

RESOLUTION NO. 2021-17-CC

**CITY OF SOUTH GATE
LOS ANGELES COUNTY, CALIFORNIA**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SOUTH GATE, CALIFORNIA, CONSENTING TO AN
ADDITIONAL PROPOSED USE OF THE EASEMENT AREA
AT THE THUNDERBIRD VILLA MOBILE HOME PARK
LOCATED AT 10001 W. FRONTAGE ROAD UNDER A 2020
SOUNDWALL EASEMENT AGREEMENT**

WHEREAS, the City of South Gate (“City”) is in the process of building a soundwall adjacent to the Thunderbird Villa Mobile Home Park located at 10001 W. Frontage Road (“Mobile Home Park”); and

WHEREAS, in connection with the construction of the soundwall, the City and the owner of the Mobile Home Park, AVMGH Six – Thunderbird Villa Limited Partnership, a Nevada limited partnership (“Thunderbird”), entered in to an easement agreement dated April 28, 2020 and recorded in the Los Angeles County Recorder’s Office on August 6, 2020 as Document No. 20200908400 (“Easement Agreement”) a copy of which is attached hereto, as Exhibit “A”; and

WHEREAS, the Easement Agreement grants Thunderbird the right to enter onto the City property described therein (“Easement Area”) for certain specified purposes; and

WHEREAS, Thunderbird wishes to install an emergency access gate on the Mobile Home Park which, when opened, will encroach slightly into the Easement Area as depicted in the attached Exhibit “B” (“Encroachment Gate”); and

WHEREAS, such Encroachment Gate will remain closed except when used for immediate ingress or egress; and

WHEREAS, such Encroachment Gate is not an authorized use of the Easement Area under the terms of the Easement Agreement; and

WHEREAS, Section 5.1 of the Easement Agreement allows the City to consent to other uses of the Easement Area not specified in the Easement Agreement; and

WHEREAS, the City has determined that the proposed “Encroachment Gate” will not adversely affect the construction or operation of the soundwall or the City’s use of the Easement Area.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SOUTH GATE
DOES HEREBY RESOLVE AS FOLLOWS:**

Section 1. The City Council does hereby declare that the above recitals are true and correct and incorporated herein by reference.

Section 2. The City Council does hereby consent to the installation of the Encroachment Gate into the Easement Area of an emergency access gate to be located on the Mobile Home Park, subject to the Public Works Department's approval of the manner and extent of that encroachment and subject to a requirement that the gate remain closed at all times, with the exception of during its immediate use.

Section 3: The City Manager, the Assistant City Manager/Director of Public Works, and their respective designees are authorized to take such actions as may be necessary or appropriate to enforce and carry out this resolution.

Section 4. The City Clerk shall certify to the adoption of this Resolution, which shall be effective upon its adoption.

PASSED, APPROVED and ADOPTED this 27th day of April, 2021.

CITY OF SOUTH GATE:

By: Al Rios
Al Rios, Mayor

ATTESTED:

Carmen Avalos
Carmen Avalos, City Clerk
(SEAL)

APPROVED AS TO FORM:

Raul F. Salinas
Raul F. Salinas, General Counsel

EXHIBIT A

This page is part of your document - DO NOT DISCARD



20200908400



Pages:
0020

Recorded/Filed in Official Records
Recorder's Office, Los Angeles County,
California

08/06/20 AT 03:29PM

FEES:	0.00
TAXES:	0.00
OTHER:	0.00
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PAID:	0.00



LEADSHEET



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THIS FORM IS NOT TO BE DUPLICATED

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Craig D. Hardwick
AlvaradoSmith, APC
1 MacArthur Place, Suite 200
Santa Ana, California, 92707

18618810



Batch Number: 10998608



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EASEMENT AGREEMENT

Including Soundwall Maintenance Obligations

This Easement Agreement Including Soundwall Maintenance Obligations (“**Agreement**”) is made as of **April 28, 2020**, by and between the City of South Gate, a municipal corporation (the “**City**”), and AVMGH Six – Thunderbird Villa Limited Partnership, a Nevada limited partnership (“**Thunderbird**”). This Agreement is made with reference to the following facts:

RECITALS

A. Thunderbird is the owner of a parcel of land containing approximately 19.683 acres, identified by the Los Angeles County Tax Assessor as Assessor's Parcel Number 6222-042-013, commonly known by the street address of 10001 W. Frontage Road, South Gate, California, the legal description of which is attached hereto as Exhibit “A” (the “**Thunderbird Property**”).

B. The City owns and operates the aforementioned W. Frontage Road, which is immediately adjacent to the eastern boundary of the Thunderbird Property.

C. There is currently a wall, approximately six-feet tall, located on the Thunderbird Property which separates the Thunderbird property from the roadway (the “**Existing Wall**”). Thunderbird owns the Existing Wall. The City has proposed removing that wall and installing one or more taller walls (individually and collectively, the “**Soundwall**”) on the City's adjacent roadway property. Such removal and replacement, and the ongoing maintenance of the Soundwall, will require a temporary construction easement and a permanent use and maintenance easement as set forth herein, as well as other agreements between the City and Thunderbird as set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, it is agreed as follows:

1. **Payment of Consideration by the City to Thunderbird.** As full consideration for the temporary construction easement to be granted to the City under Section 2 below, the demolition of the Existing Wall, permanent easement, and for Thunderbird's performance of the maintenance obligations under Section 4 below, the City hereby agrees to pay Thunderbird the sum of One Hundred Twenty-One Thousand Dollars (\$121,000.00) (the "Fee"). The City shall pay the Fee to Thunderbird not later than forty-five (45) days after the Construction Easement Commencement Date identified in Section 2.4 below.

2. **Grant of Temporary Construction Easement.** Thunderbird hereby grants to the City a temporary construction easement across portions of the Thunderbird Property ("**Construction Easement**"), on the terms and conditions set forth in this Section 2 and elsewhere in this Agreement.

2.1 **Location of Construction Easement.** The area covered by the Construction Easement (the "**Construction Easement Area**") shall be those portions of the Thunderbird Property on which the Existing Wall is located, together with any portion of the Thunderbird Property on either side of the Existing Wall to which the City and its employees, contractors, subcontractors and material suppliers must reasonably have access in order to remove the Existing Wall and build the Soundwall. Notwithstanding the foregoing, the Construction Easement Area shall not include portions of the Thunderbird Property leased by Thunderbird to residential tenants.

2.2 **Permitted Uses.** The City and its employees, contractors, subcontractors and material suppliers shall have the right to use the Construction Easement Area for and in connection with the removal of the Existing Wall and the construction of the Sound Wall. This shall include the right to temporarily store tools, equipment, demolition debris and construction materials on the Construction Easement Area in such locations (if any) where the Construction Easement Area is deep enough to accommodate such storage.

2.3 **Restrictions on Use.** Portions of the Construction Easement Area are located within the entrance driveways to the Thunderbird Property. The City shall conduct its demolition and construction activities so as to minimize interference with use of those driveways by residents of the Thunderbird Property. The City shall not store anything on the driveways. The City shall also conduct its activities on the Construction Easement Area so as not to damage the mobile homes or other personal property of the residents of the Thunderbird Property.

2.4 **Term of Construction Easement.** At least seven (7) days prior to the commencement of any activity on the Construction Easement Area by the City or its employees, contractors, subcontractors or material suppliers, the City shall send written notice to Thunderbird specifying the date on which such activity will commence on that date (the "**Construction Easement Commencement Date**"). The term of the Construction Easement will commence on the Construction Easement Commencement Date and will continue until the date on which the City notifies Thunderbird, in writing, that the City has completed construction of the Soundwall. That completion date shall be the end of the term of the Construction Easement and shall be the commencement of the term of the Soundwall Use and Maintenance Easement identified in Section 3 below.

3. **Grant of Soundwall Use and Maintenance Easement.** The City hereby grants to Thunderbird an easement to use City property on each side of the Soundwall (“**Soundwall Use and Maintenance Easement**”), on the terms and conditions set forth in this Section 3 and elsewhere in this Agreement, and subject to Thunderbird’s performance of the maintenance obligations set forth in Section 4 below.

3.1 **Location of Soundwall Use and Maintenance Easement.** The area covered by the Soundwall Use and Maintenance Easement (the “**Soundwall Easement Area**”) shall be (a) those portions of the City’s property located west of the Soundwall, between the Soundwall and the eastern boundary of the Thunderbird Property, and (b) those portions of the City’s property located east of the Soundwall, between the Soundwall and West Frontage Road. The Soundwall Easement Area shall include the curb, sidewalk and any parkway or landscape area between West Frontage Road and the Soundwall.

3.2 **Permitted Uses.** With respect to those portions of the Soundwall Easement Area located west of the Soundwall, Thunderbird shall have the right to enter upon the Soundwall Easement Area, to landscape and maintain same, and to authorize its residential tenants to enter upon same. With respect to those portions of the Soundwall Easement Area located east of the Soundwall, Thunderbird’s rights shall be limited to (a) performance of the maintenance obligations set forth in Section 4 below and (b) the right to use the public sidewalk located thereon to the same extent as members of the public in general.

3.3 **Restrictions on Use.** Thunderbird shall not build, or allow any third party to build, anything in the Soundwall Easement Area. Thunderbird shall not attach anything to the Soundwall, lean anything against the Soundwall, or damage the Soundwall. Thunderbird shall take all commercially reasonable steps to prohibit its residential tenants from climbing the Soundwall or doing any of the foregoing prohibited activities. In performing its maintenance activities pursuant to Section 4 below, Thunderbird shall not impair traffic on West Frontage Road at any time, and shall not block public access to the sidewalk adjacent to the Soundwall for longer than reasonably necessary to conduct its maintenance activities, and in no event for longer than one (1) hour.

3.4 **Term of Soundwall Use and Maintenance Easement.** The term of the Soundwall Use and Maintenance Easement Area shall commence on the commencement date specified in Section 2.4 above, and will continue such time as the City permanently removes the Soundwall. Notwithstanding the foregoing, if, prior to the completion of any such removal, the City notifies Thunderbird in writing that the City intends to replace the Soundwall with a similar wall, then the Soundwall Use and Maintenance Easement shall not terminate but shall remain in effect unless and until the City thereafter affirmatively terminates the Soundwall Use and Maintenance Easement.

4. **Maintenance Obligations.** Throughout the term of the Soundwall Use and Maintenance Easement, Thunderbird shall do and perform all of the following:

4.1 **Sidewalk Maintenance.** Thunderbird shall maintain the public sidewalk adjacent to the Soundwall in the manner contemplated by Sections 5.08.020 and 5.08.030 of the South Gate Municipal Code ("SGMC").

4.2 **Landscaping.** In connection with its construction of the Soundwall, the City shall install the initial landscaping. Thunderbird shall regularly maintain and install any future landscaping in the parkways and other unpaved areas on the side of the Soundwall facing West Frontage Road, and at each entrance to the Thunderbird Property from West Frontage Road (to a level deemed acceptable by the City in its reasonable discretion). Any trees to be installed in those areas shall conform to the requirements of the Street Tree Master Plan identified in SGMC § 5.33.070.1.

4.3 **Irrigation.** In connection with its construction of the Soundwall, the City shall install an irrigation system serving the areas to be landscaped by Thunderbird pursuant to Section 4.2 above. The City shall also install a water meter to monitor the water used by that irrigation system. Upon completion of the Soundwall, the City will transfer ownership and maintenance of irrigation and water meter to Thunderbird. Thunderbird shall control the operation of that irrigation system, and shall irrigate the landscaped areas as reasonably necessary to maintain the health and appearance of the landscaping. Thunderbird shall pay for the water meter usage and water service.

4.4 **Graffiti Removal.** Thunderbird shall, at its expense, keep the side of the Soundwall facing the Thunderbird property free of graffiti, as that term is defined in SGMC §9.49.020.F. Thunderbird shall remove any graffiti on the Soundwall within 48 hours after the earlier of (a) Thunderbird's discovery of the graffiti, or (b) Thunderbird's receipt of written notice of the graffiti from the City, regardless of whether such notice is a formal "notice to abate graffiti nuisance" pursuant to SGMC § 9.49.090.C or any less formal written notice.

4.5 **Notify City of Damage.** If Thunderbird causes any damage to the Soundwall, or discovers any damage to the Soundwall caused by any third party, Thunderbird shall immediately notify the City of same in writing. The City shall thereafter inspect such damage and make any repairs deemed necessary by the City. Thunderbird shall have no right and no obligation to make any repairs to the Soundwall.

4.6 **Reimbursement of Certain Cleaning and Repair Costs.** Thunderbird shall promptly reimburse the City, upon demand, for the City's cost of (a) repairing any damage caused to the Soundwall or (b) removing graffiti from the Soundwall which Thunderbird fails to timely remove as required by Section 4.4 above.

5. **Other Restrictions on Thunderbird's Use of the Soundwall Easement Area.**

5.1 **Activities Not Expressly Authorized are Prohibited.** Thunderbird shall use the Soundwall Easement Area solely for and in accordance with the uses specified in this Agreement. Thunderbird shall not use or permit the Soundwall Easement Area to be used for any other purpose whatsoever without the City's prior written consent, which consent may be withheld in the City's sole and absolute discretion.

5.2 **No Storage.** Thunderbird shall not store any tools, equipment or materials on the portion of the Soundwall Easement Area east of the Soundwall.

5.3 **Compliance with Laws.** Thunderbird shall exercise its rights and obligations hereunder in compliance with all applicable ordinances, statutes and other laws. Thunderbird shall not commit or permit any public or private nuisance or any other act or thing which obstructs or interferes with the rights of the City or the general public in or around the Soundwall Easement Area. Thunderbird shall not use the Soundwall Easement Area for any unlawful purpose.

5.4 **Liens.** Thunderbird shall not suffer or permit any liens, encumbrances or charges against the City's underlying fee interests in the Soundwall Easement Area, or any other property owned by the City or any part thereof – including without limitation any mechanics', materialmen's, contractors' or other liens arising from, or any claims for damages growing out of, any work of repair or alteration as herein authorized or otherwise arising. Thunderbird shall indemnify, protect, defend and hold the City and such real property free and harmless from all liability for any and all such liens and claims and all costs and expenses in connection therewith, including, without limitation, costs of suit and reasonable attorneys' fees and costs. Liens imposed by Thunderbird's contractors, material suppliers, vendors or others (including without limitation mechanics', materialmen's, or contractors' liens) shall constitute a violation by Thunderbird of this Agreement, even if such liens were imposed without Thunderbird's consent.

5.5 **Hazardous Materials.** Thunderbird shall not cause or permit any Hazardous Materials (as defined below) to be brought upon, stored, used, generated, released into the environment or disposed of on, under, from or about the Soundwall Easement Area without the City's prior written consent, which consent may be withheld in the City's sole and absolute discretion. If Thunderbird causes any such real property to become contaminated with Hazardous Materials, then Thunderbird shall reimburse the City for the cost of any clean-up work performed on, under or about said real property in connection with the removal, disposal, neutralization or other treatment of such Hazardous Materials. As used herein, the term "**Hazardous Materials**" means (i) any "hazardous materials" as defined in Section 25501(o) of the California Health and Safety Code, as may be amended from time to time, (ii) any other substance or matter which results in liability to any person or entity from exposure to such substance or matter under any statutory or common law theory and (iii) any substance or matter which is in excess of relevant and appropriate levels set forth in any federal, state or local law or regulation pertaining to any hazardous or toxic substance, material or waste or for which any federal, state or local agency orders or otherwise requires removal, treatment or remediation.

6. **Character of Easements.** In addition to the matters set forth above, the following provisions and conditions are applicable to the Construction Easement and the Soundwall Use and Maintenance Easement (which are sometimes hereafter collectively referred to as the "**Easements**"):

6.1 **Perpetual Nature of Soundwall Use and Maintenance Easement.** From and after the commencement date set forth in Section 3.4 above, the Soundwall Use and Maintenance

Agreement is perpetual and irrevocable, except upon the specific conditions set forth in this Agreement.

6.2 **Exclusivity/Non-Exclusivity**. The Construction Easement is exclusive to the City, and during its term Thunderbird shall grant no other party any rights to use the Construction Easement Area; provided, however, that the foregoing prohibition shall not restrict access by residential tenants of the Thunderbird Property to their respective residences. The Soundwall Use and Maintenance Easement shall be exclusive to Thunderbird with respect to those portions of the Soundwall Easement Area west of the Soundwall. The Soundwall Use and Maintenance Easement shall be non-exclusive with respect to those portions of the Soundwall Easement Area east of the Soundwall, which may be used by members of the public in addition to Thunderbird.

6.3 **Easements Run with the Land**. The Easements run with the land. The City's property adjacent to the Soundwall is the dominant tenement hereunder, and the Thunderbird Property is the servient tenement hereunder.

6.4 **Easements Limited to the Specified Easement Areas**. Nothing contained herein shall be deemed or construed to grant to Thunderbird any rights in or to any portion of West Frontage Road or any other property owned by the City other than the Soundwall Easement Area. No rights, easements or licenses are acquired by Thunderbird by implication or otherwise except for the Soundwall Use and Maintenance Easement.

6.5 **Easements Subject to Existing Conditions**. The Easements are subject to all easements, agreement, covenants, offers of dedication, conditions, restrictions, reservations, rights and rights-of-way, of record, apparent upon reasonable inspection, or of which Thunderbird has actual notice, as such matters now affect the Construction Easement Area and/or the Soundwall Easement Area.

7. **City Has No Obligation To Provide Security**. Other than the fire department and the police department services and other public services, the City has no obligation, nor does the City intend to ever undertake any obligation, to provide security to the Construction Easement Area or the Soundwall Easement Area for the benefit of Thunderbird or Thunderbird's personnel or property relative to the Easements. Notwithstanding any provision in this Agreement to the contrary, any security measures implemented by the City shall be solely for its protection and are not intended to provide security or protection for Thunderbird or any personnel or property of Thunderbird.

8. **Indemnity**. To the fullest extent permitted by law, Thunderbird agrees to indemnify, defend (with counsel reasonably satisfactory to the City) and hold harmless the City from and against any and all actions, causes of action, claims, costs (including without limitation attorneys' fees and costs), damages, demands, expenses, judgments, lawsuits, liabilities, liens, losses, and obligations of whatever kind or nature, character, type or description, whether direct or indirect, known or unknown, existing or potential, suspected or unsuspected, or foreseeable or unforeseeable (collectively, "Claims"), which may now or hereafter exist or be asserted against the City, which Claims are based upon, arise out of, or relate to (i) any costs incurred by the City

for corrective action taken on account of the breach by Thunderbird of Thunderbird's obligations under this Agreement, but only where the City has first given Thunderbird written notice of the proposed corrective action and an opportunity for Thunderbird to perform the corrective action itself or otherwise satisfy the Claim within ten (10) days, and Thunderbird has failed to do so with said 10-day period, (ii) Thunderbird's use of the Soundwall Easement Area or any other property owned by the City in connection with the Easements (iii) Thunderbird's failure to comply with any provision of this Agreement, (iv) Thunderbird's violation of any applicable law; (v) Thunderbird's violation of Section 5.5 above. The foregoing indemnity shall not require payment as a condition precedent and shall survive the expiration or earlier termination of this Agreement. Notwithstanding the foregoing, Thunderbird has no obligation to indemnify, and shall not indemnify, the City with respect to any Claims arising from the willful and/or negligent acts or omissions of the City or its employees, contractors, subcontractors or material suppliers.

9. **Event of Default.** As used herein, the term "Event of Default" means a failure by Thunderbird or the City to observe and perform any other provision of this Agreement where such failure continues for thirty (30) days after written notice thereof by the nondefaulting party to the defaulting party; provided, however, that if such default is not susceptible of cure within such thirty (30)-day period, but is susceptible of cure within a reasonable period of time, then no Event of Default shall occur hereunder unless the defaulting party shall fail to commence to cure such default within such thirty (30)-day period or shall fail to diligently pursue the cure of such default to completion within a reasonable period of time thereafter.

10. **Remedies Upon Event of Default.** Upon the occurrence of any Event of Default by either Thunderbird or the City, the nondefaulting party shall have the right, but not the obligation, to (a) bring an action in Superior Court against the defaulting party seeking to temporarily suspend and/or permanently revoke (*i.e.* terminate) the Easements; (b) bring an action in Superior Court against the defaulting party seeking injunctive relief to prevent the defaulting party from continuing the Event of Default and/or to prevent the defaulting party from using or interfering with the Easements; (c) bring an action in Superior Court against the defaulting party for money damages; and/or (d) pursue any and all other rights and remedies available at law. Each right and remedy of the nondefaulting party provided for herein or now or hereafter existing at law or otherwise shall be cumulative and shall not preclude the nondefaulting party from exercising any other rights or remedies provided for in this Agreement or now or hereafter existing at law or otherwise.

11. **Condemnation by Other Governmental Entities.** If any governmental entity (including without limitation the California Department of Transportation) ever seeks to acquire the Soundwall Easement Area by eminent domain, then the City shall be entitled to all condemnation proceeds relative thereto.

12. **Miscellaneous.**

12.1 **Notices.** All notices required to be given pursuant to the terms hereof shall be in writing and shall be either (a) deposited in the United States express mail or first class mail, registered or certified, return receipt requested, postage prepaid, or (b) delivered by FedEx or a similar regional or national overnight courier service for next-day delivery that requires written

acknowledgment of receipt by the addressee. All such notices shall be deemed delivered upon actual receipt (or upon the first attempt at delivery pursuant if the intended recipient refuses to accept delivery). All such notices shall be delivered to the following addresses, or to such other address as the receiving party may from time to time specify by written notice to the other party:

To the City:
The City of South Gate
South Gate City Hall
8650 California Avenue
South Gate, California 90280
Attn: Arturo Cervantes,
Assistant City Manager/Director of Public
Works
Telephone No.: (323) 563-9512
Fax No.: (323) 563-9572
E-mail: ACervantes@SoGate.org

With a copy (which shall not constitute notice)
to:

Craig D. Hardwick, Esq.
AlvaradoSmith, APC
1 MacArthur Place, Suite 200
Santa Ana, California 92707
Telephone No.: (714) 852-6800
Fax No.: (714) 852-6899
E-mail: CHardwick@AlvaradoSmith.com

To Thunderbird: (address)
10001 West Frontage Road
South Gate, CA 90280
Attn: Bruce Hohn
Telephone No.: (562) 928-4301
Fax No.: (562) 928-4451
E-mail: Tbird710@verizon.net

12.2 **Time**. Time is of the essence of every provision contained in this Agreement. If the date ("**Performance Date**") on which any action is to be taken, any obligation is to be performed, or any notice is to be given under this Agreement falls on a Friday when South Gate City Hall is closed for business, or on a Saturday, Sunday or holiday, such Performance Date shall be automatically extended to the next business day. Except as otherwise expressly provided herein, all references to periods of days shall refer to consecutive calendar days.

12.3 **Successors and Assigns**. This Agreement shall inure to the benefit of and be binding upon the parties hereto and all successive owners of the dominant and servient tenements.

12.4 **Incorporation of Recitals and Exhibits**. All of the recitals set forth in this Agreement, and all of the exhibits attached to this Agreement, are by this reference incorporated in and made a part of this Agreement as though fully set forth herein.

12.5 **Attorneys' Fees.** If either party brings suit against the other with respect to this Agreement, then all costs and expenses, including without limitation actual professional fees and costs such as appraisers' accountants' experts, and attorneys' fees and costs, incurred by the prevailing party (whether that party prevails by final judgment or out-of-court settlement) shall be paid by the losing party. The losing party's obligation shall be deemed to have accrued on the date of the commencement of such actions and shall be enforceable whether or not the action is prosecuted to judgment. As used herein, the term "attorneys' fees and costs" shall include, without limitation, attorneys' fees, costs, and expenses incurred in connection with any (a) postjudgment motions, (b) contempt proceedings, (c) garnishment, levy, and debtor and third-party examinations, (d) discovery, and (e) bankruptcy litigation. As used herein, the term "prevailing party" shall include without limitation any party against whom a cause of action, complaint, cross-complaint, counter-claim, cross-claim or third party complaint is voluntarily dismissed, with or without prejudice.

12.6 **Construction.** Thunderbird's representative have reviewed this Agreement and negotiated with the City to change provisions Thunderbird deemed unacceptable. The normal rule of construction that ambiguities are resolved against the drafting party are waived as to this Agreement.

12.7 **Governing Law.** This Agreement shall be shall be construed and interpreted in accordance with, and shall be governed and enforced in all respects according to, the laws of the State of California. All claims relating to or arising out of this Agreement, or the breach thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the State of California. No effect shall be given to any choice of law or conflict of law provision, principal or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of California.

12.8 **Consent to Jurisdiction and Service of Process.** All judicial proceedings brought against any party hereto arising out of or relating to this Agreement shall be brought in a state or federal court of competent jurisdiction in the County of Los Angeles, State of California, and by execution and delivery of this Agreement each party accepts for itself and in connection with its properties, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts (both personal jurisdiction and subject matter jurisdiction), waives any defense of *forum non conveniens* and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement. Each party hereby agrees that service of all process in any such proceeding in any such court may be made by registered or certified mail, return receipt requested, to any other party at its address provided herein, such service being hereby acknowledged by each party to be sufficient for personal jurisdiction in any action against said party in any such court and to be otherwise effective and binding service in every respect. Nothing herein shall affect the right to serve process in any other manner permitted by law.

12.9 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature page and may be executed by the affixing of the signatures of each of the parties to any one of such counterpart signature pages; all of such counterpart signature pages shall read as though one

and they shall have the same force and effect as though all of the signers had signed a single signature page.

12.10 **Entire Agreement.** This Agreement contains the entire understanding of the parties and supersedes any and all other written or oral understanding. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

12.11 **Captions.** Any captions or headings to the Sections and subsections in this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of validity of this Agreement or any provision hereof, and in no way define, limit or prescribe the scope or intent of this Agreement or any provisions thereof.

12.12 **Severability.** If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable term or provision had never been contained herein.

12.13 **Further Assurances.** Each party shall cooperate with the other and shall execute such other documents as may be reasonably necessary to carry out the provisions of this Agreement.

12.14 **No Waiver.** Any waiver, consent or approval by either party of any breach, default or event of default of any provision, condition or covenant of this Agreement must be in writing and shall be effective only to the extent set forth in writing. No waiver of any breach, default or event of default shall be deemed a waiver of any later breach, default or event of default of the same or any other provision of this Agreement. Any failure or delay on the part of either party in exercising any power, right or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude any further exercise thereof.

12.15 **Rights and Remedies.** No right or remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other right or remedy given hereunder or hereafter existing at law or in equity. The exercise of any one or more rights or the election of any one or more remedies by any party shall not constitute a waiver of the right to exercise other available rights or pursue other available remedies.

12.16 **Relationship of Parties.** Nothing contained in this Agreement or in the relationship between the parties shall be deemed to constitute a partnership, joint venture or any other relationship between them except that of grantor and grantee.

12.17 **Force Majeure.** If either party is delayed or hindered in, or prevented from, the performance of any act required under this Agreement by reason of a "Force Majeure" as defined below, then performance of such act will be excused for the period of delay and the period for

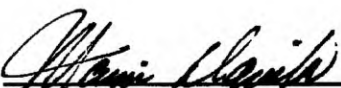
the performance of any such act will be extended for a period equivalent to the period of such delay. Notwithstanding the foregoing, however, nothing in this Section shall excuse either party from the prompt payment of any amounts owing by that party under this Agreement. Further notwithstanding the foregoing, no Force Majeure event shall excuse the delay of either party's performance by more than sixty (60) days. As used herein, the term "**Force Majeure**" means any one or more of the following to the extent not caused by the party claiming the delay: (a) fire, earthquake, flood or other natural disaster; (b) interruption of any public utilities, including without limitation electricity, gas, water, sewer or telephone service; (c) governmental action or inaction, including without limitation failure, refusal or delay in issuing permits, approvals and/or authorizations; (d) restrictive governmental laws, regulations or orders; (e) strikes, lock-outs, or similar labor interruptions; (f) inability to procure necessary construction materials; (g) riots, civil unrest or insurrection; (h) criminal activity; (i) terrorism; (j) war; or (k) any other unusual and unforeseeable delay not within the reasonable control of the party delayed.

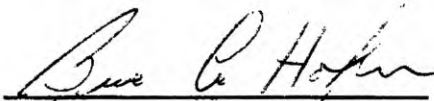
12.18 **No Third-Party Beneficiaries.** The parties hereto acknowledge and agree that no provision in this Agreement may be enforced by any third party.

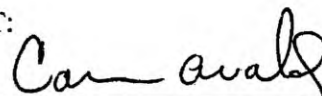
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

"City"
The City of South Gate,
a municipal corporation

"Thunderbird"
AVMGH Six – Thunderbird Villa Limited
Partnership, a Nevada limited partnership

By: 
Maria Davila, Mayor

By: 
Name: Bruce A. Hahn
Title: MANAGING PARTNER

ATTEST:
By: 
Carmen Avalos, City Clerk

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM

By: 
Raul F. Salinas, Esq., City Attorney

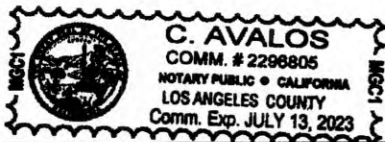
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

On May 5, 2020, before me, Carmen Avalos, Notary Public, personally appeared Raul F. Salinas, 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.



C. Avalos
Notary Public

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 Los Angeles)

On May 6, 2020, before me, Carmen Avalos, Notary Public, personally appeared Maria R. Davila, 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.



C. Avalos
Notary Public

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 Los Angeles)

On April 22, 2020, before me, Maria O. Martinez, Notary Public, personally appeared Bruce Andrew Holm, 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.



Notary Public

Exhibit "A"

Legal Description of Thunderbird Property

EXHIBIT B

Contract No. 2020-25-CC

Legal and Plat

Const Surveying, Inc
October 17, 2016

EXHIBIT A TEMPORARY CONSTRUCTION EASEMENT

THAT PORTION OF THE LAND IN THE RANCHO SAN ANTONIO, IN THE CITY OF SOUTH GATE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, CONVEYED TO MARIA MERCED DE FOSTER BY DEED RECORDED IN BOOK 3, PAGE 37 OF DEEDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AND THAT PORTION OF LOT 5 OF THE SUBDIVISION OF THE ESTATE OF ROBERT TWEEDY, DECEASED AS PER MAP RECORDED IN BOOK 83, PAGES 13 AND 14, OF MISCELLANEOUS RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER, IN SAID CITY, COUNTY AND STATE, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY CORNER OF THE LAND DESCRIBED IN PARCEL 1 OF THE DEED TO THE STATE OF CALIFORNIA, RECORDED APRIL 29, 1964, IN BOOK 44460, PAGE 1, OFFICIAL RECORDS IN THE OFFICE OF SAID COUNTY RECORDER, SAID CORNER BEING A POINT IN THE SOUTHERLY LINE OF SOUTHERN AVENUE, FORMERLY STEWART AND GRAY ROAD, 50.00 FEET WIDE; THENCE ALONG THE WESTERLY LINES OF THE LAND DESCRIBED IN SAID PARCEL 1 THE FOLLOWING THREE (3) COURSES:

1. SOUTH $03^{\circ}53'57''$ WEST 129.02 FEET TO THE BEGINNING OF A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 2475.00 FEET;
2. SOUTHERLY 107.19 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $02^{\circ}28'53''$;
3. SOUTH $06^{\circ}22'50''$ WEST 884.61 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID WESTERLY LINE THE FOLLOWING THREE (3) COURSES:

1. SOUTH $08^{\circ}22'50''$ WEST 249.49 FEET TO THE BEGINNING OF A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 4975.00 FEET;
2. SOUTHERLY 531.09 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $08^{\circ}06'59''$ TO THE BEGINNING OF A COMPOUND CURVE CONCAVE WESTERLY HAVING A RADIUS OF 2338.00 FEET, A RADIAL BEARING TO SAID POINT BEARS SOUTH $77^{\circ}30'11''$ EAST;

Crest Surveying, Inc.
October 17, 2016

3. SOUTHERLY 383.39 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09°23'44" TO THE SOUTHERLY LINE OF THE LAND DESCRIBED IN A GRANT DEED RECORDED JULY 8, 2003 AS DOCUMENT NO. 03-1948303 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

THENCE LEAVING SAID WESTERLY LINE, NON-TANGENT, ALONG SAID SOUTHERLY DEED LINE NORTH 82°58'31" WEST 4.45 FEET; THENCE LEAVING SAID SOUTHERLY DEED LINE NORTH 20°41'41" EAST 79.39 FEET; THENCE NORTH 18°43'48" EAST 75.15 FEET; THENCE NORTH 16°50'26" EAST 124.47 FEET; THENCE NORTH 14°13'52" EAST 83.01 FEET; THENCE NORTH 12°19'22" EAST 70.26 FEET; THENCE NORTH 11°20'30" EAST 153.88 FEET; THENCE NORTH 09°06'26" EAST 173.65 FEET; THENCE NORTH 06°44'34" EAST 329.50 FEET; THENCE NORTH 38°36'36" WEST 10.18 FEET; THENCE NORTH 83°36'36" WEST 15.00 FEET; THENCE NORTH 06°23'24" EAST 56.13 FEET; THENCE SOUTH 83°36'36" EAST 15.00 FEET; THENCE NORTH 51°23'24" EAST 15.91 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 6,663 SQUARE FEET, MORE OR LESS.

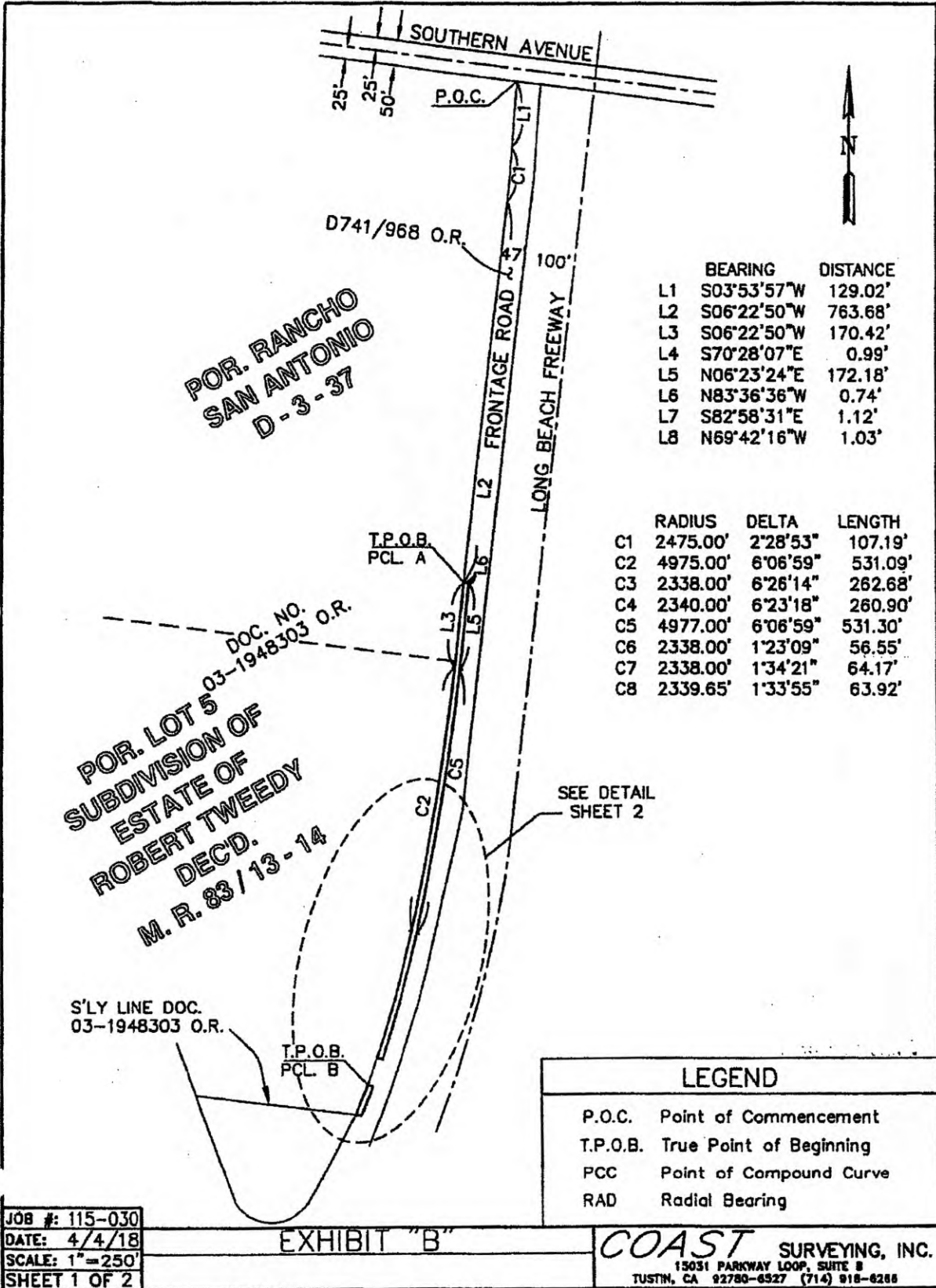
ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT B ATTACHED HERETO AND MADE A PART HEREOF.

PREPARED BY ME OR UNDER MY DIRECTION.
DATED THIS 19TH DAY OF OCTOBER, 2016



GWEN-VERA DEL CASTILLO, PLS 5108

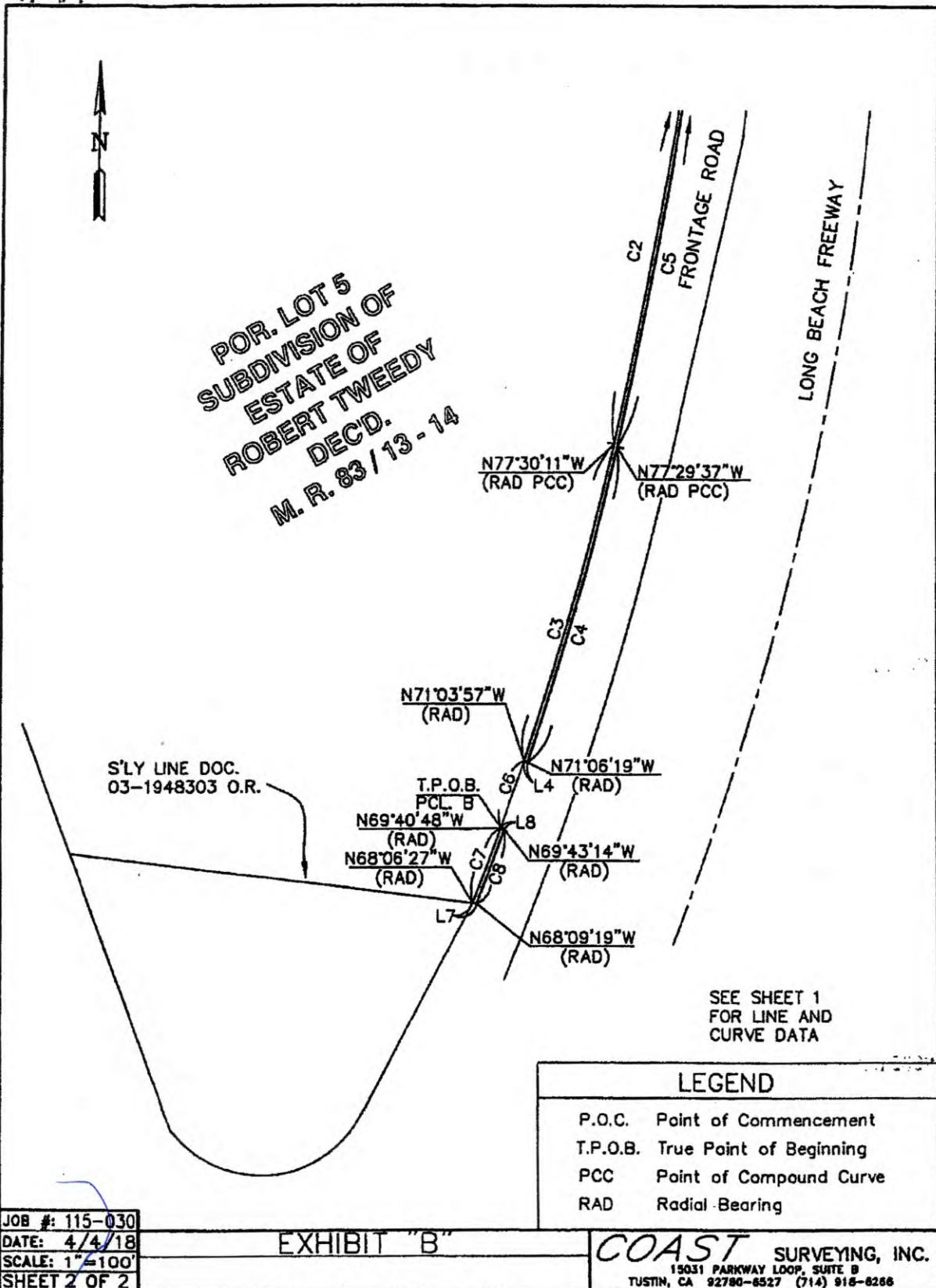




JOB #: 115-030
 DATE: 4/4/18
 SCALE: 1"=250'
 SHEET 1 OF 2

EXHIBIT "B"

COAST SURVEYING, INC.
 13031 PARKWAY LOOP, SUITE 8
 TUSTIN, CA 92780-6527 (714) 918-6266



JOB #: 115-030
DATE: 4/4/18
SCALE: 1"=100'
SHEET 2 OF 2

EXHIBIT "B"

COAST SURVEYING, INC.
15031 PARKWAY LOOP, SUITE B
TUSTIN, CA 92780-8527 (714) 918-8266

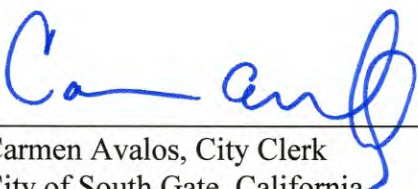
RESOLUTION CERTIFICATION PAGE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS
CITY OF SOUTH GATE)

I, Carmen Avalos, City Clerk of the City of South Gate, California, hereby certify that the whole number of Members of the City Council of said City is five; that Resolution No. 2021-17-CC was adopted by the City Council at their Regular Meeting held on April 27, 2021 by the following vote:

Ayes: Council Members: Davila, Rios, Avalos, Diaz and Hurtado
Noes: Council Members: None
Absent: Council Members: None
Abstain: Council Members: None

Witness my hand and the seal of said City on May 3, 2021.



Carmen Avalos, City Clerk
City of South Gate, California