

RECORDING REQUESTED BY:

See below

WHEN RECORDED RETURN TO:

City of Yorba Linda
4845 Casa Loma Avenue
Yorba Linda, CA 92885
Attn: City Clerk

[EXEMPT FROM RECORDER'S FEE PURSUANT TO
GOVERNMENT CODE 27383]

[THE AREA ABOVE IS RESERVED FOR RECORDER'S USE]

**AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY
(ADMINISTRATIVE ENCROACHMENT PERMIT)**

This AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY (ADMINISTRATIVE ENCROACHMENT PERMIT) (the "Agreement") is dated for reference purposes only as of the ____ day of _____, 202_ (the "Effective Date"), and is entered into by and between MICHAEL & LISA AMLING ("Owner"), and the CITY OF YORBA LINDA, a municipal corporation ("City"). Owner and City are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS

- A. Owner is the owner in fee of that certain real property located at 21525 Dunrobin Way in the City of Yorba Linda, County of Orange, State of California, and more particularly described in Exhibit "A" attached hereto ("Owner's Property").
- B. City is the owner of a Storm Drain easement on, over, under, and across a portion of the Owner's Property described in Exhibit "B" attached hereto (the "City Property").
- C. Owner has applied to City for an administrative encroachment permit to allow certain building overhangs to be constructed, installed, maintained and/or used within the City Property, as depicted, or described in Exhibit "C" to this Agreement (the "Owner's Improvements").
- D. On December, 2021, City approved said encroachment permit for the Owner's Improvements (the "Encroachment Permit") subject to the condition or requirement that Owner and City execute and record this Agreement against the Owner's Property.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Owner's Right to Construct, Install, Maintain and Use Owner's Improvements on City Property.

a. Subject to all the other terms and conditions set forth in this Agreement, City hereby grants to Owner a revocable, non-exclusive license to enter onto the City Property to construct, install, maintain and use the Owner's Improvements. Owner shall at all times construct, install, maintain and use the Owner's Improvements in strict conformity with all applicable federal, state, and local laws, regulations, and official policies (including but not limited to Title 15 of the City's Municipal Code), with any and all conditions set forth in the Encroachment Permit (a copy of which is a public record available for inspection during normal business hours in the office of the City Clerk located at 4845 Casa Loma Avenue, Yorba Linda, CA 92885), and with the terms of this Agreement, including without limitation Exhibit "C" hereto. Owner shall not allow any of the Owner's Improvements or any persons constructing, installing, maintaining, using, repairing, replacing, or removing the Owner's Improvements to (1) functionally obstruct or impair vehicular or pedestrian travel or visibility on and along the City Property, as determined by the City Engineer, (2) obstruct building entryways, (3) obstruct handicapped accessibility. Owner shall comply with and cause all of its employees, independent contractors, and agents to comply with all safety rules and regulations as may be prescribed by the City's Public Works Director or his/her designee. Owner shall have no right to expand, enlarge, or otherwise alter the Owner's Improvements in a manner inconsistent with or beyond the scope of City's initial approval of same. If Owner desires to expand, enlarge, or otherwise alter the Owner's Improvements in such manner, Owner shall first be required to obtain the written approval of City's Public Works Director or his/her designee, which approval may be withheld in City's sole and absolute discretion. In the event City's approval for an expansion, enlargement, or alteration to the Owner's Improvements is obtained, the Parties agree to execute an appropriate amendment to this Agreement to depict or describe the change and to record said amendment against the Owner's Property, and at such time all references in this Agreement to the "Owner's Improvements" shall be deemed to refer to the Owner's Improvements as so expanded, enlarged, or altered.

b. Owner shall at all times maintain the Owner's Improvements in good condition and repair and Owner shall maintain the immediate area in a neat, tidy, and clean condition, free of any refuse and debris. Upon receiving notice from City of any problem caused by Owner's failure to properly maintain Owner's Improvements, Owner shall immediately remedy such problem. Runoff from power washing or irrigation shall not enter the storm drain system. Solids and liquids from Owner's Improvements and uses shall not enter the storm drain system and shall be immediately removed from the City's Property. Upon receiving notice from City of any problem caused by Owner's failure to properly maintain Owner's Improvements, Owner shall immediately remedy such problem. An additional encroachment permit shall be obtained from the City on an annual basis prior to any Owner contractor performing maintenance work on Owner's Improvements within the right of way on the City Property.

c. Owner shall pay, at its sole expense all costs of constructing, maintaining, operating, repairing, replacing, or removing Owner's Improvements. After the installation of Owner's Improvements, or after any subsequent maintenance or repair/work thereon has been completed, the City Property and all surrounding grounds, to the extent such surrounding grounds shall have been disturbed, shall be restored by Owner to their original condition to the satisfaction of the City.

2. City Right to Expand, Enlarge, or Alter City Improvements. Notwithstanding the rights granted to Owner hereunder, City reserves the right to expand, enlarge, alter, maintain, repair, replace, and relocate any City-owned improvement on, over, under, or across the City Property and any adjacent City easement or right-of-way at any time, without any obligation or liability to Owner to repair or restore any damage that may be caused to any of the Owner's Improvements.

3. No Property Interest. The Encroachment Permit and this Agreement are not intended to and do not convey to Owner or create any interest in the City Property. This Agreement is intended as a non-exclusive and revocable license only.

4. License Fee. Owner's rights set forth in this Agreement are conditional and contingent upon Owner having paid to City any and all fees required to obtain the Encroachment Permit.

5. Term; Termination and Revocation of Encroachment Permit and Agreement.

a. This Agreement shall be of indefinite duration and shall be effective from the date this Agreement is fully executed and recorded against the Owner's Property until the date this Agreement is terminated by either Party or revoked by the City.

b. Either Party shall have the right to terminate the Encroachment Permit and this Agreement, with or without cause, by delivery of written notice to the other Party. Prior to any termination by Owner becoming effective, Owner shall remove any Owner's Improvements from the City Property, repair any damage caused by the Owner's Improvements or removal of same to the City Property, and restore the City Property as nearly as practicable to the condition existing prior to the installation of Owner's Improvements.

c. Subject to the next paragraph hereinbelow, if City delivers written notice to Owner of City's decision to terminate the Encroachment Permit and this Agreement, said termination shall be effective within thirty (90) days after the date of said notice. Within said thirty (90) day period, Owner shall remove all of Owner's Improvements from the City Property, repair any damage caused to the City Property by Owner's Improvements and/or the removal of same, and restore the City Property as nearly as practicable to the condition existing prior to the installation of Owner's Improvements.

d. In addition to the foregoing, in the event Owner violates any of the terms or conditions set forth in the Encroachment Permit or this Agreement, City shall have the right upon delivery of written notice to Owner to revoke the Encroachment Permit and this Agreement on shorter notice than thirty (30) days or no notice at all. In such event, Owner shall immediately remove all of Owner's Improvements from the City Property, repair any damage caused to the

City Property by Owner's Improvements and/or the removal of same, and restore the City as nearly as practicable to the condition existing prior to the installation of Owner's Improvements.

e. Upon termination or revocation of the Encroachment Permit and this Agreement, neither Party shall have any further rights or obligations under this Agreement, subject to the following exceptions: (i) Owner's obligation to remove the Owner's Improvements and repair and restore any damage to the City Property, as set forth hereinabove, shall survive the effective date of any such termination or revocation; (ii) in the event Owner fails to timely remove any of the Owner's Improvements and/or repair and restore any damage to the City Property, City reserves its legal remedies as set forth in Section 6 hereinbelow, including the right to recover from Owner City's actual out-of-pocket costs, plus administrative charges and interest, to effectuate said work; and (iii) Owner's release of liability and the rights of City and the City Indemnitees as set forth in Sections 7 and 9 hereinbelow shall survive any such termination or revocation.

6. City Remedies.

a. If City determines that Owner is not maintaining any of the Owner's Improvements or surrounding grounds in accordance with the Encroachment Permit or this Agreement or if City determines that Owner has not timely removed any unauthorized Owner's Improvements or repaired any damage to the City Property and restored the City Property in accordance with the Encroachment Permit or this Agreement, City shall have the right to deliver written notice to Owner stating in reasonable detail what maintenance, repair, removal or improvement work is required. If Owner thereafter fails to perform such work within a reasonable period, not to exceed thirty (30) days from the date of City's notice, City reserves the right, in addition to any other rights and remedies it may have hereunder or pursuant to applicable law, to enter onto the City Property, perform said maintenance, repair, improvement, or removal work itself, in which event Owner shall be responsible for reimbursing City for all of City's actual out-of-pocket costs (including payroll costs for work performed by City employees) plus an administrative charge of fifteen percent (15%). In addition, if Owner fails to pay any City invoice for said work within thirty (30) days after written notice from City, Owner shall additionally be liable to pay City interest on the delinquent payment at the rate of ten percent (10%) per annum or the maximum interest rate permitted by law, whichever is less.

b. City's rights set forth in this Section 6 shall survive a termination or revocation of the Encroachment Permit and this Agreement.

7. As-Is Condition; No City Representations and Warranties Regarding Condition of City Property; Release and Indemnity.

a. Owner acknowledges and agrees that City is making no representations or warranties to Owner regarding the physical condition of the City Property, the existence of any patent or latent defects in the City Property or the location, condition, or other characteristics of any improvements situated on, over, or under the City Property, or the suitability of the City Property for Owner's intended use or any of the Owner's Improvements to be located thereon, and Owner assumes the full risk with respect thereto. Owner hereby releases City from any and all claims, liabilities, and losses that may be incurred by Owner with respect to any matters that are the subject of this Agreement, including but not limited to the construction, installation,

maintenance, repair, improvement, use, replacement, and removal of the Owner's Improvements, including any personal injury or death, property damage, or economic loss arising therefrom, and City shall have no liability therefor.

b. In addition to the foregoing, Owner agrees to indemnify, defend, and hold harmless City and City's elected and appointed officials, employees, and agents (collectively, the "City Indemnitees") from and against any and all claims, liabilities, and losses arising out of Owner's activities which are related in any way to the matters that are the subject to this Agreement, including but not limited to the construction, installation, maintenance, repair, improvement, use, replacement, and removal of any of the Owner's Improvements and use of the City Property subject to the encroachment by any agent or customer of Owner, including without limitation claims for personal injury or death, property damage, and economic loss, and including without limitation fines and penalties and attorney's fees and costs. In the event that any claim is made by any third party against any of the City Indemnitees, City agrees to promptly tender said claim to Owner and thereafter Owner shall defend said claim with counsel reasonably acceptable to City. City agrees to cooperate reasonably in the defense of any said claim, provided that Owner shall promptly reimburse City for any City out-of-pocket costs incurred with respect thereto, including without limitation payroll costs at the applicable City rates for any time reasonably expended by City employees in assisting with said defense.

c. City's rights set forth in this Section 7 shall survive a termination or revocation of the Encroachment Permit and this Agreement.

8. Insurance.

a. Insurance Requirement. During the entire term of this Agreement, Owner shall procure and maintain public liability and property damage insurance, at its sole expense, in an amount not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit, insuring against all liability of Owner and its authorized representatives arising out of and in connection with Owner's Improvements or Owner's use of the City Property. Such public liability and property damage insurance shall also provide for and protect the City against incurring any legal cost in defending claims for alleged loss.

b. Primary Policy; Additional Insured. All such insurance as required by this Section 8 shall be primary insurance and shall name the City as additional insured.

c. Insurance Increase. Not more frequently than one (1) time every three (3) years, if, in the opinion of the City Manager or the City's insurance broker, the amount of public liability and property damage insurance coverage at that time is not adequate, the City Manager may require modifications to this coverage.

d. Insurance Company. All insurance required under this Section 8 shall be issued by an insurance company authorized to do business in the State California, with a financial rating of at least A-3A status as rated in the most recent edition of Best's Insurance Reports or such comparable report should Best's Insurance Reports no longer be available.

e. Modification or Cancellation of Policy. All insurance required pursuant to this Section 8 shall contain an endorsement requiring thirty (30) days written notice from the

insurance company to both parties before cancellation or change in the coverage, scope, or amount of any policy. Each policy, or a certificate of the policy, together with evidence of the payment of premiums, shall be deposited by Owner with the City at the commencement of the term, and on a renewal policy not less than twenty (20) days before expiration of the term of the policy.

9. Hazardous Materials Use.

a. Owner covenants that it will not handle or transport Hazardous Materials on Owner's Improvements or the City Property except in accordance with Hazardous Materials Standards. As used in this Agreement, the term "Hazardous Materials" means: (a) any substance, products, waste, or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 United States Code Section 9601 et seq.; the Resources Conservation and Recovery Act, 42 United States Code Section 6901 et seq.; the Hazardous Materials Transportation Conservation and Recovery Act, 42 United States Code Section 1801 et seq.; the Clean Water Act, 33 United States Code Section 1251 et seq.; the Toxic Substances Control Act, 15 United States Code Section 2601 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et seq.; the Hazardous Substance Account Act, Health and Safety Code Section 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Section 25249.5 et seq.; California Health and Safety Code Section 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Section 25170.1 et seq.; California Health and Safety Code Section 25501 et seq. (Hazardous Materials Release Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Section 13000 et seq., all as amended (the above cited California state statutes are hereinafter collectively referred to as "the State Toxic Substances Law"); or any other federal, state, or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, now or at any time hereinafter in effect; (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (c) petroleum or crude oil, other than petroleum and petroleum products which are contained within regularly operated motor vehicles; and (d) asbestos.

b. In the event Owner's Improvements are now or in the future used in the handling or transporting of Hazardous Materials, Owner agrees fully to comply with all applicable federal, state, and local laws, rules, regulations, orders, decisions, and ordinances (hereinafter referred to as "Hazardous Materials Standards") concerning Hazardous Materials. Owner further agrees that at City's request it will furnish City with proof, satisfactory to City, that Owner is in such compliance.

c. Notwithstanding anything else contained in this Agreement and to the extent permitted by law, in case of a breach of the obligations contained in this Section, Owner agrees to assume liability for and to save and hold harmless City and City Indemnitees from and against any and all injuries to any person, including wrongful death, and damage to property, including without limitation, property of City and Owner, and all related expenses, including without limitation reasonable attorneys' fees, investigators' fees, litigation expenses, and

mitigation costs resulting in whole or in part from Owner's failure to comply with any Hazardous Materials Standards issued by any governmental authority concerning Hazardous Materials. Owner, at its cost, shall assume the defense of all claims, in accordance with Section 7 hereof. Owner agrees to reimburse City for all reasonable costs of any kind incurred as a result of the Owner's failure to comply with this Section, including, but not limited to, judicial or administrative fines, penalties, clean-up and disposal costs, and reasonable legal costs incurred as a result of Owner's handling, transporting, or disposing of Hazardous Materials on, over, or across Owner's Improvements and the City Property.

d. City's rights set forth in this Section 9 shall survive a termination or revocation of the Encroachment Permit and this Agreement.

10. Miscellaneous.

a. Notices. Any notices required to be delivered by one Party to the other Party pursuant to the terms of this Agreement shall be in writing. Notices shall be deemed effective if personally served in the manner authorized in the California Code of Civil Procedure for the service of lawsuits or by mail delivered by United States mail, first class, postage prepaid, to the following addresses: (i) for Owner, the address of Owner's Property; and (ii) for City, the City Hall address (with notices directed to the attention of the City Manager and the City Attorney).

b. Entire Agreement. This Agreement between the parties contain the entire agreement between the Parties hereto with respect to the matters set forth herein, and supersedes all prior or contemporaneous agreements (whether oral or written) between the parties with respect to the matters set forth herein. All exhibits attached hereto are incorporated herein by this reference.

c. No Third Party Beneficiaries. Notwithstanding any other provision set forth in this Agreement to the contrary, nothing herein is intended to create any third party beneficiaries to this Agreement (with the exception of the rights set forth in Section 7 hereof benefiting the City Indemnitees other than City), and no person or entity other than Owner, City, and the City Indemnitees, and the permitted successors and assignees of any of them, shall be authorized to enforce the provisions set forth in this Agreement.

d. Successors and Assigns; Covenants to Run with the Land. This Agreement shall be binding upon the successors and assigns of the Parties hereto. This Agreement and the obligations hereunder shall run with Owner's Property and shall be binding upon, and inure to the benefit of, the successors and assigns of Owner as the owner of Owner's Property. Owner shall obtain the City's express written consent prior to a change in ownership or control of the Owner's Property. The City's Public Works Director is authorized to provide City's determination as to whether to grant its consent to a change in ownership or control and shall do so within 30 days of receipt of a request from Owner. The City may grant or withhold consent in its sole and absolute discretion. The phrase "change in ownership or control" as used in this section includes, but is not limited to, any transaction which results in a different owner, operator, or majority shareholder of Owner or Owner's business establishment other than existed as of the Effective Date of this Agreement and is intended to be interpreted in the broadest possible manner so as to include transactions in which a controlling interest in transferred in the entity (if any) which owns all or

some of Owner or Owner's business establishment on the Owner's Property. In the event Owner fails to obtain the City's express written consent, this Agreement shall automatically terminate upon a change in ownership or control of Owner or Owner's business establishment on Owner's Property.

e. Amendment. This Agreement may be modified only in a writing signed by the Parties in interest at the time of the modification.

f. Severability. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision hereof.

g. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

h. Headings. Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and are to be disregarded in interpreting any part of the Agreement's provisions.

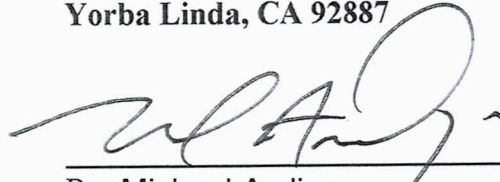
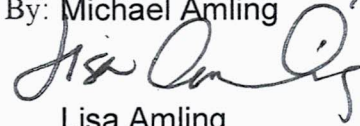
i. No Presumption Against Drafting Party. This Agreement and the provisions contained herein shall not be construed or interpreted for or against any Party hereto because said Party drafted or caused the Party's legal representative to draft any of its provisions. This Agreement shall be construed without reference to the identity of the Party or Parties preparing the same, it being expressly understood and agreed that the Parties hereto participated equally or had equal opportunity to participate in the drafting hereof. The Parties hereto acknowledge that each has read this Agreement; that they each fully understand their respective rights, privileges and duties under said Agreement; and that each enters into said Agreement freely and voluntarily.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date set forth in the applicable notary acknowledgement attached hereto.

"OWNER"

Michael & Lisa Amling
21525 Dunrobin Way
Yorba Linda, CA 92887


By: Michael Amling

Lisa Amling

"CITY"

CITY OF YORBA LINDA, a public body,
corporate and politic

By: _____
Mark Pulone, City Manager

ATTEST:

Marcia Brown, City Clerk

APPROVED AS TO FORM:

Todd Litfin, 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 Orange)

On December 23, 2021, before me, Marcia Brown,
(insert name and title of the officer)

Notary Public, personally appeared Michael & Lisa Ameling,
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 Marcia Brown



(Seal)

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

State of California)
County of _____)

On _____, before me, _____,
(insert name 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)

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

State of California)
County of _____)

On _____, before me, _____,
(insert name 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)

EXHIBIT A

LEGAL DESCRIPTION OF OWNER'S PROPERTY

That a portion of Lot 26 of Tract 13691 in the City of Yorba Linda, in County of Orange, State of California, as shown on a map filed in book 616, page 42 and 47, inclusive, of Miscellaneous Maps, in the Office of the County Recorder of said County.

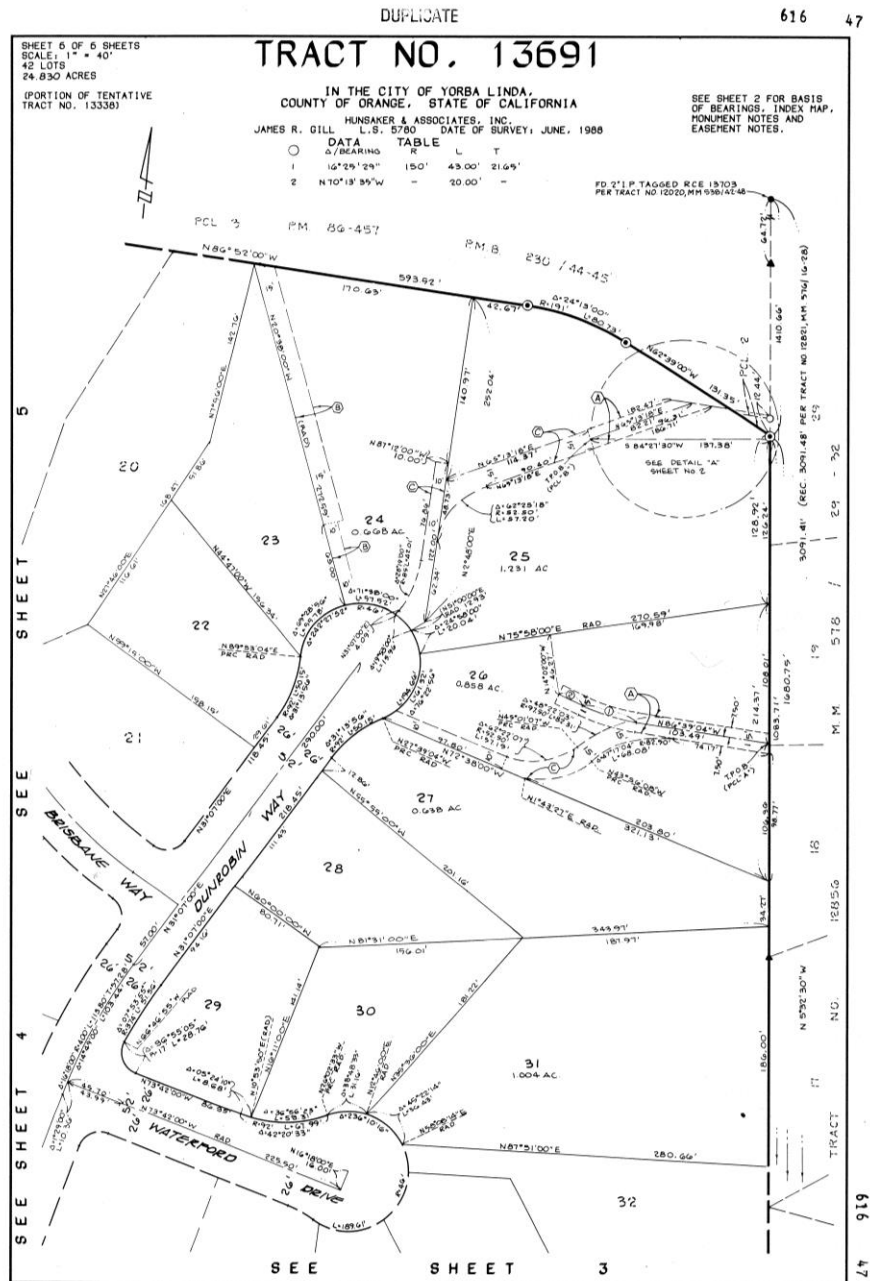


EXHIBIT B

SITE PLAN OF THE CITY EASEMENT

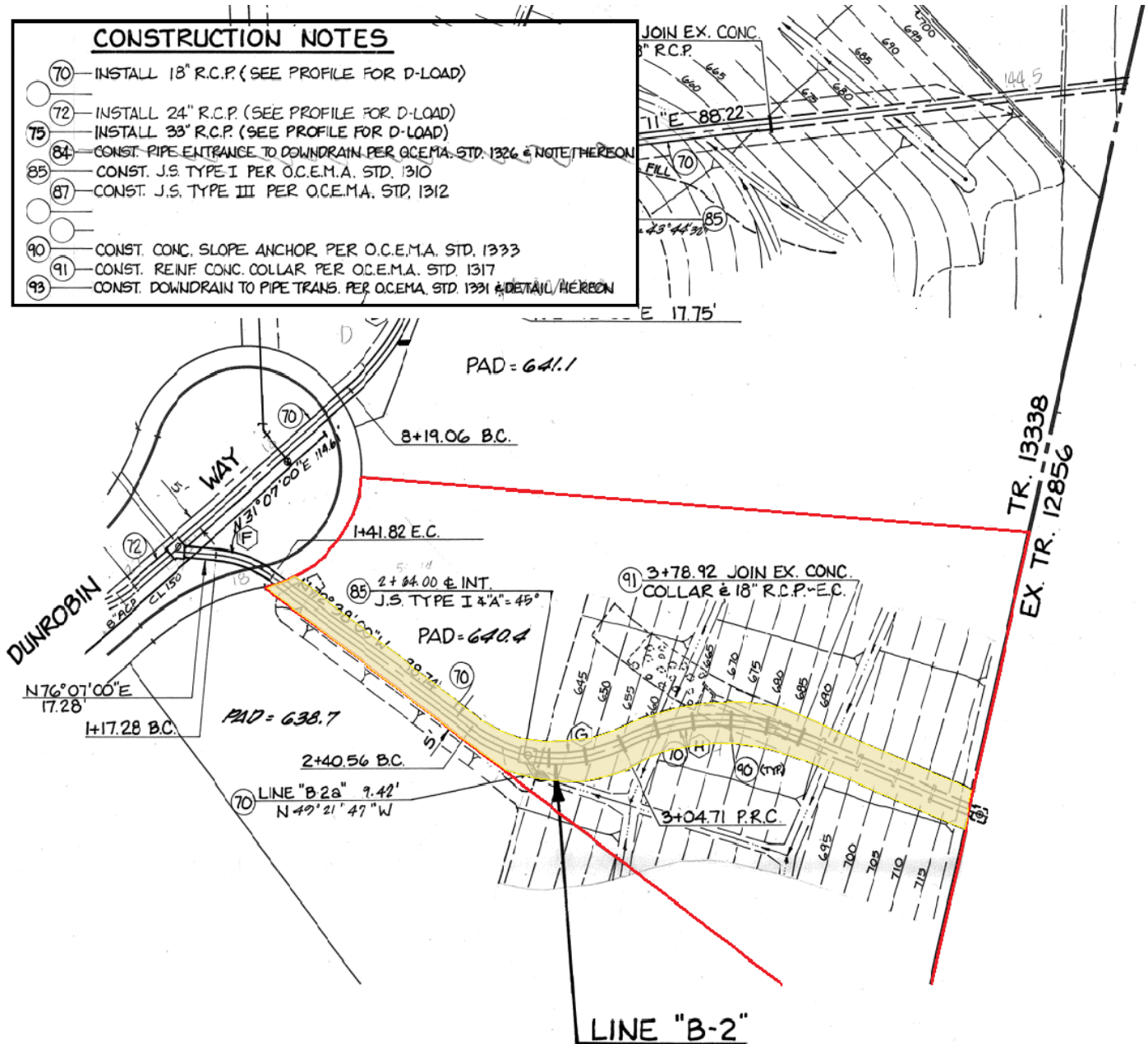


EXHIBIT C

SITE PLAN OF OWNER'S IMPROVEMENTS

1. Minor building (roof) overhang on 10-ft City Storm Drain Easement.

