Escrow and will survive the Close of Escrow:

a. The City has taken all required action to permit it to execute, deliver, and perform its obligations under this Agreement.

b. The City has the power and authority to execute and deliver this Agreement and carry out its obligations hereunder and consummate the transaction contemplated herein.

12. **City's Full Payment of Total Compensation.**

a. It is understood and agreed between Seller and the City that the City's payment to Seller of the Total Compensation is an all-inclusive settlement and constitutes the full and complete consideration and payment of just compensation for the City's acquisition of the Permanent Easement and use of the TCE in connection with the Project. The Total Compensation is full and complete consideration for all claims arising in connection with or out of the City's acquisition of the Permanent Easement and use of the TCE for the Project, claims for severance and other damages, inverse condemnation, precondemnation damages, attorneys' fees, interest, loss of rents, improvements located in the area of the Permanent Easement or TCE, loss of parking, loss of business goodwill pursuant to Code of Civil Procedure Section 1263.510, and any other damages of every kind and nature suffered by Seller by reason of the City's acquisition of the Permanent Easement, and use of the TCE in connection with the Project for

which the City is acquiring the Permanent Easement, and all costs and expenses whatever in connection therewith.

c. This Agreement is a voluntary agreement and Seller, on the Close of Escrow, on behalf of Seller, and its successors and assigns, fully releases the City, its officials, counsel, employees, and agents, from all claims and causes of action by reason of any damage that has been sustained, or may be sustained, as a result of the City's efforts to acquire the Permanent Easement and its use of the TCE, or any preliminary steps thereto and from any and all claims, demands, causes of action, obligations, liabilities or claims for further compensation relating to the City's purchase of the Permanent Easement.

13. **City's Contingencies.** For the benefit of the City, the Close of Escrow and the City's obligation to consummate the purchase of the Permanent Easement will be contingent upon and subject to the occurrence of all of the following (or City's written waiver thereof, it being agreed that the City can waive any or all such contingencies) on or before the Close of Escrow:

a. That as of the Close of Escrow the representations and warranties of Seller contained in this Agreement are all true and correct.

b. The delivery to Escrow Holder of all documents pursuant to Section 6 of this Agreement.

c. Title Company's commitment to issue in favor of the City a CLTA Standard Coverage Owner's Policy of Title Insurance (or at the City's Option an ALTA Extended Policy) with liability equal to the Purchase Price insuring the City's easement interest in the Permanent Easement, subject only to the Permitted Title Exceptions.

14. **Certain Definitions.**

a. The term "Hazardous Materials" will mean and include the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, by-product or constituent regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.*; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides regulated under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 *et seq.*; asbestos and asbestos-containing materials, PCBs and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*; source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act of 1982; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. Section 1910.1200 *et seq.*; industrial process and pollution control wastes, whether or not hazardous within the meaning of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; any substance defined as a "hazardous substance" in California Civil Code Section 2929.5(e)(2) or California Code of Civil Procedure Section 736(f)(3); and any other substance or material regulated by any Environmental Laws.

b. The term "Environmental Laws" will mean and include all federal, state and local statutes, ordinances, regulations and rules in effect on or prior to the date hereof relating to environmental quality, health, safety, contamination and clean-up, including, without limitation, the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*; and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. Section 136 *et seq.*; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. Section 1401 *et seq.*; the National Environmental Policy Act, 42 U.S.C. Section 4321 *et seq.*; the Noise Control Act, 42 U.S.C. Section 4901 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. Section 651 *et seq.*; the Resource Conservation and Recovery Act 42 U.S.C. Section 6901 *et seq.*; as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. Section 300f *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act 42 U.S.C. Section 9601 *et seq.* as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act and the Radon Gas and Indoor Air Quality Research Act; the Toxic Substances Control Act 15 U.S.C. Section 2601 *et seq.*; the Atomic Energy Act, 42 U.S.C. Section 2011 *et seq.*; and the Nuclear Waste Policy Act of 1982, 42 U.S.C. Section 10101 *et seq.*; and state and local environmental statutes and ordinances, with implementing regulations and rules in effect on or prior to the date hereof.

15. **Evidence in Court Proceeding.** Except for the interpretation or enforcement of this Agreement, the Parties agree that the Total Compensation of \$141,347.00 or any inference of per square foot value of the Permanent Easement based on said Purchase Price will not be admissible as evidence of the fair market value of the Permanent Easement or TCE, or any portion thereof, in any eminent domain or other proceeding or litigation concerning said property interests.

16. **Notices.** All notices and demands will be given in writing by registered mail, postage prepaid, or by Federal Express or other overnight carrier with a copy to be sent by email. Notices will be considered given upon two (2) business days following deposit in the United States registered mail, postage prepaid, Federal Express or other overnight carrier. A copy of all notices will be sent to Escrow Holder. The Parties will address such notices as provided below or as may be amended by written notice:

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

COPY TO: Richards, Watson & Gershon
Attention: Peter M. Thorson, City Attorney
350 South Grand Avenue,
37th Floor
Los Angeles, California 90071
Email: pthorson@rwglaw.com

SELLER: Mark McMillin, LLC
509 Avon Street

Anaheim, California 92804

COPY TO: Palmieri Hennessey & Leifer, LLP
Attention: Michael I. Kehoe
2 Park Plaza, Suite 550
Irvine, California 92614
Email: mkehoe@palmierilawgroup.com

ESCROW HOLDER: First American Title Insurance Company
3400 Central Avenue, Suite 100
Riverside, California 92506
Telephone No. (951) 787-1757
Fax No. (866) 558-2890

17. **Further Documents.** Each party will, wherever and as often as it will be requested by the other party, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, such further instruments and documents, including further escrow instructions, as may reasonably be necessary in order to complete the sale, conveyance, and transfer herein provided and to do any and all other acts and to execute, acknowledge, and deliver any and all documents as may be requested in order to carry out the intent and purpose of this Agreement.

18. **Brokers' Commissions.** No brokers represented the Parties in connection with this transaction. Seller will be solely responsible for the payment of any and all broker's commissions or similar compensation due to any broker representing Seller, if any, and Seller will defend, indemnify and hold the City harmless from and against any and all claims for any broker's commission or similar compensation that may be payable to any broker claiming it represented Seller in connection with this transaction. Each party will defend, indemnify and hold the other party harmless from and against any and all claims for any broker's commission or similar compensation that may be payable to any other broker, finder or other person or entity (other than those described above) based upon such party's own acts. The provisions of this Section 18 will survive the Close of Escrow.

19. **Miscellaneous.**

a. *Amendments.* Any amendments to this Agreement will be effective only when duly executed by both the City and Seller and deposited with Escrow Holder.

b. *Applicable Law.* This Agreement will be construed and interpreted under and governed and enforced according to the laws of the State of California.

c. *Entire Agreement.* This Agreement supersedes any prior agreement, oral or written, and together with the Exhibits hereto and any agreements delivered pursuant hereto, contains the entire agreement between the City and Seller on the subject matter of this Agreement. No subsequent agreement, representation or promise made by either party hereto, or

by or to any employee, officer, agent or representative of either party, will be of any effect unless it is in writing and executed by the party to be bound thereby. No person is authorized to make, and by execution hereof Seller and the City acknowledge that no person has made, any representation, warranty, guaranty or promise except as set forth herein; and no such agreement, statement, representation or promise that is not contained herein will be valid or binding on Seller or the City.

d. *Successors and Assigns.* This Agreement will be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the Parties hereto.

e. *Time of Essence.* The Parties acknowledge that time is of the essence in this Agreement, notwithstanding anything to the contrary in the Escrow Holder's general Escrow instructions.

f. *Counterparts and Facsimile and Electronic Signatures.* This Agreement 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. For purposes of this Agreement, facsimile and electronic signatures will be deemed to be original signatures.

g. *Remedies Not Exclusive and Waivers.* No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies will not constitute a waiver of the right to pursue other available remedies.

h. *Interpretation and Construction.* Each party to this Agreement has reviewed the Agreement each has had the opportunity to have its respective counsel and real estate advisors review and revise this Agreement and 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 Agreement or any amendments or exhibits thereto. In this Agreement, the neuter gender includes the feminine and masculine, and singular number includes the plural, and the words "person" and "party" include corporation, partnership, firm, trust, or association wherever the context so requires. The recitals and captions of the Sections and Subsections of this Agreement are for convenience and reference only, and the words contained therein will in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

i. *Judicial Reference.* The parties agree that any dispute arising from or relating to the interpretation of this Agreement shall proceed pursuant to binding Judicial Reference in accordance with Code of Civil Procedure Section 638, et seq. The parties shall agree to a retired judge to act as Judicial Referee. In the event agreement cannot be reached, each party shall submit a list of no more than three retired judges to the Superior Court for designation as judicial referee and the Superior Court shall select the Judicial Referee from the list of candidates submitted. The parties shall share equally the costs of the Judicial Referee and administrative costs associated therewith. The prevailing party, as determined by the Judicial

Referee, shall be entitled to recover its share of the fees for the Judicial Referee and associated administrative costs.

j. *Severability.* If any part, term or provision of this Agreement 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 the Parties will be construed and enforced as if this Agreement did not contain the particular part, term or provision held to be invalid.

k. *Exhibits.* The exhibits and schedules attached hereto are incorporated in this Agreement by reference herein.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, this Agreement is effective on the date it is fully-executed by the Parties.

SELLER

**MARK MCMILLIN, LLC, a California
limited liability company**

Dated: 2-19-21

By: 

Title: Owner

Approved as to form:

PALMIERI HENNESSEY & LEIFER, LLP

By: 
Michael I. Kehoe

BUYER

**CITY OF TEMECULA, a municipal
corporation**

Dated: _____

By: _____
Aaron Adams, City Manager

ATTEST:

Randi Johl, City Clerk

Approved as to form:

RICHARDS, WATSON & GERSHON

Peter M. Thorson, City Attorney

Exhibit "A"
Legal Description of Permanent Easement

February 8, 2010
Sheet 1 of 1

EXHIBIT "A"
LEGAL DESCRIPTION
EASEMENT FOR ROAD PURPOSES
(OVERLAND DRIVE)

BEING A PORTION OF LOT 16 OF TRACT MAP NO. 16178-3, SITUATED IN THE CITY OF TEMECULA, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, RECORDED AUGUST 8, 1986 AS SHOWN BY MAP ON FILE IN BOOK 160, PAGES 99 THROUGH 101, INCLUSIVE, OF MAPS, OFFICIAL RECORDS OF RIVERSIDE COUNTY, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF SAID LOT 16, SAID CORNER BEING ON THE WESTERLY RIGHT-OF-WAY OF COMMERCE CENTER DRIVE (66.00 FEET WIDE) AS SHOWN ON SAID MAP, ALSO BEING A POINT ON A CURVE CONCAVE SOUTHWESTERLY WITH A RADIUS OF 967.00 FEET, A RADIAL BEARING TO SAID POINT BEARS NORTH 53°38'28" EAST (NORTH 53°38'37" EAST PER SAID MAP); THENCE SOUTHEASTERLY ALONG THE NORTHEASTERLY LINE OF SAID LOT 16 AND ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 1°50'07" A DISTANCE OF 30.97 FEET; THENCE LEAVING SAID LINE NORTH 79°57'39" WEST A DISTANCE OF 35.59 FEET; THENCE SOUTH 52°46'53" WEST A DISTANCE OF 129.84 FEET TO A POINT IN THE SOUTHWESTERLY LINE OF SAID LOT 16; THENCE ALONG SAID SOUTHWESTERLY LINE NORTH 34°16'24" WEST (NORTH 34°16'35" WEST PER SAID MAP) A DISTANCE OF 1.78 FEET TO THE MOST WESTERLY CORNER OF SAID LOT 16; THENCE ALONG THE NORTHWESTERLY LINE OF SAID LOT 16 NORTH 51°39'19" EAST (NORTH 51°41'16" EAST PER SAID MAP) A DISTANCE OF 154.89 FEET TO THE **POINT OF BEGINNING**.

CONTAINING: 840 SQ. FT. OR 0.019 ACRE, MORE OR LESS.

EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

THIS LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE LAND SURVEYORS' ACT.






BY:  2/11/10
REX S. PLUMMER, PLS 6641 DATE
(MY LICENSE EXPIRES 12-31-2011)



Exhibit "B"
Depiction of Permanent Easement

LEGEND

-  INDICATES EASEMENT FOR ROAD PURPOSES
 AREA = 840 SQ. FT. OR 0.019 ACRE
- POB** INDICATES POINT OF BEGINNING
- () INDICATES RECORD DATA PER TRACT 16178-3
- (R) INDICATES RADIAL BEARING
-  LANDSCAPE MAINTENANCE AGREEMENT PER
 INST. 141902, RECORDED MAY 20, 1987
-  EASEMENT TO GENERAL TELEPHONE CO. PER
 INST. NO. 117514, RECORDED APRIL 29, 1987
-  15' WIDE DRAINAGE EASEMENT PER TRACT 16178-3



VICINITY MAP




 2/11/10
 REX S. PLUMMER NO. 6641 DATE
 EXP. DATE 12-31-11

EXHIBIT "B"
EASEMENT FOR ROAD PURPOSES
- LOT 16 (OVERLAND DRIVE)



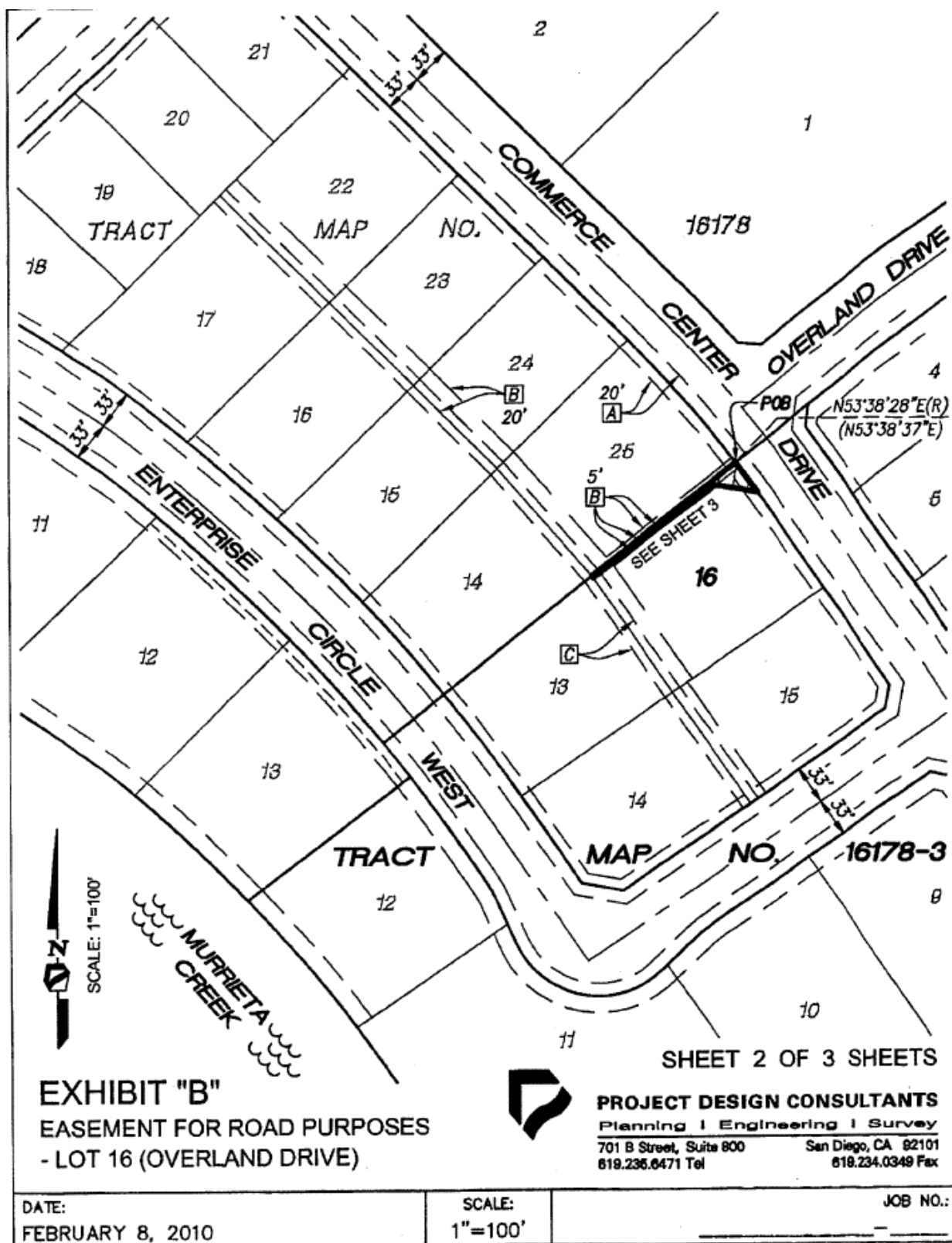
SHEET 1 OF 3 SHEETS

PROJECT DESIGN CONSULTANTS
 Planning | Engineering | Survey
 701 B Street, Suite 800 San Diego, CA 92101
 619.236.6471 Tel 619.234.0349 Fax

DATE:
 FEBRUARY 8, 2010

SCALE:
 N.T.S.

JOB NO.:



CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	1°50'07"	967.00'	30.97'

LINE TABLE		
LINE	BEARING	LENGTH
L1	N34°16'24"W (N34°16'35"W)	1.78'

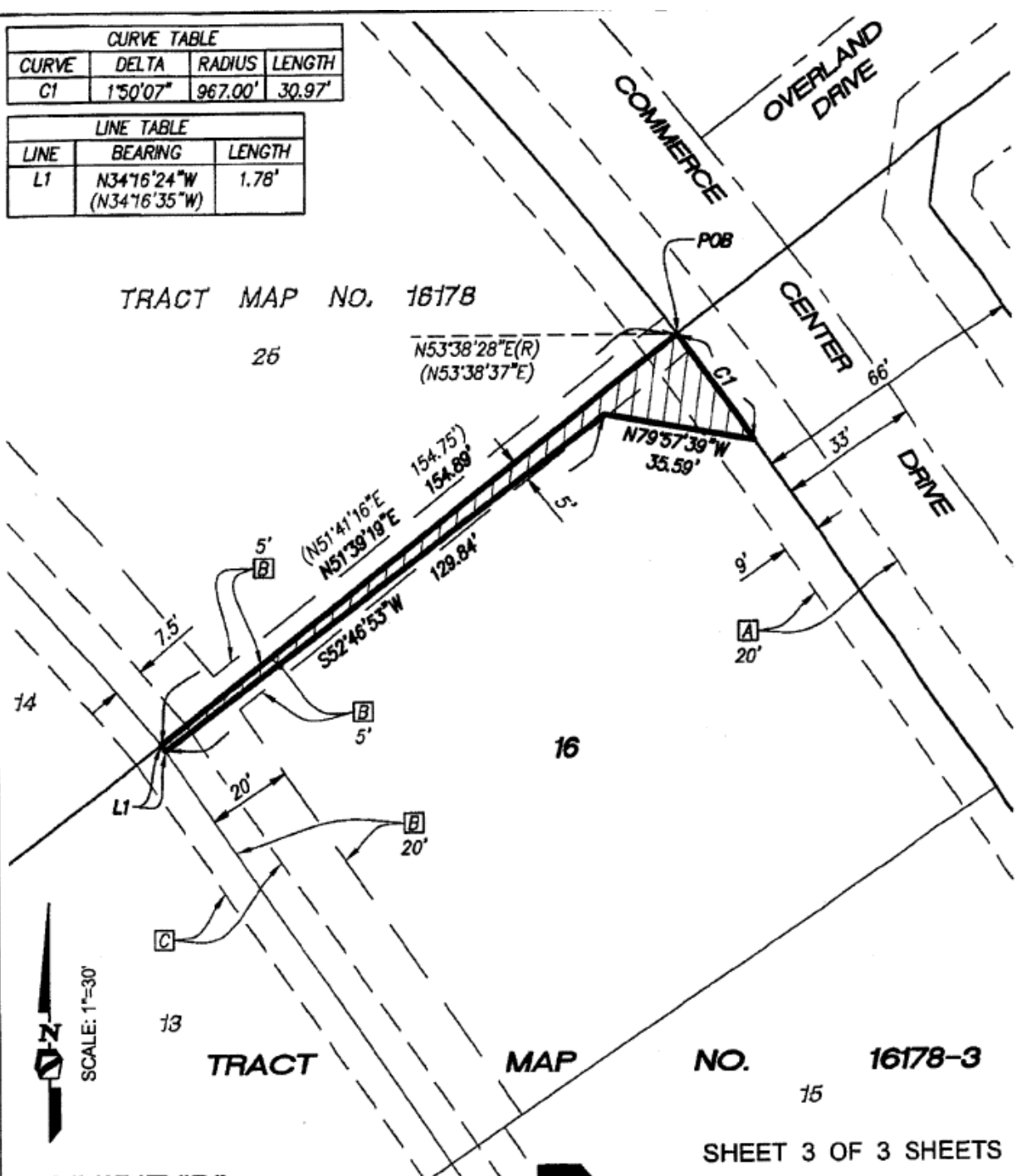


EXHIBIT "B"
EASEMENT FOR ROAD PURPOSES
- LOT 16 (OVERLAND DRIVE)



PROJECT DESIGN CONSULTANTS
 Planning | Engineering | Survey
 701 B Street, Suite 800 San Diego, CA 92101
 619.236.6471 Tel 619.234.0349 Fax

DATE: FEBRUARY 8, 2010	SCALE: 1"=30'	JOB NO.:
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Exhibit "A-1"
Legal Description of Temporary Construction Easement

February 8, 2010
Sheet 1 of 1

EXHIBIT "A"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION EASEMENT
(OVERLAND DRIVE)

BEING A PORTION OF LOT 16 OF TRACT MAP NO. 16178-3, SITUATED IN THE CITY OF TEMECULA, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, RECORDED AUGUST 8, 1986 AS SHOWN BY MAP ON FILE IN BOOK 160, PAGES 99 THROUGH 101, INCLUSIVE, OF MAPS, OFFICIAL RECORDS OF RIVERSIDE COUNTY, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHERLY CORNER OF SAID LOT 16, SAID CORNER BEING ON THE WESTERLY RIGHT-OF-WAY OF COMMERCE CENTER DRIVE (66.00 FEET WIDE) PER SAID MAP AND ALSO BEING A POINT ON A CURVE CONCAVE SOUTHWESTERLY WITH A RADIUS OF 967.00 FEET, A RADIAL BEARING TO SAID POINT BEARS NORTH 53°38'28" EAST (NORTH 53°38'37" EAST PER SAID MAP); THENCE SOUTHEASTERLY ALONG THE NORTHEASTERLY LINE OF SAID LOT 16 AND ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 1°50'07" A DISTANCE OF 30.97 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE CONTINUING ALONG SAID LINE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0°15'09" A DISTANCE OF 4.26 FEET; THENCE SOUTH 34°16'16" EAST (SOUTH 34°16'35" EAST PER SAID MAP) A DISTANCE OF 6.47 FEET; THENCE LEAVING SAID NORTHEASTERLY LINE SOUTH 55°43'44" WEST A DISTANCE OF 10.49 FEET; THENCE NORTH 79°57'39" WEST A DISTANCE OF 29.03 FEET; THENCE SOUTH 52°46'53" WEST A DISTANCE OF 124.05 FEET TO A POINT IN THE SOUTHWESTERLY LINE OF SAID LOT 16; THENCE ALONG SAID LINE NORTH 34°16'24" WEST A DISTANCE OF 15.02; THENCE LEAVING SAID LINE NORTH 52°46'53" EAST A DISTANCE OF 129.84 FEET; THENCE SOUTH 79°57'39" EAST A DISTANCE OF 35.39 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING: 2445 SQ. FT. OR 0.056 ACRE, MORE OR LESS.

EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

THIS LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE LAND SURVEYORS' ACT.

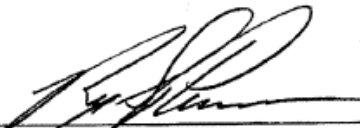

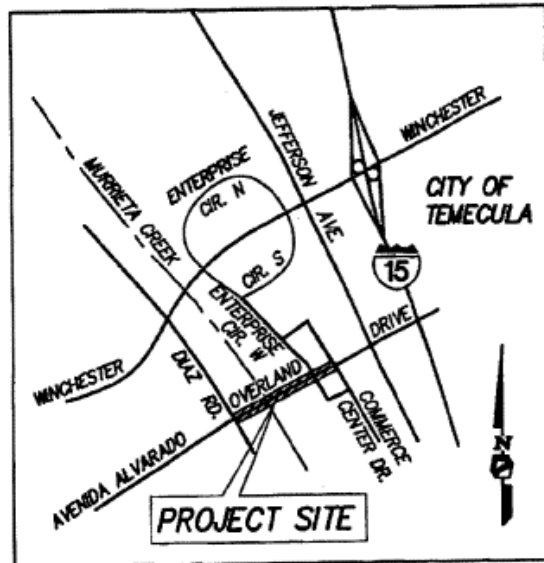
BY:  2/11/10
REX S. PLUMMER, PLS 6641 DATE
(MY LICENSE EXPIRES 12-31-2011)



Exhibit "B-1"
Depiction of Temporary Construction Easement

LEGEND

-  INDICATES TEMPORARY CONSTRUCTION EASEMENT
 AREA = 2445 SQ. FT. OR 0.056 ACRE
- POC INDICATES POINT OF COMMENCEMENT
- TPOB INDICATES TRUE POINT OF BEGINNING
- () INDICATES RECORD DATA PER TRACT 16178-3
- (R) INDICATES RADIAL BEARING
- [A] LANDSCAPE MAINTENANCE AGREEMENT PER
 INST. 141902, RECORDED MAY 20, 1987
- [B] EASEMENT TO GENERAL TELEPHONE CO. PER
 INST. NO. 117514, RECORDED APRIL 29, 1987
- [C] 15' WIDE DRAINAGE EASEMENT PER TRACT 16178-3



VICINITY MAP



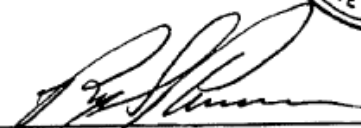

 REX S. PLUMMER NO. 6641 DATE 2/11/10
 EXP. DATE 12-31-11

EXHIBIT "B"
TEMP. CONSTRUCTION EASEMENT
- LOT 16 (OVERLAND DRIVE)



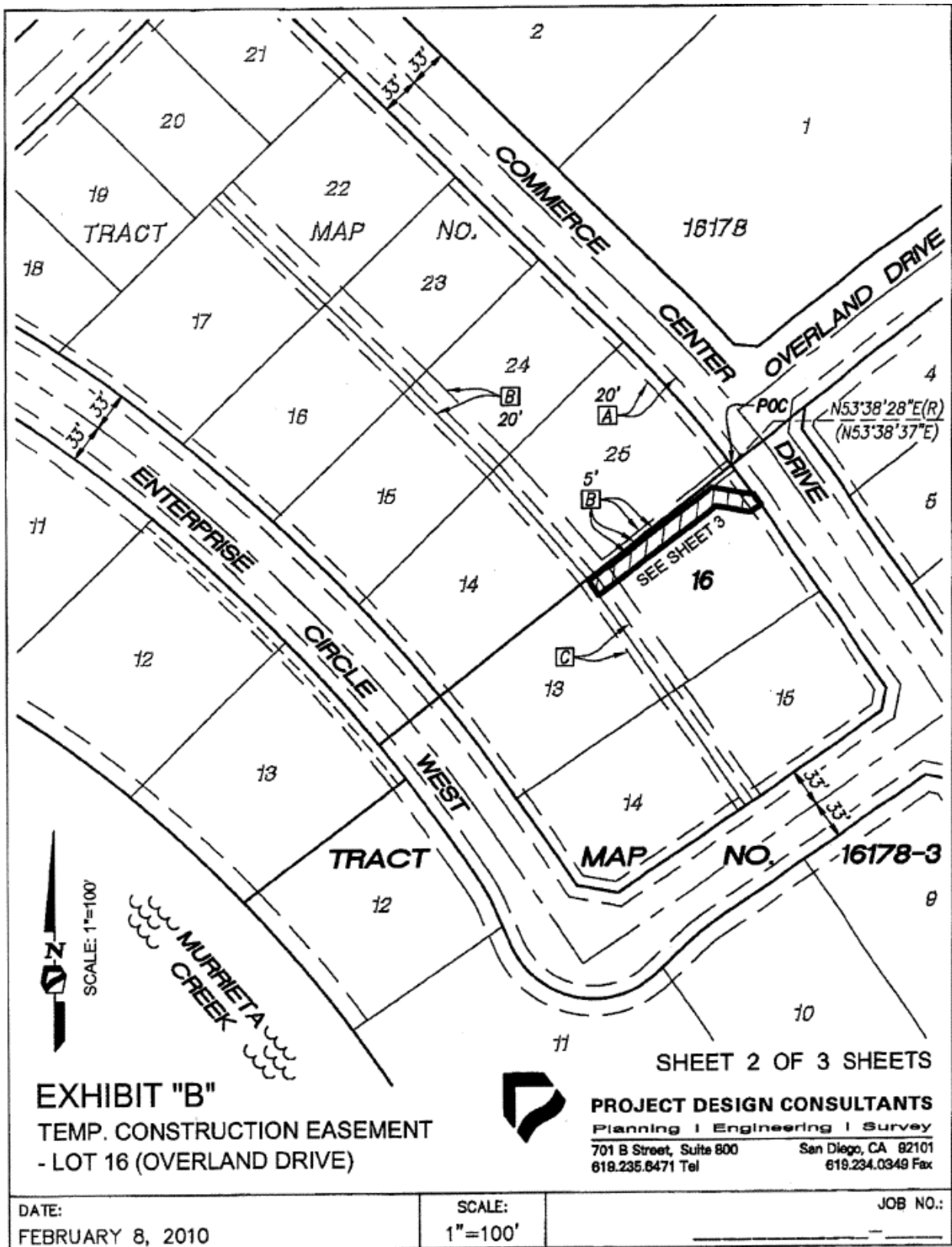
SHEET 1 OF 3 SHEETS

PROJECT DESIGN CONSULTANTS
 Planning | Engineering | Survey
 701 B Street, Suite 800 San Diego, CA 92101
 619.236.6471 Tel 619.234.0349 Fax

DATE:
 FEBRUARY 8, 2010

SCALE:
 N.T.S.

JOB NO.:



CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	1°50'07"	967.00'	30.97'
C2	0°15'09"	967.00'	4.26'

LINE TABLE		
LINE	BEARING	LENGTH
L1	S34°16'16"E (N34°16'35"W)	6.47'

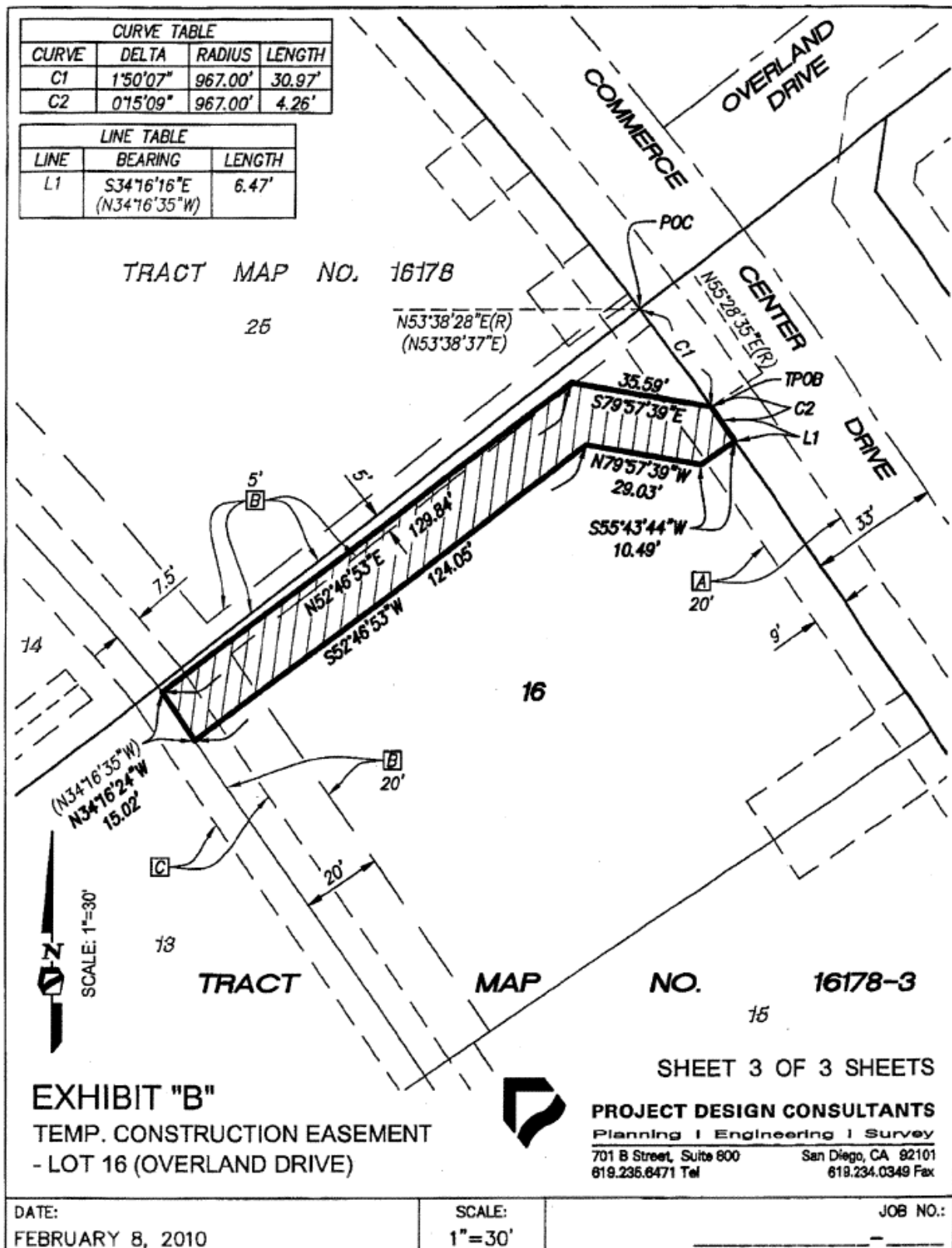


Exhibit "C"
Form of Grant of Easement

Recording Requested by and when recorded
mail to:

City of Temecula
41000 Main Street
Temecula, California 92590
Attention: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Assessor's Parcel No. 921-480-032[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 PERMANENT EASEMENT

WHEREAS, Mark McMillin (referred to as "Grantor" below) is the record fee owner of the real property commonly known as 27511 Commerce Center Drive, in the City of Temecula, County of Riverside, State of California, and identified as Riverside County Tax Assessor's Parcel Number 921-480-032 ("Grantor's Property"); and

WHEREAS, Grantor desires to grant to the City of Temecula, a municipal corporation, (referred to as "Grantee" below) and Grantee desires to acquire from Grantor an approximate 840 square foot permanent easement on Grantor's Property for public use, namely public street purposes, and all uses necessary or convenient thereto in connection with the Overland Drive Extension Project, PW 16-06.

NOW THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Grantor hereby grants to Grantee and approximate 840 square foot permanent easement on Grantor's Property for public use, namely public street purposes, and all uses necessary or convenient thereto, including, but not limited to street, sewer, drainage, and utilities. The approximate 840 square foot permanent easement is described more particularly on Exhibit "A" and depicted on Exhibit "B", which are attached hereto and incorporated herein by this reference.

IN WITNESS WHEREOF, Grantor has executed this Grant of Permanent Easement on _____, 2021.

GRANTOR
Mark McMillin, LLC, a California limited liability company

By:_____

Title:_____

Exhibit "A"

Legal Description of Permanent Easement

February 8, 2010
Sheet 1 of 1

**EXHIBIT "A"
LEGAL DESCRIPTION
EASEMENT FOR ROAD PURPOSES
(OVERLAND DRIVE)**

BEING A PORTION OF LOT 16 OF TRACT MAP NO. 16178-3, SITUATED IN THE CITY OF TEMECULA, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, RECORDED AUGUST 8, 1986 AS SHOWN BY MAP ON FILE IN BOOK 160, PAGES 99 THROUGH 101, INCLUSIVE, OF MAPS, OFFICIAL RECORDS OF RIVERSIDE COUNTY, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF SAID LOT 16, SAID CORNER BEING ON THE WESTERLY RIGHT-OF-WAY OF COMMERCE CENTER DRIVE (66.00 FEET WIDE) AS SHOWN ON SAID MAP, ALSO BEING A POINT ON A CURVE CONCAVE SOUTHWESTERLY WITH A RADIUS OF 967.00 FEET, A RADIAL BEARING TO SAID POINT BEARS NORTH 53°38'28" EAST (NORTH 53°38'37" EAST PER SAID MAP); THENCE SOUTHEASTERLY ALONG THE NORTHEASTERLY LINE OF SAID LOT 16 AND ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 1°50'07" A DISTANCE OF 30.97 FEET; THENCE LEAVING SAID LINE NORTH 79°57'39" WEST A DISTANCE OF 35.59 FEET; THENCE SOUTH 52°46'53" WEST A DISTANCE OF 129.84 FEET TO A POINT IN THE SOUTHWESTERLY LINE OF SAID LOT 16; THENCE ALONG SAID SOUTHWESTERLY LINE NORTH 34°16'24" WEST (NORTH 34°16'35" WEST PER SAID MAP) A DISTANCE OF 1.78 FEET TO THE MOST WESTERLY CORNER OF SAID LOT 16; THENCE ALONG THE NORTHWESTERLY LINE OF SAID LOT 16 NORTH 51°39'19" EAST (NORTH 51°41'16" EAST PER SAID MAP) A DISTANCE OF 154.89 FEET TO THE **POINT OF BEGINNING**.

CONTAINING: 840 SQ. FT. OR 0.019 ACRE, MORE OR LESS.

EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

THIS LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE LAND SURVEYORS' ACT.





BY: 
REX S. PLUMMER, PLS 6641
(MY LICENSE EXPIRES 12-31-2011)

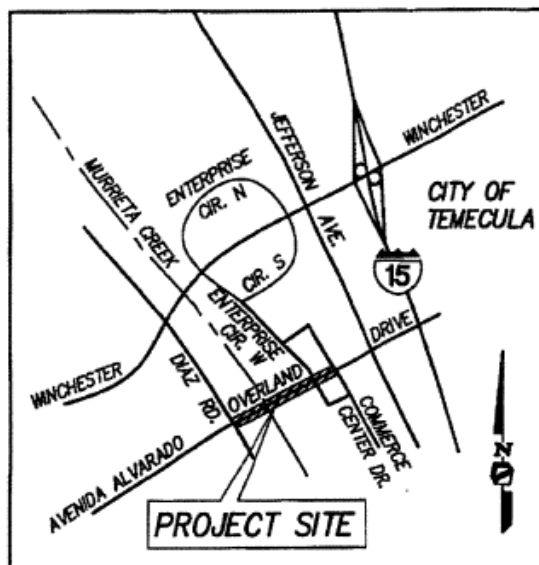
2/11/10
DATE



Exhibit "B"
Depiction of Permanent Easement

LEGEND

-  INDICATES EASEMENT FOR ROAD PURPOSES
AREA = 840 SQ. FT. OR 0.019 ACRE
- POB** INDICATES POINT OF BEGINNING
- () INDICATES RECORD DATA PER TRACT 16178-3
- (R) INDICATES RADIAL BEARING
-  LANDSCAPE MAINTENANCE AGREEMENT PER
INST. 141902, RECORDED MAY 20, 1987
-  EASEMENT TO GENERAL TELEPHONE CO. PER
INST. NO. 117514, RECORDED APRIL 29, 1987
-  15' WIDE DRAINAGE EASEMENT PER TRACT 16178-3



VICINITY MAP




 2/11/10
 REX S. PLUMMER NO. 6641 DATE
 EXP. DATE 12-31-11

EXHIBIT "B"
EASEMENT FOR ROAD PURPOSES
- LOT 16 (OVERLAND DRIVE)

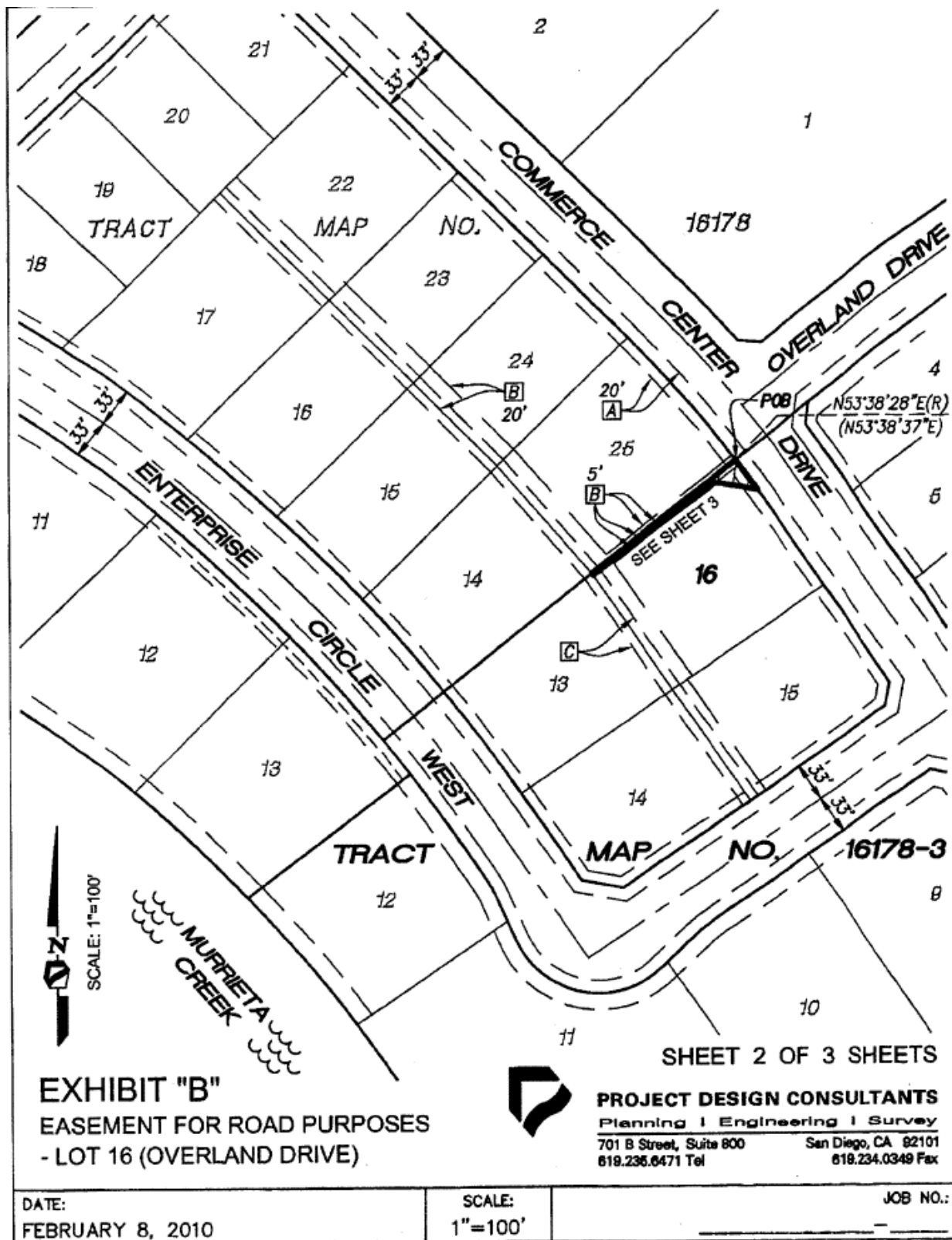


SHEET 1 OF 3 SHEETS
PROJECT DESIGN CONSULTANTS
Planning | Engineering | Survey
701 B Street, Suite 800 San Diego, CA 92101
619.236.6471 Tel 619.234.0349 Fax

DATE:
FEBRUARY 8, 2010

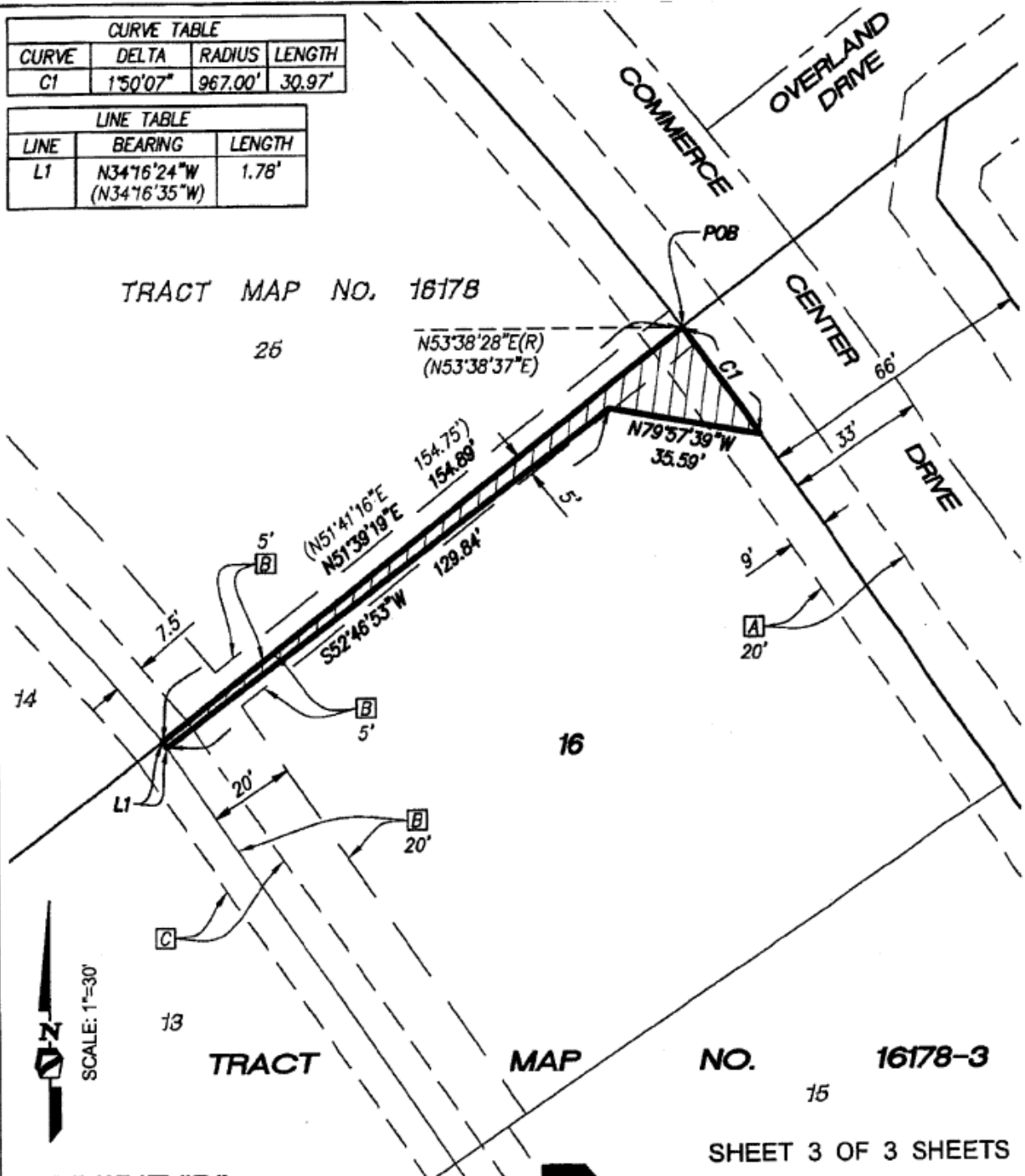
SCALE:
N.T.S.

JOB NO.:



CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	1°50'07"	967.00'	30.97'

LINE TABLE		
LINE	BEARING	LENGTH
L1	N34°16'24"W (N34°16'35"W)	1.78'



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 Riverside)

On _____, before me, _____,
(insert name and title of the officer)

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 _____

(Seal)

**City of Temecula
41000 Main Street
Temecula, California 92590**

**CERTIFICATE OF ACCEPTANCE OF
GRANT OF PERMANENT EASEMENT**

(Gov't Code § 27281)

(Permanent Easement on APN 921-480-032)

This is to certify that the grant to the City of Temecula of that certain approximate 840 square foot permanent easement on portions of that certain real property located at 27511 Commerce Center Drive, Temecula, and identified as Riverside County Tax Assessor's Parcel Number 921-480-032 for public use, namely public street purposes, and all uses necessary or convenient thereto in connection with the Overland Drive Extension Project, PW 16-06 o is hereby accepted under the authority of the City Council of the City of Temecula, and the City of Temecula hereby consents to the recordation thereof by its duly authorized officer.

City of Temecula, a municipal corporation

Dated: _____

By: _____
Aaron Adams, City Manager

Attest:

By: _____
Randi Johl, City Clerk