

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
BOARD ACTION SUMMARY

DEPT: Public Works

BOARD AGENDA #: *C-2

AGENDA DATE: October 24, 2017

SUBJECT:

Approval of an Agreement for Acquisition of Property for the Claribel Road at Roselle Avenue Intersection Road Widening Project, Grantor: CW Brower Inc

BOARD ACTION AS FOLLOWS:

No. 2017-603

On motion of Supervisor Olsen, Seconded by Supervisor DeMartini
and approved by the following vote,

Ayes: Supervisors: Olsen, Monteith, DeMartini, and Chairman Chiesa

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: Withrow

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION: This Item was removed from the consent calendar for discussion and consideration.

ATTEST: 
ELIZABETH A. KING, Clerk of the Board of Supervisors

File No.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
AGENDA ITEM**

DEPT: Public Works

Urgent

Routine



BOARD AGENDA #: *C-2

AGENDA DATE: October 24, 2017

CEO CONCURRENCE:

4/5 Vote Required: Yes No

SUBJECT:

Approval of an Agreement for Acquisition of Property for the Claribel Road at Roselle Avenue Intersection Road Widening Project, Grantor: CW Brower Inc

STAFF RECOMMENDATIONS:

1. Approve the Agreement for Acquisition of Property for the Claribel Road at Roselle Avenue Intersection Road Widening Project, Grantor: CW Brower Inc., Assessor's Parcel Number (APN) 083-002-024 (portion).
2. Authorize the Chairman of the Board to execute the Agreement for Acquisition of Property.
3. Authorize the Director of Public Works to take any appropriate action necessary to carry out the purpose and intent of these recommendations.

DISCUSSION:

The Claribel Road/Roselle Avenue intersection is located in Stanislaus County on the southern city limits of Riverbank and north of the City of Modesto. The intersection is non-signalized and controlled by an all-way stop. The intersection consists of an overhead flashing red beacon at the center of the intersection and "roll-over" curbs at all corners.

The purpose of this project is to improve regional air quality by installing traffic signals to reduce stop and start movements at the Claribel Road/Roselle Avenue intersection. The improvements to the intersection consist of the installation of traffic signals, widening the intersection to provide for truck turn movements, the addition of left turn lanes in all directions, an asphalt overlay, and restriping of the roadway at Claribel Road and Roselle Avenue. This project will also improve safety and efficiency at the intersection.

Stanislaus County is the lead agency on the project. Per the Amended and Restated Memorandum of Understanding between the County and the City of Riverbank, approved on December 15, 2015, Stanislaus County is responsible for all right-of-way acquisitions needed for the construction of this project. The property being acquired is located on the southwest corner of the intersection of Claribel Road and Roselle Avenue. The property owner who owns the parcel needed by the County has agreed to accept the following terms as outlined in the Agreement for Acquisition of Property in Attachment 1:

Approval of an Agreement for Acquisition of Property for the Claribel Road at Roselle Avenue Intersection Road Widening Project, Grantor: CW Brower Inc

Property Owner: CW Brower Inc.
 Amount of Compensation: \$23,120.00
 Assessor's Parcel Number: 083-002-024 (portion)
 Right-of-Way Acquisition Area: 0.27± Acres Permanent Road Easement (approximate)
 0.16± Acres Temporary Construction Easement

The amount of compensation has been determined to be within the range of just compensation by an independent appraiser hired by the property owner, Valbridge Property Advisors.

Staff recommends that the Board approve the right-of-way acquisition and authorize the Chairman of the Board to execute the Agreement for Acquisition of Property.

Construction of this project is scheduled to begin April 2018.

POLICY ISSUE:

The Board of Supervisors' approval is necessary for all agreements for acquisition of property per Government Code section 6950.

FISCAL IMPACT:

The \$25,370 needed for the purchase of this right-of-way is funded 66% by City/County Public Facilities Fees (PFF) and 34% by City of Riverbank and consists of \$23,120 for the acquisition of property and \$2,250 for estimated title insurance and escrow fees. No budget adjustment is necessary as the cost of this acquisition was included in the Fiscal Year 2017-2018 Public Works Road Projects Budget.

Cost of recommended action:	\$	25,370
Source(s) of Funding:		
City/County PFF	\$	16,744
City of Riverbank		8,626
		<hr/>
Funding Total:		25,370
Net Cost to County General Fund	\$	<hr/> <hr/> -

Fiscal Year: 2017-2018

BOARD OF SUPERVISORS' PRIORITY:

The recommended actions are consistent with the Board's priorities of providing A Safe Community, A Healthy Community, and A Well-Planned Infrastructure System by improving regional air quality, safety and efficiency at the intersection with the installation of a traffic signal.

STAFFING IMPACT:

Existing Public Works staff is overseeing this project.

CONTACT PERSON:

Matt Machado, Public Works Director

Telephone: (209) 525-4153

ATTACHMENT(S):

1. Right of Way Contract
2. Roadway Deed
3. Temporary Construction Easement

ATTACHMENT 1
AGREEMENT FOR ACQUISITION OF PROPERTY

Project: Claribel Road and Roselle
Avenue Intersection Project
Grantor: C. W. Brower, Inc.,
a California Corporation
APN: 083-002-024

AGREEMENT FOR ACQUISITION OF PROPERTY

This Agreement for Acquisition of Property is between the **County of Stanislaus** (County) and **C. W. Brower, Inc., a California Corporation** (Grantor). This Agreement is expressly subject to approval by the County Board of Supervisors.

1. PROPERTY.

Grantor agrees to sell to County, and County agrees to purchase from Grantor, on the terms and conditions set forth in this Agreement, the real property interest described in the Exhibits, attached hereto which are incorporated herein by this reference (the "Property").

2. DELIVERY OF DOCUMENTS/ESCROW.

All documents necessary for the transfer of the Property shall be executed and delivered by Grantor to the County's designated Acquisition Agent.

This transaction shall be handled through an escrow with Fidelity National Title Company, 1375 Exposition Blvd., Suite 240, Sacramento, CA 95815, at (916) 646-6057.

3. PURCHASE PRICE AND TITLE.

The consideration to be paid by the County for the Property is as follows:

Road Deed: 0.27 Acres x \$60,000/Acre	\$16,200.00
Temporary Construction Easement: 0.16 Acres x \$60,000/Acre x 10% x2	\$ 1,920.00
Severance Damages	\$ 5,000.00
Benefits	\$ 0.00
Total	\$23,120.00

County shall deliver the Purchase Price no later than 45 days after Board of Supervisors approval and after delivery and execution of all necessary transfer documents. Grantor shall convey good, marketable and insurable title to the Property free and clear of all liens, encumbrances, taxes, assessments and leases recorded and/or unrecorded.

Agreement for Purchase

C. W. Brower, Inc.

Page 2 of 5

Good, marketable and insurable title to the Property interest shall be evidenced by a CLTA owner's policy of title insurance ("Title Policy"). The Title Policy shall be in the amount of the Purchase Price, showing title to the Property interest vested in County. It shall be a condition precedent to County's obligations under this Agreement that escrow holder is able to issue the Title Policy to County.

County shall pay all costs of any escrow, title insurance, and recording fees incurred in this transaction.

Grantor agrees that if claims are submitted by lien-holders, the County is hereby authorized to honor such claims and deduct the amount of said claims from the amount to be paid to the property owner. The County will notify the Grantor of any such claims prior to payment.

Grantor acknowledges that the acquisition of the Property by the County is for a public purpose, and therefore, the Property is otherwise subject to taking by the power of eminent domain. Grantor acknowledges that this transaction is a negotiated settlement in lieu of condemnation and agrees that the Purchase Price to be paid herein shall constitute full and fair compensation and consideration for any and all claims that Grantor may have against the County by reason of the acquisition, improvement, possession, use and/or occupancy of the Property, and Grantor waives any and all claims, including, but not limited to, claims for attorney fees, pre-condemnation damages, severance damages, business goodwill, relocation assistance, or any other claim.

If any eminent domain action that includes the Property, or any portion thereof, has been filed by the County, Grantor hereby agrees and consents to dismissal of said action. Grantor waives any and all claims to any money that may have been deposited with the State Treasurer in such action and further waives any and all claims for damages, costs, or litigation expenses, including attorney's fees, arising by virtue of the abandonment of the action pursuant to Section 1268.510 of the California Code of Civil Procedure.

4. PRORATION OF TAXES.

- (a) Taxes shall be prorated in accordance with California Revenue and Taxation Code section 5081 et seq., as of the recordation of the Grant Deed conveying title to County, except that where County has taken possession of the Property, taxes shall be prorated as of the date of possession.
- (b) Grantor authorizes County to deduct from the purchase price any amount necessary to satisfy any delinquent taxes, together with penalties and interest thereon, and any delinquent or non-delinquent assessments or bonds, which are to be cleared from the title to the Property.

5. **POSSESSION.**

Grantor agrees that immediately upon approval of this Agreement by County, the County may enter upon and take possession of the Property.

6. **TEMPORARY CONSTRUCTION EASEMENT.**

It is mutually agreed and understood by the Grantor and by County as follows:

- (a) Temporary Easement shall commence on Close of escrow and shall continue for a period of two (2) years. County shall have the option, at its sole discretion, to extend the term of the Temporary Easement, under the same terms and conditions of this Agreement for Acquisition of Property, for one (1) additional year for a total Temporary Easement term not to exceed three (3) years. The County's exercise of the term extension option shall not be effective or binding upon County unless and until the same has been approved by the appropriate official action of County and communicated in writing to the Grantor.
- (b) In the event County exercises its option to extend the term of the Temporary Construction Easement, the rental rate for the land to be paid by County to Grantor shall be that same rental rate as established in this Agreement per year, representing the same rental rate of land as provided in paragraph 3. hereinabove.

Temporary Construction Easement:

$0.16 \text{ Acres} \times \$60,000/\text{Acre} \times 10\% \times 1 \text{ year} = \960.00

7. **HAZARDOUS WASTE MATERIAL.**

The Grantor hereby represents and warrants that during the period of Grantor's ownership of the Property, there have been no disposals or releases of hazardous substances on, from, or under the Property. Grantor further represents and warrants that Grantor has no knowledge of any disposal or release of hazardous substances, on, from, or under the Property which may have occurred prior to Grantor taking title to the Property.

The Purchase Price of the Property reflects the fair market value of the Property without the presence of contamination. If the Property is found to be contaminated by the presence of hazardous substances which requires mitigation under Federal or State law, the County reserves the right to recover its clean-up costs from those who caused or contributed to the contamination, or who may be otherwise deemed responsible parties.

8. **ENTIRE AGREEMENT.**


This Agreement and the attached Exhibits constitute the entire agreement between the parties relating to the sale of the Property. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect.

Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the County and Grantor.

(INTENTIONALLY LEFT BLANK)

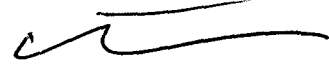
IN WITNESS WHEREOF, the parties have executed this Agreement on October 24, 2017 as follows:

COUNTY OF STANISLAUS



Vito Chiesa
Chairman of the Board of Supervisors

GRANTOR:
C. W. BROWER, INC.,
a California Corporation

By: 

Name: TOM NIEBERREYKER


Its: C. P.

By: _____

Name: _____


Its: _____

ATTEST:
Elizabeth A. King
Clerk of the Board of Supervisors of the
County of Stanislaus, State of California

By: 

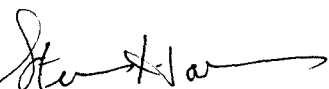
Kelly Rodriguez
Deputy Clerk

APPROVED AS TO CONTENT:
County of Stanislaus

By: 

Matt Machado
Director of Public Works

RECOMMENDED FOR APPROVAL:

By: 

Steven Harris
Right of Way Agent

APPROVED AS TO FORM:
John P. Doering
County Counsel

By: 

Amanda DeHart
Deputy County Counsel

No Obligations Other Than Those Set Forth Herein Will Be Recognized

ATTACHMENT 2

ROAD DEED

NO FEE
RECORDING REQUESTED BY:
BOARD OF SUPERVISORS

RETURN TO: STANISLAUS COUNTY
DEPARTMENT OF PUBLIC WORKS
1716 MORGAN ROAD
MODESTO, CA 95358

Road Name: CLARIBEL ROAD AND
ROSELLE AVENUE
APN: 083-002-024

ROAD DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

C. W. Brower, Inc., a California Corporation,

does hereby grant to the COUNTY OF STANISLAUS, a political subdivision of the State of California, an easement for road right-of-way and public utility purposes in the real property in the County of Stanislaus, State of California described as:

SEE EXHIBITS "A" AND "B"

Dated 9-26-17

C. W. Brower, Inc., a California Corporation

By [Signature]

Name: THOMAS NIEBERREYER

Its: VICE PRESIDENT

**See Attached
for Notarial Seal**

By _____

Name: _____

Its: _____

APPROVED as to description: _____ Dated: _____

CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORDATION

This is to certify that the interest in real property conveyed by the deed or grant dated _____ From C. W. Brower, Inc., a California Corporation, to County of Stanislaus, a political subdivision of the State of California, is hereby accepted by the undersigned officer or agent on behalf of the Board of Supervisors of the County of Stanislaus, pursuant to authority conferred by resolution of the Board of Supervisors of the County of Stanislaus adopted on May 12, 1998 in accordance with the provisions of Government Code Section 27281, and the grantee consents to recordation thereof by its duly authorized officer.

Matthew Machado, Director of Public Works
of Stanislaus County, State of California

By _____ Dated: _____

ACKNOWLEDGEMENT

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 Stanislaus)

On Sept. 26, 2017 before me, Kristie Ortega, Notary Public, personally appeared Thomas Niederreuther

_____, 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 Kristie Ortega



(Seal)

Exhibit "A"

LEGAL DESCRIPTION

APN: 083-002-024

Right of Way

All that real property situate in Section 2, Township 3 South, Range 9 East, M.D.M., County of Stanislaus, State of California, being a portion of Parcel 5 as shown in Volume 25 of Maps, page 33, recorded April 30, 1975, Official Records of Stanislaus County, more particularly described as:

Commencing at a 2" Iron Pipe with Brass Disc marking the northeast corner of Section 2, Township 3 South, Range 9 East as shown in Book 22 of Surveys, at page 51, recorded March 30, 1995, Official Records of Stanislaus County, which bears along the North Line of Section 2, South 89°47'09" East 1083.56' from a 2" Iron Pipe as shown on County Survey No. 1606 titled CLARIBEL ROAD SURVEY, dated June 17, 1969; thence along said North Line North 89°47'09" West 148.17 feet; thence leaving said North Line South 00°12'51" West 25.89 feet to the southerly right-of-way of Claribel Road as described in the Grant Deed to the COUNTY OF STANISLAUS, recorded November 19, 1979 in Book 3261, at page 851, also being the **Point of Beginning**; thence along said right-of-way South 87°52'39" East 123.50 feet to the westerly right-of-way of Roselle Avenue as shown in Volume 25 of Maps, page 33, recorded April 30, 1975, Official Records of Stanislaus County; thence along said westerly right-of-way South 00°16'44" East 170.53 feet to a point on the westerly right-of-way as shown in the ROAD DEED to the COUNTY OF STANISLAUS, recorded December 21, 1998 as Document 98-0117626-00; thence continuing along said westerly right-of-way South 04°24'06" West 220.57 feet to the south line of said Parcel; thence along said south line North 89°45'18" West 7.00 feet; thence leaving said south line North 00°16'44" West 310.79 feet; thence North 49°33'43" West 129.81 to the **Point of Beginning**.

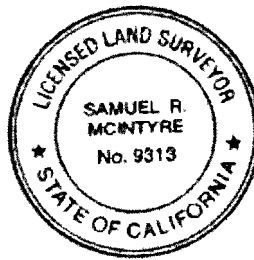
Containing 0.27 acres or 11,756 square feet.

Bearings shown are based on the North line of Section 2 as measured between the found monuments described hereon and having a bearing of North 89°47'09" West. Distances shown and described are ground and in US Survey Feet

This real property description has been prepared at Mark Thomas & Company, Inc., by me, or under my direction, in conformance with the Professional Land Surveyors Act.

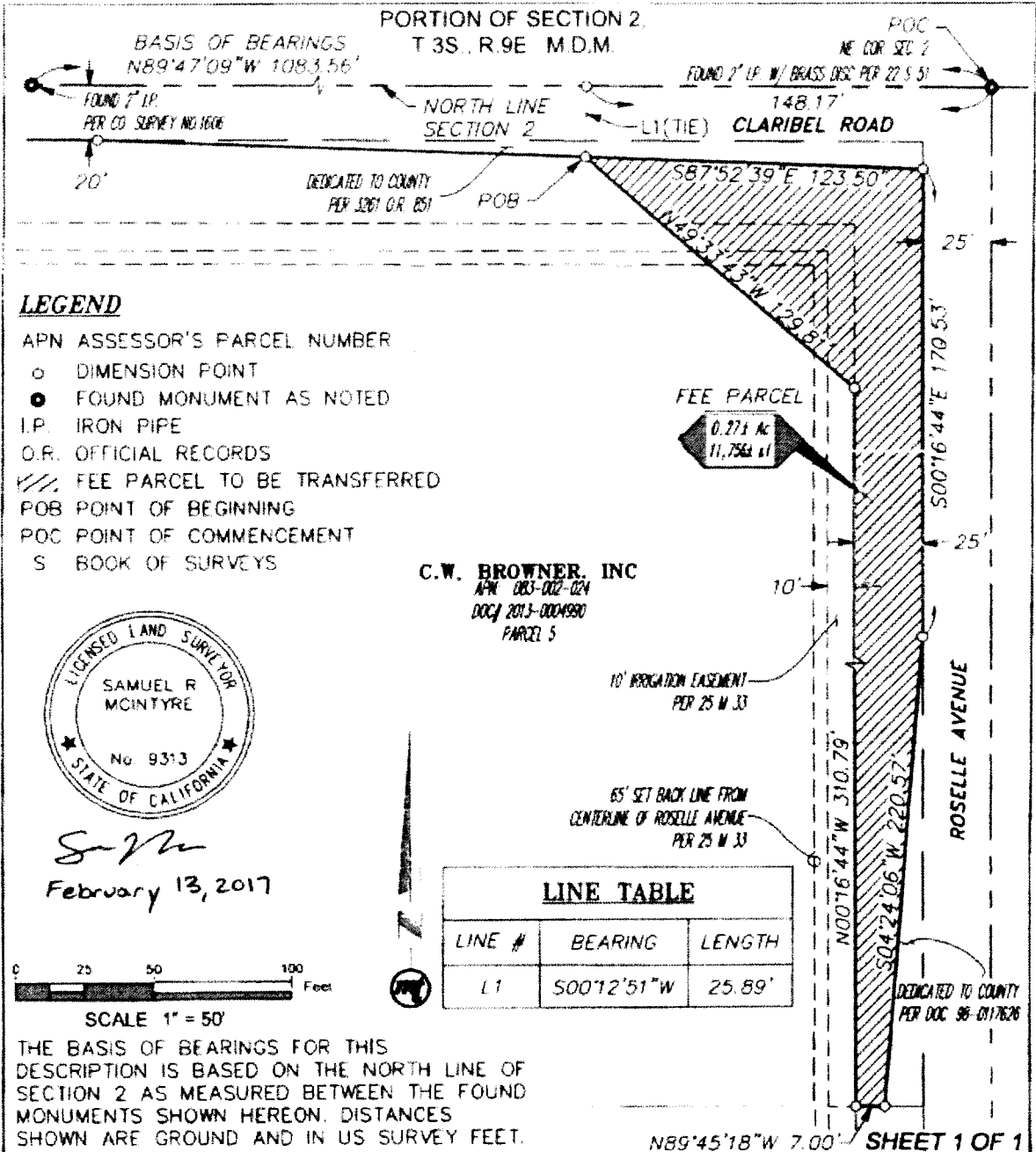


Samuel McIntyre, LS 9313



03/13/2017
Date

Exhibit "B"



LINE TABLE

LINE #	BEARING	LENGTH
L1	S00°12'51"W	25.89'

N89°45'18"W 7.00' SHEET 1 OF 1


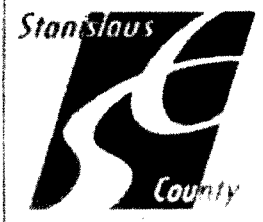
 Mark Thomas & Company Inc.
Scale: 1" = 50'
Date Feb. 2017
Drawn By SMB
Checked By SRM

Exhibit B
APN 083-002-024
Plat to Accompany Legal Description
In the City of Modesto
Stanislaus County, California



ATTACHMENT 3
TEMPORARY CONSTRUCTION EASEMENT

NO FEE
RECORDING REQUESTED BY:
BOARD OF SUPERVISORS

RETURN TO:
STANISLAUS COUNTY
DEPARTMENT OF PUBLIC WORK
1716 MORGAN ROAD
MODESTO, CA 95358

Road Name: Claribel Road & Roselle Ave
APN: 083-002-024

TEMPORARY CONSTRUCTION EASEMENT

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

C. W. Brower, Inc., a California Corporation,

do hereby grant to the COUNTY OF STANISLAUS, a political subdivision of the State of California a **temporary construction easement** for access and construction purposes in the real property in the County of Stanislaus, State of California described as:

SEE EXHIBITS "A" AND "B"

Dated: 9-26-17

C. W. Brower, Inc., a California Corporation

By [Signature]

Name: THOMAS NIEBERREYER

Its: VICE PRESIDENT

**See Attached
for Notarial Seal**

By _____

Name: _____

Its: _____

APPROVED as to description: _____ Dated: _____

CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORDATION

This is to certify that the interest in real property conveyed by the deed or grant dated _____ From C. W. Brower, Inc., a California Corporation, to the County of Stanislaus, a political subdivision of the State of California is hereby accepted by the undersigned officer or agent on behalf of the Board of Supervisors of the County of Stanislaus, pursuant to authority conferred by resolution of the Board of Supervisors of the County of Stanislaus adopted on March 8, 2011 in accordance with the provisions of Government Code Section 27281, and the grantee consents to recordation thereof by its duly authorized officer.

The Temporary Construction Easement shall commence on the date of this agreement and shall automatically terminate and expire upon the date of the improvements are completed and a notice of completion is filed for record with the Stanislaus County Recorder. All rights and benefits of the Grantee in, to and under the Temporary Construction Easement shall automatically terminate and shall cease to be enforceable or in effect.

Matthew Machado, Director of Public Works
Stanislaus County, State of California

By _____ Dated: _____

ACKNOWLEDGEMENT

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 Stanislaus)

On Sept. 26, 2017 before me, Kristie Ortega, Notary Public, personally appeared Thomas Niederreuther

_____, 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 Kristie Ortega



(Seal)

Exhibit "A"

LEGAL DESCRIPTION

APN: 083-002-024

TCE

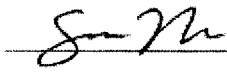
All that real property situate in Section 2, Township 3 South, Range 9 East, M.D.M., County of Stanislaus, State of California, being a portion of Parcel 5 as shown in Volume 25 of Maps, page 33, recorded April 30, 1975, Official Records of Stanislaus County, more particularly described as:

Commencing at a 2" Iron Pipe with Brass Disc marking the northeast corner of Section 2, Township 3 South, Range 9 East as shown in Book 22 of Surveys, at page 51, recorded March 30, 1995, Official Records of Stanislaus County, which bears along the North Line of Section 2, South 89°47'09" East 1083.56 feet from a 2" Iron Pipe as shown on County Survey No. 1606 titled CLARIBEL ROAD SURVEY, dated June 17, 1969; thence along said North Line North 89°47'09" West 709.68 feet; thence leaving said North Line South 00°12'51" West 20.00 feet to the southerly right-of-way of Claribel Road as described in said County Survey, also being the **Point of Beginning**; thence along said right-of-way South 89°47'09" East 384.85 feet to a point on the southerly right-of-way of Claribel Road as described in Book 3261, Page 851 recorded November 1979, Official Records Stanislaus County; thence continuing along said right-of-way South 87°52'39" East 176.75; thence leaving said right-of-way South 49°33'43" East 129.81 feet; thence South 00°16'44" East 310.79 feet to the south line of said Parcel; thence along said south line North 89°45'18" West 10.00 feet; thence leaving said south line North 00°16'44" West 306.11 feet; thence North 49°33'43" West 129.82 feet; thence North 87°52'39" West 166.87 feet; thence North 89°47'09" West 384.77 feet; thence North 00°12'51" East 5.00 feet to the **Point of Beginning**.

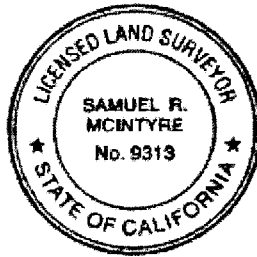
Containing 0.16 acres or 7,166 square feet.

Bearings shown are based on the North line of Section 2 as measured between the found monuments described hereon and having a bearing of North 89°47'09" West. Distances shown and described are ground and in US Survey Feet.

This real property description has been prepared at Mark Thomas & Company, Inc., by me, or under my direction, in conformance with the Professional Land Surveyors Act.

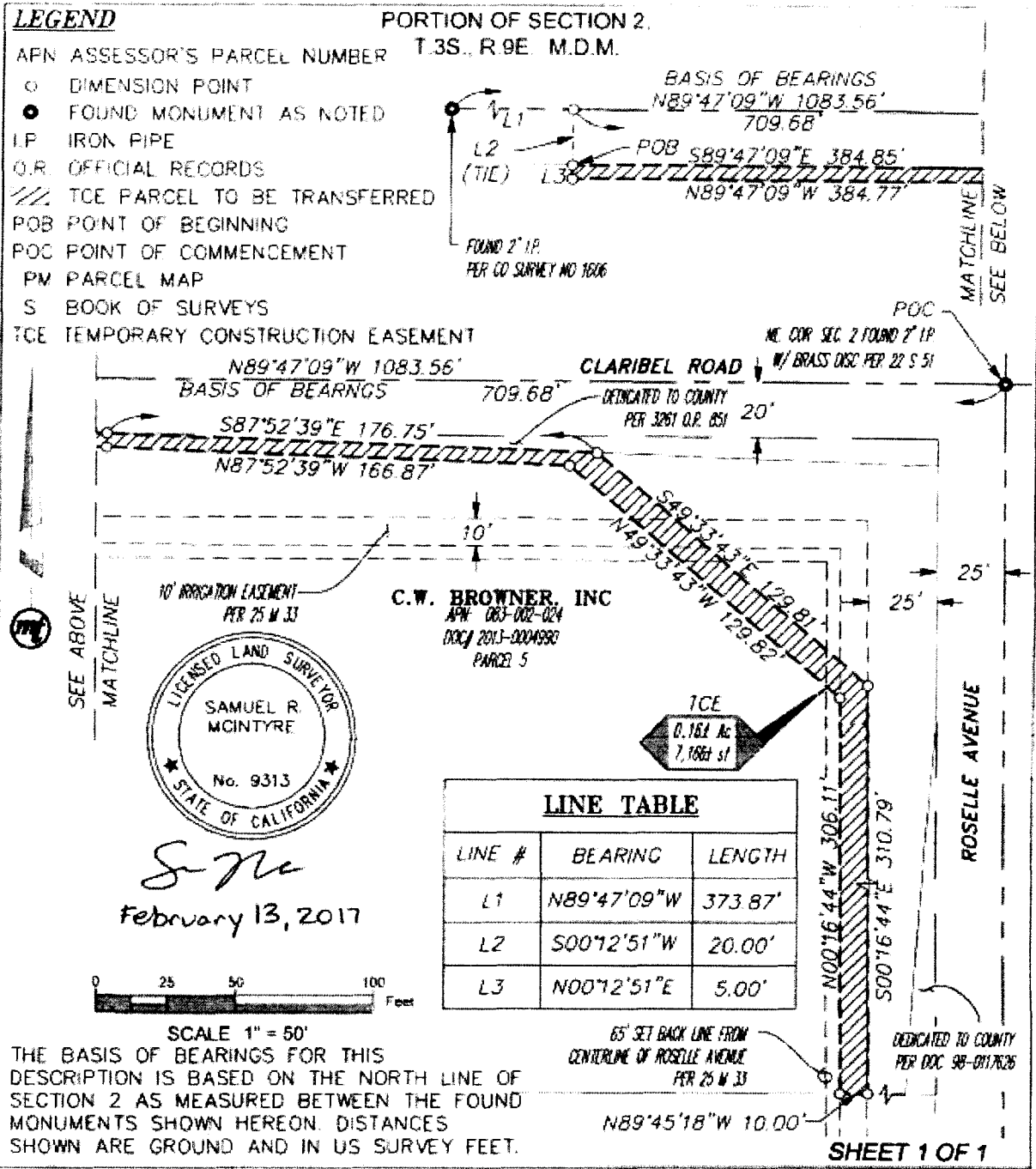


Samuel McIntyre, LS 9313



03/13/2017
Date

Exhibit "B"



Mark Thomas & Company Inc.
Scale: 1" = 50'
Date Feb. 2017
Drawn By SMB
Checked By SRM

Exhibit B
APN 083-002-024
Plat to Accompany Legal Description
In the City of Modesto
Stanislaus County, California

