

**AGREEMENT OF PURCHASE AND SALE  
AND ESCROW INSTRUCTIONS**

(Date to be added on day Council Approves), 2019

By and Between

BMW Management, LLC,  
("Buyer")

and

CITY OF MANTECA  
("Seller")

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**AGREEMENT OF PURCHASE AND SALE  
AND ESCROW INSTRUCTIONS**

THIS AGREEMENT OF PURCHASE AND SALE AND ESCROW INSTRUCTIONS ("Agreement") is made as of \_\_\_\_\_, 2019, ("Effective Date") by and between the CITY OF MANTECA ("Seller"), and BMW MANAGEMENT, LLC ("Buyer"). The Effective Date shall be the date the last party signs this agreement. This Agreement supersedes and replaces any prior instructions and agreements delivered to Escrow Holder in connection with this escrow.

Seller hereby agrees to sell, and Buyer hereby agrees to buy, on the terms and conditions contained herein, certain real property located in Manteca, San Joaquin County, California, as described in Exhibit "A" attached hereto and incorporated herein by reference and subject to an easement ingress/egress and public utilities as set forth in Exhibit "B". The property was previously improved by Buyer and currently used as an ancillary parking lot, however subject to Close of Escrow Buyer may use the property for any lawful use.

Seller and Buyer shall cause an escrow to be opened with Old Republic Title Company-Manteca Office ("Escrow Holder"), within two (2) business days after the Effective Date and request that Lori Richardson, be the escrow officer. Subject to the Terms of this Agreement, escrow shall close as provided for in Article 6 below. Close of escrow means the time that Seller's grant deed conveying title to the Property to Buyer is filed for record by Escrow Holder. Time is of the essence of this Agreement. If this escrow fails to close as provided above, any party which has fully complied with the provisions of this Agreement may at any time thereafter give written notice to Escrow Holder to cancel this escrow. Escrow Holder shall comply with such notice without further consent from any other party to this escrow and shall deliver any deposits and/or other documents to the party who is entitled to them under the terms hereof. Except as otherwise provided in this Agreement, cancellation of escrow as provided herein shall be without prejudice to whatever legal rights Buyer and Seller may have against each other. Whoever gives notice of cancellation to Escrow Holder shall agree by such notice to hold Escrow Holder harmless and to indemnify Escrow Holder for any loss or liability that may incur by complying with the notice.

**1. Purchase Price**

The purchase price for the Property shall be \$470,356.00 ("Purchase Price"), which shall be payable on the terms and conditions set forth in Article 2 hereof.

**2. Terms of Payment**

The Purchase Price shall be paid in the following manner:

Buyer shall deposit into escrow in time to permit the close thereof on or before the scheduled closing date the Purchase Price, together with all additional sums necessary to pay Buyer's costs, expenses and prorations in connection with this transaction.

**3. Condition of Title; Title Insurance**

(a) Seller shall deposit into the escrow for recordation at the close of escrow a grant deed conveying title to the Property to Buyer, subject only to the exceptions to title described in subparagraph (b) below.

(b) Unless Buyer instructs Escrow Holder to issue an ALTA, Extended Coverage Owner's Policy ("ALTA Policy"), Buyer's title to Property shall be insured by a standard coverage policy of title insurance ("Title Policy") issued by Escrow Holder with liability in the amount of the Purchase Price showing title to the Property vested in Buyer, subject only to:

(i) The Permitted Title Exceptions listed in Exhibit "C" attached hereto and incorporated herein by reference;

(ii) Such other easements, covenants, conditions and restrictions and other matters of record which are not objected to by Buyer in writing as provided for below.

(c) Within two (2) business days after the Effective Date, Escrow Holder shall provide Seller and Buyer with a preliminary title report for the Property, together with legible copies of the recorded documents listed therein as exceptions to title ("Preliminary Report"). Buyer shall have ten (10) business days from receipt of the Preliminary Title Report within which to examine the Preliminary Report. If Buyer objects to any item set forth in the Preliminary Report, other than the Permitted Title Exceptions, Buyer shall furnish Seller with a written statement thereof ("Buyer's Title Notice"). Within five (5) business days after receipt of Buyer's Title Notice, Seller shall deliver to Buyer written notice ("Seller's Title Notice") of Seller's election to either (i) remove or cure at or prior to the closing all exceptions objected to by Buyer or obtain a written commitment from Escrow Holder to insure over any such item or items at the close of escrow or (ii) not remove or cure one or more of the title exceptions disapproved by Buyer. If in Seller's Title Notice, Seller elects not to or Seller fails to cure or remove all objectionable title exceptions or obtain a written commitment from Escrow Holder to insure over such item or items then Buyer shall have the choice of (i) accepting the Property with such title exceptions without any reduction of the Purchase Price otherwise payable hereunder; provided, however, that Seller shall, prior to the close of escrow, cause the Property to be released from any deed of trust, lien, judgment or other monetary encumbrance affecting the Property (other than the lien(s) for non-delinquent taxes or assessments), or (ii) declining to accept the Property with such title exceptions, such choice to be exercised by written notice to Seller mailed within five (5) business days following Buyer's receipt of Seller's Title Notice. If no such notice is given by Buyer with said five (5) business day period, Buyer shall be deemed to have accepted the Property as provided for in clause (i) above. If Buyer timely declines to accept the property subject to such title exceptions, this Agreement shall automatically terminate, the Initial Deposit and all interest earned

thereon shall be promptly returned to buyer, and thereafter neither party shall have any liability to the other hereunder, except as otherwise expressly provided herein.

**4. Escrow and Other Charges**

The premium for the issuance of the Title Policy to Buyer shall be paid one-half (1/2) by Seller and one-half (1/2) by Buyer. If Buyer elects to obtain an ALTA Policy or requests the issuance of any title insurance endorsements, Buyer shall pay the additional title insurance premium required for the issuance of the ALTA Policy and/or said endorsements. All escrow fees shall be paid one-half by Seller and one-half by Buyer. The documentary transfer tax to be paid upon recordation of Seller's grant deed and the cost of recording the grant deed shall be paid by Seller.

**5. Possession; Prorations**

All rents, real property taxes, bonds and special assessments shall be prorated to the close of escrow, said prorations to be based on a thirty-day month and a 360-day year. If Buyer purchases the Property, it shall assume liability for the future payment of all bonds and assessments which are approved by Buyer pursuant to Article 3 above.

**6. Close of Escrow**

Escrow shall close no later than sixty days from the Effective Date.

**7. Buyer's Representations**

As of the Effective Date and effective through the close of escrow, Buyer hereby represents, warrants and covenants to Seller as follows, which representations, warranties and covenants shall survive the close of escrow.

(a) Buyer has full power and authority to enter into and perform this Agreement in accordance with its terms, and all proceedings required to be taken by or on behalf of Buyer to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken, and the individuals executing this Agreement on behalf of Buyer have the legal power, right and actual authority to bind Buyer to the terms and conditions of this Agreement;

(b) All requisite action has been taken or obtained by Buyer in connection with the entering into of this Agreement and the consummation of the transaction contemplated hereby, as and if applicable;

(c) The documents and instruments to be delivered by Buyer hereunder shall constitute the valid and legally binding obligations of Buyer, enforceable in accordance with their terms subject to the effect of applicable bankruptcy, insolvency, reorganization, or other similar laws affecting the rights of creditors generally, and Buyer (a) has not filed for and is not subject to any bankruptcy, reorganization or receivership proceeding, (b) is not currently subject to other similar laws affecting the rights of creditors generally, and (c) is not currently insolvent or at substantial risk of becoming insolvent; and

(d) the individuals executing this Agreement on behalf of Buyer have the legal power, right and actual authority to bind Buyer to the terms and conditions of this Agreement.

**8. As-Is Sale**

Buyer acknowledges that the Property shall be conveyed by Seller and accepted by Buyer on and as of the close of escrow "AS IS, WHERE IS, WITH ALL FAULTS", without any representation or warranty of any kind or nature whatsoever, either express or implied, and with no right of setoff or reduction in the Purchase Price.

**9. Seller's Representations**

As an inducement to Buyer to enter into this Agreement and to purchase the Property, Seller covenants with and warrants and represents to Buyer as of the Effective Date and as of the date of close of escrow, which representations and warranties shall survive the close of escrow and delivery of the deed to Buyer, as follows:

(a) Seller has the right, power, and authority to enter into this Agreement and the right, power and authority to convey the Property to Buyer in accordance with the terms and conditions of this Agreement.

(b) Seller is not a "foreign person" as that term is defined in the Internal Revenue Code of 1954, as amended, and the Regulations promulgated pursuant thereto.

(c) Seller is informed there are no leases, licenses, concessions, or other oral or written agreements affecting the Property that grant to any person or entity the right of occupancy or use thereof, except as may be disclosed in the Preliminary Report or otherwise included in the Due Diligence Materials.

**10. Commissions**

The parties agree that no broker or agent has been used or engaged in connection with this transaction. Each party agrees to indemnify, protect, and defend the other party against and hold the other party free and harmless from any and all loss, claim, liability, and expense, including but not limited to reasonable attorney's fees, arising out of any claim for a broker's commission or fee allegedly incurred by the indemnifying party. The obligations of the parties under this Article 10 shall survive the close of escrow or any termination of this Agreement.

**11. Default by Seller**

If escrow does not close as a result of any breach hereof or a default hereunder by Seller, the Deposit and any other sums deposited into escrow in payment of the Purchase Price shall be returned to Buyer upon demand, and Buyer may, at Buyer's option (a) terminate this Agreement by giving written notice of such termination to Seller, whereupon all rights, duties and obligations of all the parties hereunder shall expire and this Agreement shall in all respects become null and void, or (b) exercise such rights and remedies as may be provided for or allowed by law or in equity, including, without

limitation, the right to seek and obtain specific performance of this Agreement. Buyer acknowledges and agrees that Seller shall not be in default under this Agreement if Seller is unable to acquire title to the Property because of the default of Owner under the agreement between Seller and Owner.

12. DEFAULT BY BUYER

IF ESCROW DOES NOT CLOSE AS A RESULT OF A BREACH HEREOF OR A DEFAULT HEREUNDER BY BUYER, THE PARTIES AGREE THAT SELLER, AS ITS SOLE AND EXCLUSIVE REMEDY, SHALL RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES FOR BUYER'S FAILURE TO CLOSE ESCROW AS PROVIDED HEREIN, WHICH SUMS, THE PARTIES AGREE IS A REASONABLE SUM CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE SUM TO THE RANGE OF HARM TO SELLER THAT REASONABLY COULD BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT. SELLER HEREBY WAIVES AND RELEASES ANY RIGHT TO (AND HEREBY COVENANTS THAT IT SHALL NOT) SUE BUYER (1) FOR SPECIFIC PERFORMANCE OF THIS AGREEMENT OR (2) TO PROVE THAT SELLER'S ACTUAL DAMAGES EXCEED THE AMOUNT WHICH IS HEREBY PROVIDED SELLER AS FULL LIQUIDATED DAMAGES FOR BUYER'S FAILURE TO CLOSE ESCROW AS PROVIDED HEREIN. IN PLACING THEIR INITIALS AT THE PLACES PROVIDED, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION AT THE TIME THIS AGREEMENT WAS MADE. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL BE DEEMED TO LIMIT (A) BUYER'S LIABILITY IN CONNECTION WITH THE BREACH BY BUYER OF ANY OTHER OBLIGATION UNDER THIS AGREEMENT OR LIABILITY RELATED TO ANY OF ITS INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT OR LIABILITY RELATED TO ANY OF ITS INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, OR (B) SELLER'S ABILITY TO RECOVER ITS ATTORNEY'S FEES AND COSTS UNDER ARTICLE 17 BELOW IF SELLER IS THE PREVAILING PARTY IN ANY ACTION OR PROCEEDING REGARDING LIQUIDATED DAMAGES.

Seller Initial here: \_\_\_\_\_ Buyer Initial here:  \_\_\_\_\_

13. Article Heading

Headings at the beginning of each numbered Article of this Agreement are solely for the convenience of the parties and are not a part of this Agreement.

14. Notices

All communications, notices and demands of any kind which either party may be or desire to give to or serve upon the other party shall be made in writing and delivered

by personal service to the other party or sent by registered mail, postage paid, return receipt requested, facsimile transmission, or by overnight mail service (next day delivery) to the following addresses:

To Buyer: BMW Management, LLC  
c/o Gary W. Myers, Aimee Patton & Bryce E. Myers  
43172 Business Park Drive, Suite 102  
Temecula, CA 92590  
Facsimile: (951) 699-3226

To Seller: City of Manteca  
c/o Tim Ogden, City Manager  
1001 W. Center Street  
Manteca, CA 95337  
Facsimile: (209) 923-8960

Notice by personal delivery, overnight courier (next day delivery), or facsimile transmission shall be effective upon receipt of such notice or written confirmation of successful facsimile transmission. Notice by registered mail shall be deemed effective forty-eight (48) hours after such notice is deposited in the mail. Either party may change its address for notices by giving the other party written notice of its new address as herein provided.

15. Time is of the Essence

Time is of the essence of this Agreement.

16. Incorporation of Prior Agreements

This Agreement contains all of the agreements of the parties hereto with respect to the Property or the matters contained herein, and no prior agreement or understanding pertaining to the Property or any such matter shall be effective for any purpose. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the parties hereto or their successors in interest.

17. Partial Invalidity

If any term or provision of this Agreement or the application thereof to any person or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

18. Waivers

No waiver of any breach of any agreement or provision herein contained shall be deemed a Waiver of any preceding or succeeding breach thereof, or of any other agreement or provision herein contained. No extension of time for performance of any



obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

19. Assignment

Buyer may not assign its rights hereunder to a third party without Seller's consent; which Consent may be granted or withheld in Seller's sole discretion; provided, however any such assignment which is consented to by Seller shall not release Buyer from its obligation to purchase the Property as provided herein.

20. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of Buyer and Seller, respectively.

21. Counterparts

This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

22. Maintenance of Ingress/Egress and Public Utility Easement

It is understood by and between the parties that it is anticipated that the Seller or its successor will be constructing improvements that will abut the easement reserved herein. It is therefore agreed that once said improvements have commenced installation that the Seller shall be responsible for all operations, maintenance and repairs in and to the easement reserved by Seller. Buyer shall maintain the reserved easement until improvements are first constructed (i) within the easement or (ii) on the adjoining lot of Seller.

23. Indemnity and Insurance

Each party shall defend, indemnify, and hold harmless, the other party from all damages or liability to persons or property that might arise from any act of negligence or willful misconduct caused by the other party.

Each party further agrees that each party will at all times during the duration of the easement maintain liability insurance affording protection to the other party and naming the other party as an additional insured for a combined limit of liability of not less than One Million for each occurrence.

Signatures on following page.

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement as of the Effective Date.

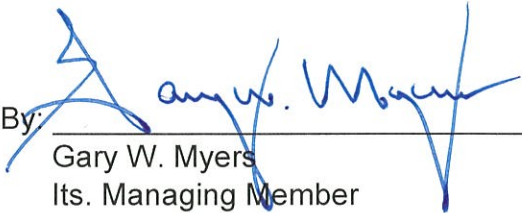
SELLER:

City of Manteca

BUYER:

BMW Management, LLC  
A California Limited Liability Company

By: \_\_\_\_\_  
Benjamin Cantu  
Mayor

By:  \_\_\_\_\_  
Gary W. Myers  
Its. Managing Member

Approved as to Form:

By: \_\_\_\_\_  
City Attorney

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**PARCEL "A"**

Being a portion of that certain real property granted to the City of Manteca by Grant Deed recorded January 17, 2018 as Document No. 2018-005228, San Joaquin County Records, situate in the Southwest quarter of Section 6, Township 2 South, Range 7 East, Mount Diablo Meridian, City of Manteca, County of San Joaquin, State of California, being more particularly described as follows:

**BEGINNING** at the most Northwesterly corner of said City of Manteca property, thence, along the Westerly, Northwesterly and Northerly line of said City of Manteca property, the following four (4) courses:

1. North 67°27'31" East 38.63 feet to the most Northerly corner of said City of Manteca property; thence
2. South 38°22'02" East 62.44 feet to the beginning of a curve to the left, having a radius of 50.00 feet and having a central angle of 21°59'34"; thence
3. along the arc of said curve, 19.19 feet;
4. South 60°21'36" East 75.64 feet; thence

Leaving said Northerly line, South 14°49'43" West 8.78 feet to a point which is 117.31 feet distant at right angles from the West line of said City of Manteca property; thence

Parallel with said West line, South 29°51'36" West 210.01 feet to a point on the Southerly line of said City of Manteca property; thence

Along said Southerly line of City of Manteca property, North 60°08'24" West 117.31 feet to the Southwesterly most corner of said City of Manteca property; thence

Along the Westerly line of said City of Manteca property, North 29°51'36" East 192.55 feet; thence

Continuing along said Westerly line, North 40°27'57" West 64.68 feet to the Point of Beginning.

Containing 27,668 square feet more or less

Subject to all easements and/or rights-of-way of record.

**BASIS OF BEARINGS:**

A course of North 60°08'24" West for the centerline of Daniels Street as shown on that certain map, filed for record in Book 24 of Parcel Maps, at Page 199, San Joaquin County Records, has been used as a basis for bearings.

## ATTACHMENT 2

This legal description as described is delineated on the accompanying "Plat to Accompany Legal Description" and made a part hereof for reference purposes.

  
Nicole Cannella, P.L.S. 9099



3.25.19

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**INGRESS / EGRESS AND PUBLIC UTILITY EASEMENT**

Being a portion of that certain real property granted to the City of Manteca by Grant Deed recorded January 17, 2018 as Document No. 2018-005228, San Joaquin County Records and a portion of New Parcel 3 as described in the Grant Deed to BMW Management LLC, filed for record January 26, 2016, San Joaquin County Records, situate in the Southwest quarter of Section 6, Township 2 South, Range 7 East, Mount Diablo Meridian, City of Manteca, County of San Joaquin, State of California, being more particularly described as follows:

**BEGINNING** at the most Northwesterly corner of said City of Manteca property, being also the Northeasterly corner of said New Parcel 3, thence,

along the Westerly, Northwesterly and Northerly line of said City of Manteca property, the following four (4) courses:

1. North 67°27'31" East 38.63 feet to the most Northerly corner of said City of Manteca property
2. South 38°22'02" East 62.44 feet to the beginning of a curve to the left, having a radius of 50.00 feet and having a central angle of 21°59'34"; thence
3. along the arc of said curve, 19.19 feet;
4. South 60°21'36" East 75.64 feet; thence

Leaving said Northerly line, South 14°49'43" West 8.78 feet to a point which is 117.31 feet distant at right angles from the West line of said City of Manteca property, being also the East line of said New Parcel 3; thence

Parallel with said West line of City of Manteca property and said East line of New Parcel 3, South 29°51'36" West 36.51 feet to a point which is 45.00 feet distant at right angles from the Northerly line of said City of Manteca property; thence

Parallel with said Northerly line, North 60°21'36" West 109.58 feet; thence

North 22°42'03" West 51.55 feet to a point on the Westerly line of said City of Manteca property, being also a point on the Easterly line of said New Parcel 3; thence

Along said Westerly line of City of Manteca property, being also said Easterly line of New Parcel 3, North 40°27'57" West 29.42 feet to the Point of Beginning.

Containing 7,543 square feet more or less

Subject to all easements and/or rights-of-way of record.

BASIS OF BEARINGS:

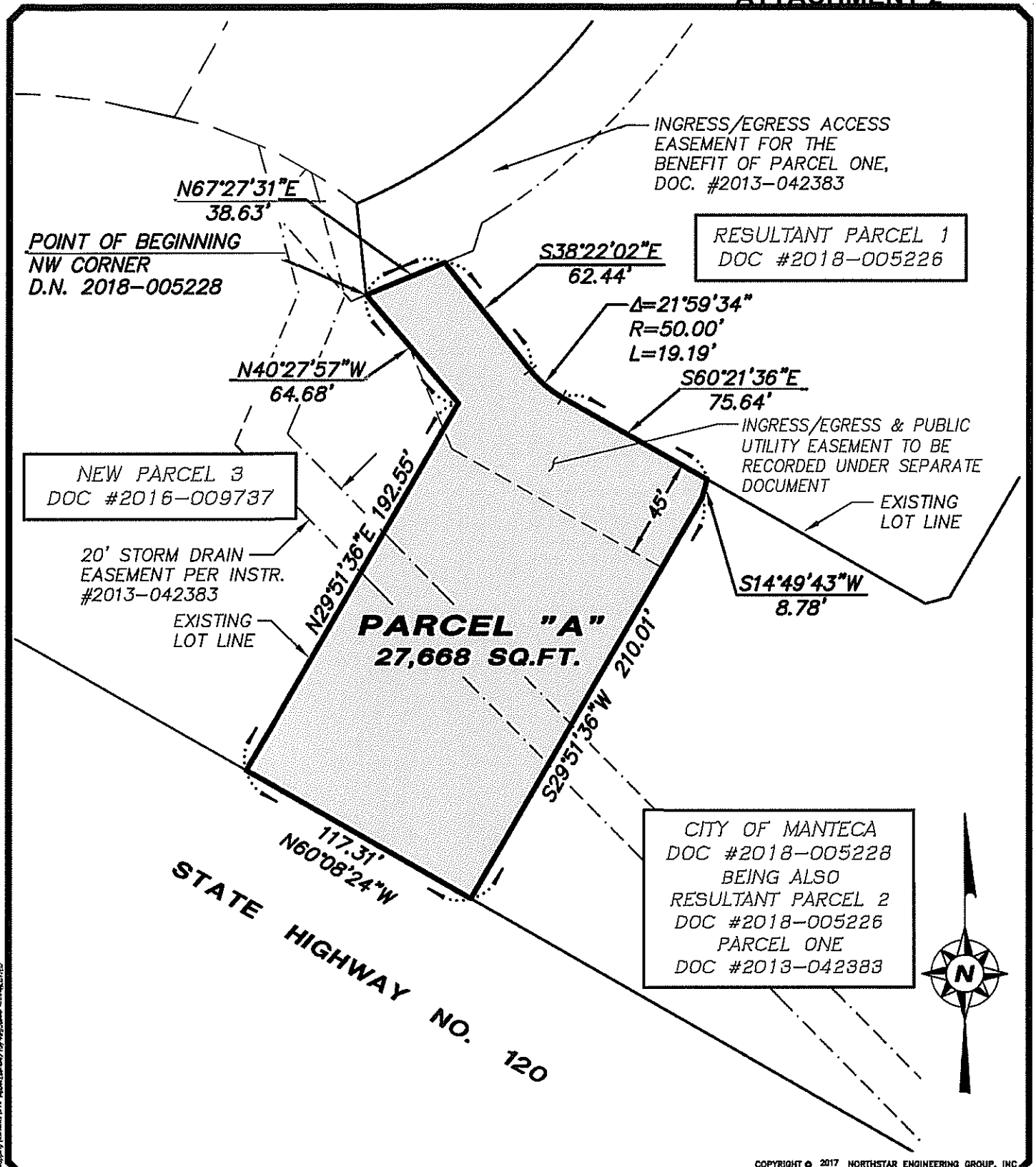
A course of North 60°08'24" West for the centerline of Daniels Street as shown on that certain map, filed for record in Book 24 of Parcel Maps, at Page 199, San Joaquin County Records, has been used as a basis for bearings.

This legal description as described is delineated on the accompanying "Plat to Accompany Legal Description" and made a part hereof for reference purposes.

  
Nicole Cannella, P.L.S. 9099



3.25.19



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*NorthStar***Engineering Group, Inc.**

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## PLAT TO ACCOMPANY LEGAL DESCRIPTION

### EXHIBIT 'B'

BEING A PORTION OF THE SOUTHWEST QUARTER OF SECTION 6,  
 TOWNSHIP 2 SOUTH, RANGE 7 EAST, MOUNT DIABLO MERIDIAN.  
**MANTECA SAN JOAQUIN COUNTY CALIFORNIA**

JOB: J19-2332  
 DATE: 3/25/19  
 SCALE: 1"=60'  
 DRAWN: NC  
 DESIGN: NC  
 CHK'D: NC

SHEET  
**01**  
 OF 01



 *North Star*  
**Engineering Group, Inc.**

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• CIVIL ENGINEERING • SURVEYING • PLANNING •

620 12th Street Modesto, CA 95354  
(209) 524-3525 Phone (209) 524-3526 Fax

## EXHIBIT 'B'

BEING A PORTION OF THE SOUTHWEST QUARTER OF SECTION 6,  
TOWNSHIP 2 SOUTH, RANGE 7 EAST, MOUNT DIABLO MERIDIAN.

**MANTECA    SAN JOAQUIN COUNTY    CALIFORNIA**

JOB:	J19-2332
DATE:	3/25/19
SCALE:	1"=60'
DRAWN:	NC
DESIGN:	NC
CHK'D:	NC

SHEET

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