

RESOLUTION NUMBER R- 312179

DATE OF FINAL PASSAGE JAN 14 2019

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO SUMMARILY VACATING KEARNY MESA ROAD PUBLIC RIGHT-OF-WAY AND A DRAINAGE EASEMENT (PUBLIC RIGHT-OF-WAY VACATION NO. 1581087, EASEMENT VACATION NO. 1581089) IN-N-OUT BURGER – PROJECT NO. 449166.

WHEREAS, California Streets and Highways Code sections 8320 *et seq.* and 8330 *et seq.* and San Diego Municipal Code sections 125.0901 *et seq.* and 125.1001 *et seq.* provide a procedure for the summary vacation of public rights-of-way and public easements by City Council resolution; and

WHEREAS, MARK S. LAMOUREUX, Engineer, acting on behalf of the owner of the underlying property, filed an application to vacate those portions of Kearny Mesa Road and those portions of a Public Utility, Right of Ingress and Egress and Drainage Purposes Easement, being described as Right-of-Way Vacation No. 1581087 and Easement Vacation No. 1581089; and

WHEREAS, Right-of-Way Vacation No. 1581087 and Easement Vacation No. 1581089 are located on property owned by IN-N-OUT BURGERS, a California corporation, and the City of San Diego, a Municipal Corporation; and

WHEREAS, in connection with Right-of-Way Vacation No. 1581087 and Easement Vacation No. 1581089, the City desires to reserve and except a public utility easement for the purposes of drainage; and

WHEREAS, the public right-of-way, or portion of the public right-of-way, is excess public right-of-way and is not required for street or highway purposes; and the public right-of-

way vacation does not terminate a public service easement, unless the easement vacation satisfies the requirements of the California Streets and Highways Code section 8333; and

WHEREAS, the easement has been superseded by relocation and there are no other public facilities located within the easement and the easement has not been used for the purpose for which it was dedicated or acquired for five (5) consecutive years immediately preceding the proposed abandonment; and

WHEREAS, under Charter Section 280(a)(2), this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body, a public hearing was required by law implicating due process rights of individuals affected by the decision, and the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on January 14, 2019, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that with respect to Right-of-Way Vacation No. 1581087, the Council finds that:

(a) **There is no present or prospective public use for the public right-of-way, either for the facility for which it was originally acquired or for any other public use of a like nature that can be anticipated.** The 0.164-acre area of the proposed right-of-way vacation was originally created in 1948 by a dedication on a map for the purposes of creating the Kearny Mesa Road right-of-way running parallel to State Route 163 (SR-163 freeway). In 1951, 1953, 1957, and 1961 additional portions of the right-of-way were dedicated to the City of San Diego through subsequent deeds and dedications on maps. Since that time, the Kearny Mesa Road

right-of-way has been diverted west of the project site. The undeveloped right-of-way is located at the rear of the project site and does not contain facilities nor is there a present or prospective use for the easement. Kearny Mesa Road has been improved and located west of the project site, which provides the necessary access to the irregularly shaped lot. Public water and sewer services are provided for the project site and the unimproved easement is not needed for providing water or sewer services. The land intended to be vacated is no longer needed as public right-of-way and is not needed to provide public circulation or services. Therefore, there is no present or prospective public use for the public right-of-way proposed to be vacated, either for the facility for which it was originally acquired or for any other public use of a like nature that can be anticipated.

(b) The public will benefit from the action through improved use of the land made available by the vacation. The property adjacent to the area to be vacated will benefit by the vacation of the existing right-of-way as the property will become larger and will facilitate future commercial development to the benefit of the public. Additionally, the additional area provided by the vacation will allow the project site to be redesigned to remove or reduce the potential for any off-site queueing, benefiting the public safety. The City of San Diego and the County of San Diego will benefit by the increase of property value by increasing the area of privately owned land subject to property tax and the incremental increase to the tax base. With an increase of tax revenue, the general public will benefit by the vacation of the existing right-of-way by the increase of available public funds. The public will benefit by the reduction of liability to the City of San Diego by reducing the land it controls.

(c) The vacation does not adversely affect any applicable land use plan. The adopted Kearny Mesa Community Plan identifies the adjacent site for general commercial

development. The vacation of this portion of Kearny Mesa Road will facilitate the fullest and highest use of the land as designated by the community plan. For these reasons, the proposed vacation of this portion of Kearny Mesa Road is consistent with the policies and goals of the adopted within Kearny Mesa Community Plan and will not adversely affect the Kearny Mesa Community Plan.

(d) The public facility for which the public right-of-way was originally acquired will not be detrimentally affected by the vacation. The abutting project site is served by the diverted and improved Kearny Mesa Road, which provides frontage and access necessary to the public. This portion of the unimproved Kearny Mesa Road is not needed to provide public circulation, water or sewer services, because Kearny Mesa Road has been improved and located west of the project site. Electricity, telephone, cable and other services are provided through other easements on site and within the diverted Kearny Mesa Road right-of-way. The remaining public right-of-way will not be detrimentally affected by the vacation of this portion of Kearny Mesa Road in that this right-of-way is no longer necessary for the purposes it was originally acquired.

BE IT FURTHER RESOLVED, by the Council of the City of San Diego, that with respect to Easement Vacation No. 1581089, the Council finds that:

(a) There is no present or prospective public use for the easement, either for the facility for which it was originally acquired or for any other public use of a like nature that can be anticipated. The area of the proposed easement vacation was originally created in 1993, ancillary to the unimproved Kearny Mesa Road public right-of-way for the purposes of servicing the public utility, right of ingress and egress, and drainage. Since that time, the Kearny Mesa Road right-of-way has been diverted west of the project site and the easement is no longer

necessary. Public services are provided by the diverted Kearny Mesa Road right-of-way fronting the project site. Public water and sewer services are provided in a different portion of the site, and the City has reserved an easement for drainage purposes only. The land intended to be vacated is no longer needed as originally required. Therefore, there is no present or prospective public use for the easement, either for the facility for which it was originally acquired or for any other public use of a like nature that can be anticipated.

(b) The public will benefit from the action through improved use of the land made available by the vacation. The land made available by the vacation may facilitate future commercial development to the benefit of the public. The public will benefit from the vacation as it removes unnecessary and unproductive encumbrances on the property. The increased area provided by the vacation will allow the project site to be redesigned to remove or reduce the potential for off-site queueing, benefiting the public safety. The removal of these easements will allow better site design and a more productive use of the property. Therefore, the public will benefit from the action through improved use of the land made available by the vacation.

(c) The vacation does not adversely affect any applicable land use plan. The vacation is located within the Kearny Mesa Community Plan which designates the site as General Commercial. The community plan does not provide guidance for the vacation of easements; however, the vacation of the easement allows greater utilization of the land with General Commercial uses. Therefore, the vacation does not adversely affect any applicable land use plan.

(d) The public facility for which the easement was originally acquired will not be detrimentally affected by the vacation. The public facilities for which the easement was originally acquired were not implemented. The current location of Kearny Mesa Road functions

as the easement for the facilities, making the easements on the site redundant and unnecessary. The City of San Diego will reserve a drainage easement at the necessary location on the property. Therefore, the public facility for which the easement was originally acquired will not be detrimentally affected by the vacation.

BE IT FURTHER RESOLVED, that Right-of-Way Vacation No. 1581087 and Easement Vacation No. 1581089, in connection with Planned Development Permit No. 1824217, as more particularly described in the legal description marked as Exhibit "A" and shown on Drawing No. 39095-1-B, marked as Exhibit "B," which are by this reference incorporated herein and made a part hereof, is ordered vacated; and

BE IT FURTHER RESOLVED, that the City of San Diego reserves and excepts from Right-of-Way Vacation No. 1581087 and Easement Vacation No. 1581089, the permanent easement for public utility purposes, as more particularly described hereinafter:


An easement for drainage purposes from said street and easement vacation, a strip of land 15.00 feet in width lying 5.00 feet north and 10.00 feet south, of the following described center line: beginning at the most southerly corner of said parcel 5 of parcel map no. 17213; thence along the westerly line of said parcel 5 north $03^{\circ}56'07''$ east 49.50 feet to the true point of beginning of this description, said point being the centerline of said drainage easement; thence south $86^{\circ}03'53''$ east 32.54 feet to the easterly boundary of said parcel map no. 17213. The sidelines of said strip shall be lengthened or shortened as to terminate in the easterly boundary of said parcel map no. 17213.

BE IT FURTHER RESOLVED, that the easements reserved herein are in, under, over, upon, along, and across that portion of Kearny Mesa Road, vacated by this Document and as

more particularly described in the legal description marked as Exhibit "A" and shown on Drawing No. 39095-1-B, marked as Exhibit "B."

BE IT FURTHER RESOLVED, that the Development Services Department shall record a certified copy of this resolution with attached exhibits, attested by the City Clerk under seal, in the Office of the County Recorder.

APPROVED: MARA W. ELLIOTT, City Attorney

By  _____
Noah J. Brazier
Deputy City Attorney

NJB:nja
12/17/18
Or. Dept: DSD
Doc. No.: 1894190

Attachments: Exhibit A - Legal Description
Exhibit B - Drawing No. 39095-1-B

EXHIBIT "A"
LEGAL DESCRIPTION
STREET, PUBLIC UTILITY, RIGHTS OF INGRESS AND EGRESS, AND DRAINAGE
EASEMENT VACATION AND DRAINAGE EASEMENT RESERVATION

VACATING THAT PORTION OF KEARNY MESA ROAD SHOWN ON PARCEL MAP NO. 17213 IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS PER MAP FILED IN THE OFFICE OF SAID COUNTY ON SEPTEMBER 16, 1993 AS FILE NUMBER 1993-611252 MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID PARCEL 5 OF PARCEL MAP NO. 17213;
THENCE NORTH 22°35'20" EAST ALONG THE EASTERLY LINE OF SAID PARCEL 5 A DISTANCE OF 265.03 FEET (265.02 FEET PER SAID PARCEL MAP);
THENCE NORTH 17°03'43" EAST ALONG THE EASTERLY LINE OF SAID PARCEL 5 A DISTANCE OF 148.88 FEET;
THENCE NORTH 24°49'52" EAST ALONG THE EASTERLY LINE OF SAID PARCEL 5 A DISTANCE OF 56.89 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 65.00 FEET AND TO WHICH BEGINNING A RADIAL LINE BEARS NORTH 79°37'46" EAST, SAID BEGINNING ALSO BEING THE MOST EASTERLY CORNER OF SAID PARCEL 5;
THENCE SOUTHEASTERLY 31.27 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 27°33'37" TO THE EASTERLY RIGHT OF WAY LINE OF SAID KEARNY MESA ROAD AS SHOWN ON SAID PARCEL MAP NO. 17213;
THENCE ON A NON-TANGENT LINE SOUTH 17°03'43" WEST 175.88 FEET TO THE EASTERLY RIGHT OF WAY LINE OF SAID KEARNY MESA ROAD AS SHOWN ON SAID PARCEL MAP NO. 17213;
THENCE SOUTH 22°35'20" WEST 270.11 FEET TO THE EASTERLY RIGHT OF WAY LINE OF SAID KEARNY MESA ROAD AS SHOWN ON SAID PARCEL MAP NO. 17213;
THENCE SOUTH 19°27'19" WEST ALONG THE EASTERLY RIGHT OF WAY LINE OF SAID KEARNY MESA ROAD AS SHOWN ON SAID PARCEL MAP NO. 17213 A DISTANCE OF 47.90 FEET TO A POINT ON THE SOUTHERLY PROLONGATION OF THE WESTERLY LINE OF SAID PARCEL 5 WHICH PASSES THROUGH THE POINT OF BEGINNING;
THENCE NORTH 03°56'07" EAST ALONG SAID LAST MENTIONED PROLONGATION 55.08 FEET TO THE POINT OF BEGINNING.

THE AREA OF THE ABOVE DESCRIBED STREET VACATION LEGAL DESCRIPTION CONSISTS OF 7,162.36 SQUARE FEET OR 0.164 ACRES.

ALSO VACATING THAT CERTAIN PUBLIC UTILITY, RIGHT OF INGRESS AND EGRESS, AND DRAINAGE EASEMENT RESERVED FROM A STREET VACATION APPROVED BY CITY COUNCIL UNDER RESOLUTION NO. R-28505 ADOPTED AUGUST 9, 1993 AND RECORDED AUGUST 25, 1993 AS INSTRUMENT NO. 554207 IN SAID COUNTY.

THE AREA OF THE ABOVE DESCRIBED PUBLIC UTILITY, RIGHT OF INGRESS AND EGRESS, AND DRAINAGE EASEMENT VACATION LEGAL DESCRIPTION CONSISTS OF 6,969.34 SQUARE FEET OR 0.160 ACRES.

EXHIBIT "A"

LEGAL DESCRIPTION OF STREET, PUBLIC UTILITY, RIGHTS OF INGRESS AND EGRESS, AND DRAINAGE
EASEMENT VACATION AND DRAINAGE EASEMENT RESERVATION (CONTINUED)

ALSO RESERVING AN EASEMENT FOR DRAINAGE PURPOSES FROM SAID STREET AND EASEMENT VACATION, A STRIP OF LAND 15.00 FEET IN WIDTH LYING 5.00 FEET NORTH AND 10.00 FEET SOUTH OF THE FOLLOWING DESCRIBED CENTER LINE:

BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID PARCEL 5 OF PARCEL MAP NO. 17213;
THENCE ALONG THE WESTERLY LINE OF SAID PARCEL 5 NORTH 03°56'07" EAST 49.50 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION, SAID POINT BEING THE CENTERLINE OF SAID DRAINAGE EASEMENT;
THENCE SOUTH 86°03'53" EAST 32.54 FEET TO THE EASTERLY BOUNDARY OF SAID PARCEL MAP NO. 17213.

THE SIDELINES OF SAID STRIP SHALL BE LENGTHENED OR SHORTENED AS TO TERMINATE IN THE EASTERLY BOUNDARY OF SAID PARCEL MAP NO. 17213.

THE AREA OF THE ABOVE DESCRIBED DRAINAGE EASEMENT RESERVATION LEGAL DESCRIPTION CONSISTS OF 475.46 SQUARE FEET OR 0.011 ACRES.

ATTACHED HERETO IS A DRAWING NO. 39095-B LABELED EXHIBIT "B" AND BY THIS REFERENCE MADE A PART HEREOF.

I.O. 24006247
P.T.S. NO. 449166

THIS LEGAL DESCRIPTION WAS PREPARED BY OR UNDER THE DIRECT SUPERVISION OF THE FOLLOWING STATE OF CALIFORNIA PROFESSIONAL LAND SURVEYOR.

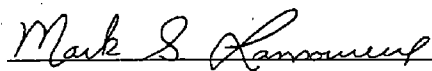
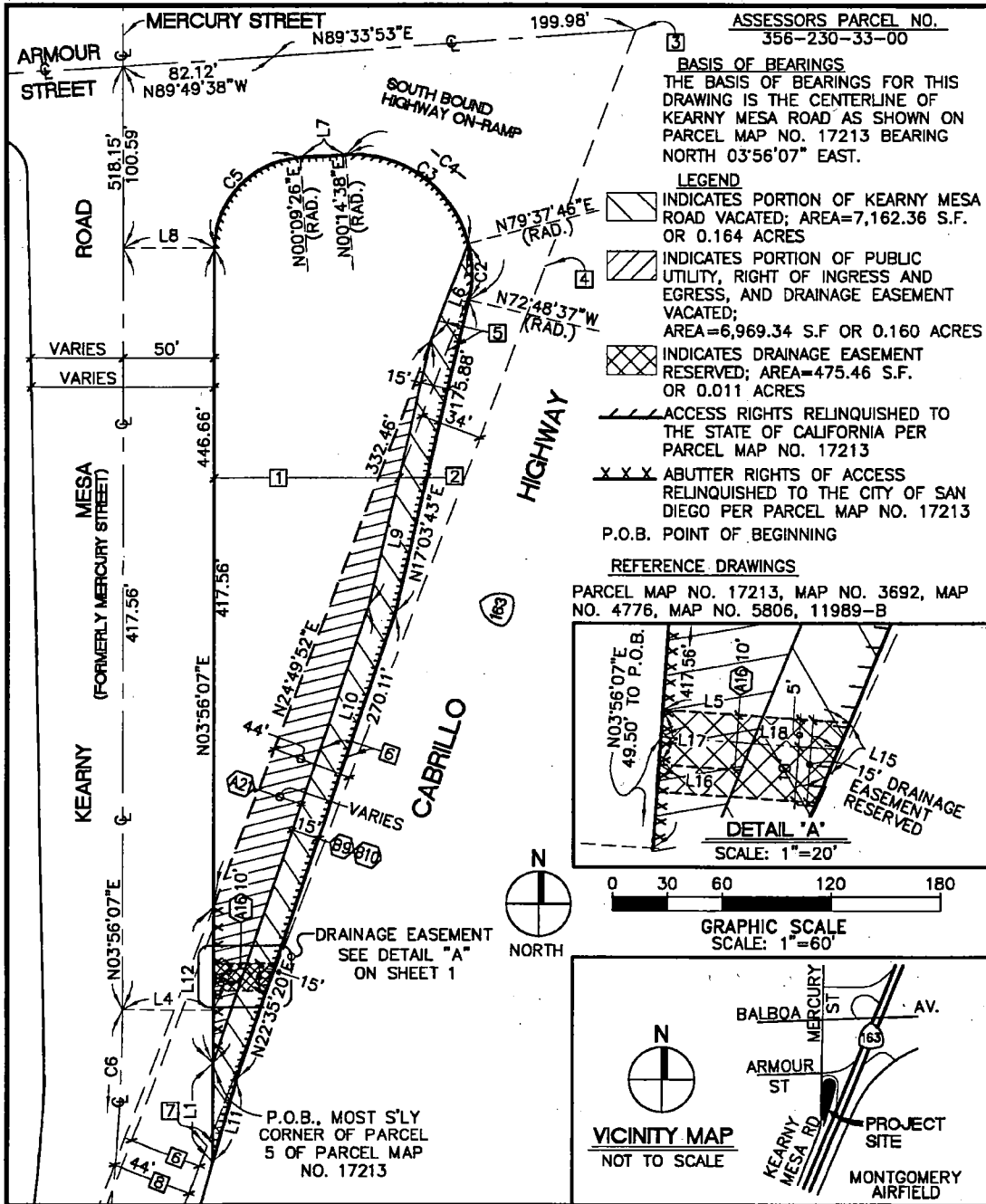

10-26-18
MSL ENGINEERING, INC.
MARK S. LAMOUREUX, P.L.S. 5794
REGISTRATION EXPIRES 06-30-2020
MSL JN 12018F
COMBINED STREET AND EASEMENT VACATION AND
RESERVATION LEGAL DESCRIPTION



EXHIBIT "B"



ENGINEER OF WORK:
MSL ENGINEERING, INC.
402 W. ARROW HIGHWAY, SUITE 4
SAN DIMAS, CA. 91773
909-305-2395
Mark S. Lamoureux 10-26-18
MARK S. LAMOUREUX PLS 5794



MSL JN12018F

STREET AND EASEMENT VACATION AND DRAINAGE RESERVATION

DESCRIPTION	BY	APPROVED	DATE	FILMED	CITY OF SAN DIEGO, CALIFORNIA	I.O. 24006247
ORIGINAL	MSL				SHEET 1 OF 2 SHEETS	P.T.S. NO. 449166
						1878-6283 CCS83 COORDS.
					CITY ENGINEER	DATE
						238-1723 L.C. COORDS.
					STATUS	DWG. NO. 39095-1-B

EXHIBIT "B"

NOTES

- ① PROPERTY OWNED BY IN-N-OUT BURGERS, A CALIFORNIA CORPORATION BEING PARCEL 5 OF PARCEL MAP NO. 17213 PER DOC. #2002-1101837 RECORDED 12-05-2002.
- ② THE PROPERTY OWNED BY THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION BEING THAT PORTION OF KEARNY MESA ROAD SHOWN ON PARCEL MAP NO. 17213 FILED SEPTEMBER 16, 1993 AS FILE #1993-611252.
- ③ N.E. CORNER MAP NO. 4776 PER PARCEL MAP NO. 17213 REC. 09-16-1993.
- ④ WESTERLY LINE OF O.R. 2997-220 REC. 10-27-1948, O.R. PER PARCEL MAP NO. 17213 REC. 09-16-1993.
- ⑤ PORTION OF KEARNY MESA ROAD FEE PROPERTY DEDICATED PER MAP NO. 4776 REC. 05-29-1961 AS SHOWN ON PARCEL MAP NO. 17213 REC. 09-16-1993.
- ⑥ PORTION OF KEARNY MESA ROAD FEE PROPERTY DEDICATED PER DEED RECORDED 5-6-1953 IN BOOK 4846, PAGES 487 & 490 O.R. (CITY DWG. 11793-L) PER PARCEL MAP NO. 17213 REC. 09-16-1993.
- ⑦ PORTION OF KEARNY MESA ROAD FEE PROPERTY DEDICATED BY O.R. 2997-220 REC. 10-27-1948, O.R. PER PARCEL MAP NO. 17213 REC. 09-16-1993.
- ⑧ PORTION OF KEARNY MESA ROAD EASEMENT DEDICATED PER MAP NO. 3692 RECORDED 8-19-1957 AS SHOWN ON PARCEL MAP NO. 17213 REC. 09-16-1993.
- Ⓐ16 A 10.00 FOOT WIDE EASEMENT IN FAVOR OF THE CITY OF SAN DIEGO FOR DRAINAGE PURPOSES AS SHOWN ON PARCEL MAP NO. 17213.
- Ⓐ21 AN EASEMENT IN FAVOR OF THE CITY OF SAN DIEGO FOR PUBLIC UTILITIES, RIGHT OF INGRESS AND EGRESS AND DRAINAGE PURPOSES PER CITY COUNCIL RESOLUTION NO. R-282505 ADOPTED ON AUGUST 9, 1993 AND CITY DRAWING NO 17989-B AS SHOWN IN INSTRUMENT NO. 554207 RECORDED AUGUST 25, 1993.
- Ⓐ9-810 KEARNY MESA ROAD DEDICATED TO THE CITY OF SAN DIEGO PER INSTRUMENT NUMBERS 62215 AND 62216 RECORDED MAY 6, 1953 IN BOOK 4846, PAGES 487 AND 490 AS SHOWN ON PARCEL MAP NO. 17213.

LINE TABLE		
NO.	BEARING	DISTANCE
L1	N03°56'07"E	55.08'
L4	N86°03'53"W(R)	50.00'
L5	N86°03'53"W	34.23'
L6	N24°49'52"E	56.89'
L7	N89°28'50"W	25.04'
L8	N86°03'50"W(R)	50.00'
L9	N17°03'43"E	148.88'
L10	N22°35'20"E	265.03'
L11	N19°27'19"E	47.90'
L12	N03°56'07"E	85.50'
L15	N22°35'20"E	10.55'
L18	N86°03'53"W	30.85'
L17	N03°56'07"E	10.00'
L18	N86°03'53"W	32.54'

CURVE DATA TABLE			
NO.	DELTA	RADIUS	LENGTH
C2	27°33'37"	65.00'	31.27'
C3	79°23'08"	65.00'	90.06'
C4	105°56'45"	65.00'	121.33'
C5	86°13'16"	50.00'	75.24'
C6	19°42'22"	1,000.00'	343.94'

ENGINEER OF WORK:
 MSL ENGINEERING, INC.
 402 W. ARROW HIGHWAY, SUITE 4
 SAN DIMAS, CA. 91773
 909-305-2395
Mark S. Lamoureux 10-26-16
 MARK S. LAMOUREUX PLS 5794



MSL JN12018F

STREET AND EASEMENT VACATION AND DRAINAGE RESERVATION

DESCRIPTION	BY	APPROVED	DATE	FILMED	CITY OF SAN DIEGO, CALIFORNIA	I.O. 24006247
ORIGINAL	MSL				SHEET 1 OF 2 SHEETS	P.T.S. NO. 449166
						1878-6283 CCS83 COORDS.
					CITY ENGINEER _____ DATE _____	238-1723 L.C. COORDS.
					STATUS _____	DWG. NO. 39095-2-B

Passed by the Council of The City of San Diego on JAN 14 2019, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JAN 14 2019

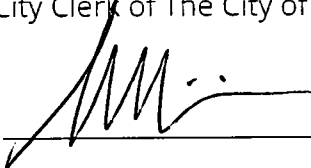
(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 312179