

## TEMPORARY CONSTRUCTION EASEMENT DEED

For valuable consideration, receipt of which is hereby acknowledged,

ORANGE COUNTY FLOOD CONTROL DISTRICT,  
a body corporate and politic,  
hereinafter referred to as "**DISTRICT**,"

does hereby grant to

CITY OF CORONA, a municipal corporation,  
hereinafter referred to as "**GRANTEE**," its, successor and assigns,

a non-exclusive temporary construction easement ("**Temporary Easement**") in, on, over, upon and across that certain real property (hereinafter referred to as "**Easement Area**") described in "**Exhibit A**," and illustrated in "**Exhibit B**," which exhibits are attached hereto and made a part hereof.

DISTRICT and GRANTEE, may sometimes hereinafter be individually referred to as "**Party**" or jointly as "**Parties**".

It is understood and agreed by the Parties hereto and their successors and assigns that the easement and right of way herein granted in this Temporary Easement shall be subject to the following terms, conditions and reservations:

### 1. TERM

This Temporary Easement shall be effective for a maximum period of sixty (60) days ("**Term**"), commencing no later than 30 (thirty) days after the date GRANTEE provides written notice of commencement to DISTRICT'S Director OC Public Works, or designee ("**Director**") and terminating sixty (60) days thereafter.

### 2. EXTENSIONS

The Term may be extended by mutual agreement of GRANTEE and the Director. Any request for extension by GRANTEE must be in writing, shall state the requested extension period, and be forwarded to the Director via Express or Certified U.S. Postal Service, personal delivery, by courier or by overnight delivery service and addressed as provided herein below in Section 8 (Notice) not less than thirty (30) days prior to expiration of the Term of this Temporary Easement. Approval of such request shall be deemed denied unless, in Director's sole discretion, Director provides GRANTEE with written approval of the requested extension within fifteen (15) days following receipt of the request to extend, which approval shall not be unreasonably withheld.

### 3. USE

GRANTEE'S rights shall include rights to GRANTEE, its officers, agents, employees, contractors and subcontractors to utilize the surface of the Easement Area to park, place, store and stockpile construction materials, tools, vehicles, storage containers, implements and other construction related equipment and materials ("**GRANTEE'S equipment and material**") and shall include reasonable access to the Easement Area for the purpose of exercising the rights herein granted

The rights granted under this Temporary Easement expressly prohibit any grading of the Easement Area, the construction or placement of any improvements or structures on the Easement Area, on, or about the Easement Area and/or the placement of any petroleum product or other Hazardous Material (as hereinafter defined)

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Area and/or the placement of any petroleum product or other Hazardous Material (as hereinafter defined) storage tanks or containers with accumulative storage capacity in excess of 50 gallons.

#### **4. GRANTEE RESPONSIBILITIES**

GRANTEE shall, at no cost to DISTRICT, maintain the Easement Area in good repair and in safe condition, and protect in place any slope features, trees and/or landscaping within the Easement Area throughout the Term, including any extension period, of this Temporary Easement.

GRANTEE shall, at no cost to DISTRICT, conduct all activities, including but not limited to the storage of materials, in, on, or about the Easement Area in a safe, good and workmanlike manner and in compliance with all applicable building, fire and sanitary laws, ordinances and regulations and shall maintain all equipment, used in on or about the Easement Area in good repair and in safe condition.

GRANTEE shall, at its sole cost and expense, promptly and at all times observe, comply with and carry out all present and future orders, regulations, directions, rules, laws, ordinances, permits and requirements of all governmental authorities, including but not limited to environmental regulatory authorities, with jurisdiction in, on, over and about the Easement Area which arise from GRANTEE'S use of or performance of any activities permitted to be conducted in, on, over or across the Easement Area.

In addition, GRANTEE shall ensure that all activities in, on, over or about the Easement Area are performed in accordance with any NPDES (National Pollutant Discharge Elimination System) permit requirements or other water quality statutes, regulations, ordinances or permits, applicable to such activities, including but not limited to use of appropriate best management practices, so as to ensure that pollutants are not discharged into the municipal stormwater drainage system or into the waters of the state.

No approvals or consents given hereunder by DISTRICT, as party to this Temporary Easement, shall be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules or regulations.

#### **5. CONDITION OF EASEMENT AREA UPON TERMINATION**

Prior to the expiration of this Temporary Easement, GRANTEE agrees, at its sole expense, to restore the Easement Area to the condition that existed prior to the granting of this Temporary Easement, to Director's satisfaction. Said restoration shall include, but not be limited to the removal of construction materials (including stockpiled material), equipment, trash and debris.

#### **6. HOLD HARMLESS (PMES7.2S)**

GRANTEE hereby releases and waives all claims and recourse against DISTRICT and County of Orange ("COUNTY") including the right of contribution for loss of or damage to property, or injury to or death of any person arising from, growing out of or in any way connected with or related to this Temporary Easement, including any damage to or interruption of use of GRANTEE'S equipment or caused by the operation, maintenance, repair, reconstruction, replacement, enlargement or improvement of the Auxiliary Embankment or by DISTRICT'S flood control operations, except claims arising from the concurrent active or sole negligence of DISTRICT and/or County, their officers, agents, employees and contractors.

GRANTEE hereby agrees to indemnify, defend (with counsel approved in writing by DISTRICT), and hold harmless, DISTRICT and County, their elected and appointed officials, officers, agents, employees and contractors against any and all claims, losses, demands, damages, cost, expenses or liability for injury to or death of any persons, or loss of or damage to any property, arising out of the maintenance, use of or operations

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or activities conducted in, on, or over the Easement Area, and/or the exercise of the rights under this Temporary Easement by GRANTEE, its agents, officers, employees, invitees or licensees, except for liability arising out of the concurrent active or sole negligent acts of DISTRICT, and/or County, their elected and appointed officials, officers, agents, employees or contractors including the cost of defense of any lawsuit arising therefrom. If DISTRICT and/or County is/are named as co-defendant(s) in a lawsuit, GRANTEE shall notify Director of such fact and shall represent DISTRICT/County in such legal action unless DISTRICT/County undertake(s) to represent itself/themselves as co-defendant(s) in such legal action, in which event, GRANTEE shall pay to DISTRICT/County its/their litigation costs, expenses, and attorneys' fees. If judgment is entered against DISTRICT/County and GRANTEE by a court of competent jurisdiction because of the concurrent active negligence of DISTRICT/County and GRANTEE, DISTRICT and GRANTEE agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

#### **7. GRANTEE'S LIABILITY FOR HAZARDOUS OR TOXIC MATERIALS (PMES8.2S)**

GRANTEE or GRANTEE's employees, agents, independent contractors or invitees ("GRANTEE Parties") shall not cause or permit any "Hazardous Material," as hereinafter defined, to be brought upon, kept, stored used, generated, released into the environment or disposed of, on, under, from, in on or about the Easement Area. Notwithstanding the foregoing, GRANTEE or GRANTEE Parties may use or keep small quantities of Hazardous Materials on the Easement Area that are used in the ordinary, customary and lawful construction operations conducted on the Easement Area. If GRANTEE or GRANTEE Parties breach(es) the obligations stated herein, or if contamination of the Easement Area by Hazardous Material otherwise occurs for which GRANTEE is legally liable to DISTRICT for damage resulting therefrom, then GRANTEE shall indemnify, defend with counsel approved in writing by DISTRICT, and hold harmless, DISTRICT and/or County, and their elected or appointed officials, officers, agents, and employees from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, diminution in value of the Easement Area, sums paid in settlement of claims, attorney fees, consultant fees, and expert witness fees) which arise during or after GRANTEE'S use of the Easement Area as a result of such contamination. This indemnification includes, without limitation, costs incurred by DISTRICT in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental entity or agency because of Hazardous Material having been introduced, placed or released by GRANTEE, and therefore being present in the soil or ground water under the Easement Area. GRANTEE shall promptly take all action, at its sole cost and expense, as is necessary to clean, remove, and restore the Easement Area to its condition prior to the introduction of such Hazardous Material by GRANTEE, provided GRANTEE shall first have obtained Director's written approval and the approval of any necessary governmental entities or agencies for any such remedial action.

As used herein, the term "**Hazardous Material**" means any hazardous or toxic substance, material or waste which is or shall become regulated by any governmental entity or agency, including, without limitation, the County, the state of California, or the United States government.

#### **8. CONVEYANCE SUBJECT TO EXISTING INTERESTS (PMES10.1S)**

This Temporary Easement is subject to existing contracts, leases, licenses, easements, encumbrances and claims which may affect the Easement Area and the use of the word "grant" herein shall not be construed as a covenant against the existence of any thereof.

Nothing contained herein, or in any document related hereto, shall be construed to imply the conveyance to GRANTEE of the rights in the Easement Area which exceed those owned by DISTRICT, or any

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representation or warranty, either express or implied, relating to the nature or condition of the Easement Area or DISTRICT's interest therein.

**9. NOTICES (PMES12.1S)**

All notices, documents, correspondence and communications concerning this Temporary Easement shall be addressed as set forth in this Section, or as the Parties may hereafter designate by written notice, and shall be sent through the United States mail with postage prepaid. Any such mailing shall be deemed served or delivered twenty-four (24) hours after mailing. Each Party may change the address for notices by giving the other Party at least ten (10) calendar days' prior written notice of the new address.

Notwithstanding the above, either Party may also provide notices, documents, correspondence, or such other communications to the other by personal delivery or courier service such as FedEx, and so delivered shall be deemed to have been given upon receipt.

To DISTRICT:

Orange County Flood Control District  
c/o CEO Real Estate  
P.O. Box 4048  
Santa Ana, CA 92702-4048

To GRANTEE:

City of Corona  
Public Works Department  
Attention: Public Works Director  
400 S. Vicentia Ave., 2<sup>nd</sup> Floor  
Corona, CA 92882-2187

**10. VENUE (PMES13.1S)**

The Parties hereto agree that this Temporary Easement has been negotiated and executed in the state of California and shall be governed by and construed under the laws of California. In the event of any legal action to enforce or interpret this Temporary Easement, the sole and exclusive venue shall be a court of competent jurisdiction located in the County of Riverside, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties hereto specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

**11. WAIVER OF RIGHTS (PMES14.1S)**

The failure of DISTRICT to insist upon strict performance of any of the terms, covenants or conditions of this Temporary Easement shall not be deemed a waiver of any right or remedy that DISTRICT may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants and conditions of the Temporary Easement thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant, or condition of the Temporary Easement.

**12. SEVERABILITY (PMES15.1S)**

If any term, covenant, condition, or provision of this Temporary Easement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

**13. ATTORNEYS' FEES (PMES16.1S)**

In any action or proceeding brought to enforce or interpret any provision of this Temporary Easement, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorneys' fees and costs.

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**14. SUCCESSORS AND ASSIGNS (PMES18.1S)**

The terms, covenants and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties hereto.

**15. AUTHORITY (PMES20.1S)**

The Parties to this Temporary Easement represent and warrant that this Temporary Easement has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

**16. RECORDATION PROHIBITED**

The Parties agree this Temporary Easement shall not be recorded unless mutually agreed upon in writing by Director and GRANTEE. If recorded, GRANTEE agrees to execute and deliver to Director for recordation in the Official Records of Riverside County, California, a Quitclaim Deed sufficient to remove the encumbrance of this Temporary Deed from title, within sixty (60) days following the expiration or sooner termination of this Temporary Easement.

Approved as to Form  
Office of the County Counsel  
Orange County, California

By: Michelle A. Hunt  
Deputy

Date: 9/22/17

**DISTRICT**

ORANGE COUNTY FLOOD CONTROL DISTRICT,  
a body corporate and politic

By: Shane L. Silsby  
Shane L. Silsby, Director  
OC Public Works  
Pursuant to Section 1-4-225 of the Codified  
Ordinances of the County of Orange

*GRANTEE'S signature appears on following page.*

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### ACKNOWLEDGMENT

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 September 27, 2017, before me E. Scott Burns

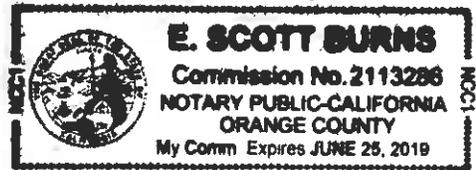
Notary Public, personally appeared Shane L. Silsby

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 E. Scott Burns



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**GRANTEE**

CITY OF CORONA,  
a municipal corporation

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**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**TEMPORARY CONSTRUCTION EASEMENT**

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**PARCEL 1: (TEMPORARY CONSTRUCTION EASEMENT)**

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That portion of the Tomas Yorba Allotment, in the Rancho La Sierra, as per map recorded in Book 2, Page 7 of Maps, in the Office of the County Recorder of San Bernardino County, California, in the County of Riverside, State of California, described as follows:

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**COMMENCING** at the intersection of the southwesterly right of way line of the County Highway (Pomona-Rincon Road, now Auto Center Drive) conveyed to the County of Riverside by deed recorded November 6, 1914 in Book 406, Page 15 of Deeds, in the Office of the County Recorder of said Riverside County and the northwesterly line of that certain 200.00 foot strip of land conveyed to the Atchison, Topeka and Santa Fe Railroad Company, by deed recorded October 20, 1942 in Book 559, Page 226 of Official Records, in the Office of the County Recorder of said Riverside County; thence along said southwesterly right of way line North 57°47'45" West 350.69 feet to the **TRUE POINT OF BEGINNING**; said point also being the beginning of a non-tangent curve concave northeasterly having a radius of 330.00 feet, said point being the easterly terminus of that certain curve having a radius of 330.00 feet as described in Easement Deed to the City of Corona recorded August 2, 2011 as Document Number 2011-0338198 of Official Records of said Riverside County, a radial bearing to said point bears South 09°46'40" West; thence leaving said southwesterly right of way line northwesterly 4.22 feet along said curve through a central angle of 00°44'00" to the northerly corner of said Easement Deed; thence along the northwesterly line of said Easement Deed South 32°12'43" West 84.59 feet to an angle point in said Easement Deed; thence along the southwesterly line of said Easement Deed South 40°41'34" East 43.65 feet; thence North 64°38'57" West 251.15 feet; thence North 56°38'57" West 544.03 feet; thence North 32°12'17" East 118.10 feet to said southwesterly right of way line of the County Highway; thence along said southwesterly line South 57°47'45" East 755.50 feet to the **TRUE POINT OF BEGINNING**.

**CONTAINING:** 2.107 Acres, more or less.

**SUBJECT TO** all Covenants, Rights, Rights-of-Way and Easements of Record.

**EXHIBIT "B"** attached and by this reference made a part hereof.

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5-16-2017

Kevin D. MacDonald, L.S. 8431

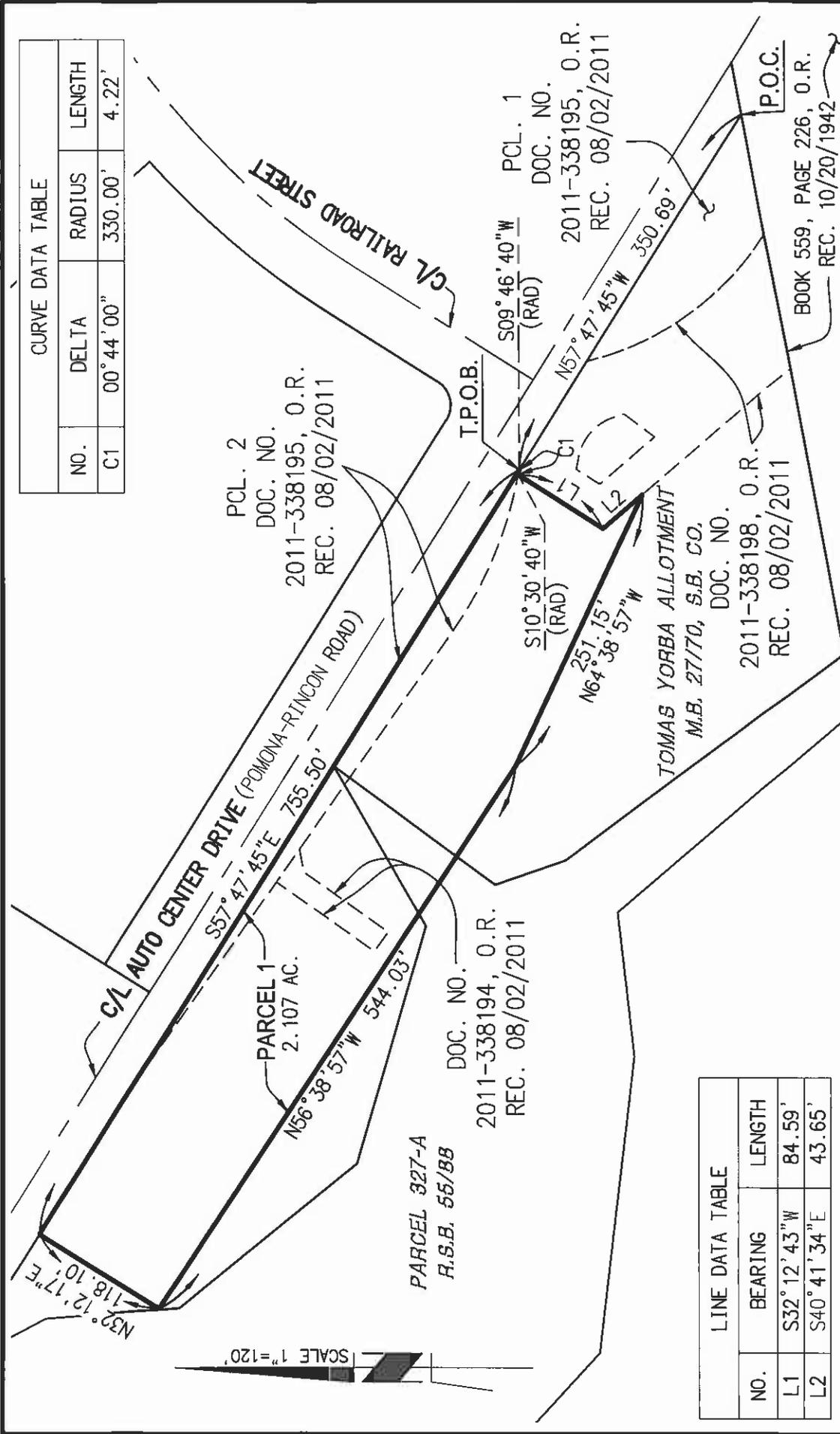
Date

Michael Baker International  
5 Hutton Centre Drive, Suite 500,  
Santa Ana, California 92707  
JN 133668



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CURVE DATA TABLE			
NO.	DELTA	RADIUS	LENGTH
C1	00° 44' 00"	330.00'	4.22'



LINE DATA TABLE		
NO.	BEARING	LENGTH
L1	S32° 12' 43" W	84.59'
L2	S40° 41' 34" E	43.65'

**EXHIBIT "B"**  
 SKETCH TO ACCOMPANY A  
 LEGAL DESCRIPTION FOR

TEMPORARY CONSTRUCTION EASEMENT

SHEET 1 OF 1 SHEETS

**Michael Baker**  
**INTERNATIONAL**  
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 Santa Ana CA 92707  
 (949) 472-3505 · MBAKERINTL.COM  
 MAY 16, 2017 JN 133668