

OWNER: Overland Financial Company, LLC  
APN: Portion of 363-540-002  
ESCROW/TITLE NO.: First American Title Insurance Company

**AGREEMENT AND ESCROW INSTRUCTIONS FOR  
PURCHASE AND SALE OF REAL PROPERTY**

**THIS AGREEMENT AND ESCROW INSTRUCTIONS FOR PURCHASE AND SALE OF REAL PROPERTY** (this "Agreement"), dated for identification purposes only as of August \_\_\_\_, 2018, is made by and between the **CITY OF LAKE ELSINORE**, a California municipal corporation ("Buyer") and **OVERLAND FINANCIAL COMPANY, LLC**, a California limited liability company ("Seller").

**RECITALS**

A. Seller is the present owner of that certain unimproved portion of real property consisting of approximately 0.51 acres (approximately 22,369 square feet of land) located on the northeast side of Interstate 15, at the intersection of Franklin Street and Grunder Drive in the City of Lake Elsinore, California, generally described as a portion of Assessor's Parcel No. 363-540-002 and more particularly described in the Exhibit "A" to the Grant Deed (Attachment No. 1 hereto) and depicted in Exhibit "B" to the Grant Deed (Attachment No. 1 hereto) (the "Property"). For the purpose of clarity, the term "Property" refers only to that portion of the land that Buyer is acquiring pursuant to this Agreement.

B. Seller desires to sell the Property to Buyer. Buyer desires to acquire the Property for purposes of making certain public right of way improvements.

**AGREEMENT**

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

**ARTICLE I**

**PURCHASE AND SALE; PURCHASE PRICE; PUBLIC PURPOSE**

**1.1 Purchase and Sale.** Buyer agrees to purchase the Property from Seller and Seller agrees to sell the Property to Buyer, on and subject to the conditions, covenants and terms contained in this Agreement.

**1.2 Purchase Price.** The purchase price shall be Thirty-Three Thousand Four Hundred Two and No/100 Dollars (\$33,402.00) (the "Purchase Price").

**ARTICLE II**

**ESCROW**

**2.1 Open Escrow.** Within five (5) days after the execution of this Agreement by both parties, Seller and Buyer shall open escrow ("Escrow") with First American Title Insurance Company (the "Escrow/Title Company") located at 43620 Ridge Park Drive, Suite 200, Temecula, CA 92590, Attention: Debbie Fritz.

**2.2 Close of Escrow.** The “Close of Escrow” shall mean the time and day the Grant Deed is filed for record with the Riverside County Recorder, which shall be on or before sixty (60) days after the opening of Escrow (“Closing Date”). The Close of Escrow shall be in accordance with Article IV of this Agreement.

**2.3 Escrow Instructions.** This Agreement shall constitute joint primary escrow instructions to the Escrow/Title Company; provided, however, that the parties shall execute such additional instructions as requested by the Escrow/Title Company not inconsistent with the provisions hereof. In the event of any inconsistency between such escrow instructions and this Agreement, this Agreement shall control the rights and obligations of the parties.

### **ARTICLE III CONDITIONS PRECEDENT**

**3.1** The purchase and sale under this Agreement shall be subject to the satisfaction of the conditions precedent set forth in this Article III (unless waived in writing by the party to whom the benefit of such condition runs) on or before the Closing Date or such earlier date as is specified in this Agreement, each of which conditions shall be a covenant of the party required to perform such condition.

**3.2 Conditions to Buyer’s Obligations and Due Diligence Period.**

A. Delivery of Title and Title Insurance. Seller shall convey title to the Property to Buyer at the Close of Escrow, subject only to Permitted Exceptions. The term “Permitted Exceptions” shall mean: (i) liens for real property taxes shown as exceptions in the Title Report provided that the taxes are not delinquent; (ii) the standard exclusions to coverage under Escrow/Title Company’s ALTA Extended Coverage Owner’s Policy of Title Insurance (“Title Policy”); and (iii) any other lien, encumbrance, title exception or defect that appears in the Title Report which Buyer has approved or which is caused by Buyer prior to the Close of Escrow. Notwithstanding the foregoing, in no event shall the following be considered Permitted Exceptions: deeds of trust or mortgages; judgments; mechanics’ and materialmen’s liens; tax liens; or liens, encumbrances or other title matters created by Seller after the date of this Agreement without the prior written consent of Buyer. Buyer agrees that Seller’s obligation to convey title to Buyer shall be deemed satisfied upon Escrow/Title Company’s willingness to issue the Title Policy subject only to the Permitted Exceptions.

B. Delivery of Title Report; Delivery of Natural Hazard Zone Disclosure Report.

(i) Buyer and Seller acknowledge and agree that Buyer has, at Buyer’s sole cost and expense, obtained a preliminary title report (“Title Report”) for the Property.

(ii) Within five (5) days following the opening of Escrow and at Buyer’s expense, Escrow/Title Company shall deliver to Buyer, at Buyer’s option (in light of Cal. Civ. Code § 1103.1(a)(9) exemption to disclosure of natural and environmental hazards), a Natural Hazard Zone Disclosure Report, including environmental hazards (“NHZ Report”). Buyer expressly waives any and all claims Buyer may have against Seller pursuant to Cal. Civ. Code, Art. 1.7, and Buyer hereby relieves Seller of any and all liability and/or responsibility thereunder.

Buyer acknowledges and agrees that the NHZ Report provided by Escrow/Title Company regarding the results of any examination performed by Escrow/Title Company or its/their designee, fully and completely discharges Seller for errors, or omissions not within its actual knowledge, and Escrow/Title Company or its designee, shall be deemed to be an expert, dealing with matters within the scope of its expertise with respect to the examination and written report regarding any natural hazards

referred to above. THESE HAZARDS MAY LIMIT BUYER'S ABILITY TO DEVELOP THE PROPERTY, TO OBTAIN INSURANCE, OR TO RECEIVE ASSISTANCE AFTER DISASTER. THE MAPS ON WHICH THESE DISCLOSURES ARE BASED ON ESTIMATE WHERE NATURAL HAZARDS EXIST. THEY ARE NOT DEFINITIVE INDICATORS OR WHETHER OR NOT A PROPERTY WILL BE AFFECTED BY A NATURAL DISASTER. BUYER MAY WISH TO OBTAIN PROFESSIONAL ADVICE REGARDING THOSE HAZARDS AND OTHER HAZARDS THAT MAY AFFECT THE PROPERTY.

"Actual knowledge" as used in this Agreement is the personal knowledge of Barry Cayton, the manager of Seller, without any independent inquiry or representation.

C. Due Diligence Period. Buyer shall have thirty (30) days after the delivery of the Title Report and the NHZ Report (the "Due Diligence Period") to (i) review the exceptions, legal descriptions and other matters contained in the Title Report and (ii) conduct or review such surveys, investigations, studies and inspections and make or review such geologic, environmental and soils tests and other studies of the Property which Buyer deems necessary and appropriate in its sole and absolute discretion, including any "Phase 1" and/or "Phase 2" investigations of the Property and such soils, geological, toxic waste, hazardous substance, and/or any other kind of soil or water contamination tests and analyses. Seller shall deliver to Buyer during the Due Diligence Period title or environmental-related documents reasonably relating to the Property requested by Buyer and reasonably available to Seller at the time of the request (collectively "Property File"). Buyer shall promptly provide to Seller a copy of all reports and test results Buyer obtains independently pursuant to this Section 3.2(C). If the Buyer reasonably determines within the Due Diligence Period that the condition of title or the condition of the Property is not satisfactory for any reason, Buyer may elect to terminate this Agreement by promptly notifying the Seller and Escrow/Title Company in writing of its decision to terminate on or before the expiration of the Due Diligence Period. If for any reason whatsoever Buyer terminates this Agreement prior to the Closing Date, Buyer shall either return to Seller or destroy (and confirm in writing such destruction) all Property File information provided to Buyer prior to or after the date of this Agreement, and shall deliver to Seller, without warranty or representation, copies of all reports, studies, physical inspections or other similar information prepared by third-party consultants or advisors for Buyer and which are in Buyer's possession.

D. Access to Property. Seller hereby grants to Buyer and any of Buyer's consultants a right of entry to the Property at reasonable times for the purpose of conducting soils and geological investigation and tests for toxic or hazardous substances and other contamination. Buyer may perform such tests either before or after the opening of Escrow as part of an environmental site assessment or in accordance with the Comprehensive, Environmental Response, Compensation and Liability Act (42 USC 9061 *et seq.*). With respect to such entry and investigation, Buyer shall be responsible for all costs and expenses associated with the inspection and such other cost as may be related thereto. Buyer will restore the Property to substantially the same condition existing prior to Buyer's testing at Buyer's sole cost and expense if this transaction does not close. Prior to Buyer or its agents or contractors entering upon the Property, Buyer shall (i) give Seller forty-eight (48) hours prior notice of such entry, (ii) provide satisfactory evidence to Seller that Buyer, or its agents or contractors, have obtained commercial general liability insurance, with limits of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in aggregate; workers compensation insurance in statutory limits and employers liability insurance with limits not less than \$1,000,000.00 each incident; and umbrella excess liability insurance excess of the underlying commercial general liability and employers liability insurance with limits not less than \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate, and (iii) restore the Property to the condition it was in property to Buyer's investigation. Buyer will defend, indemnify and hold Seller free and harmless from and against any and all Buyer's, or Buyer's employee, representative, agent, contractor, or subcontractor, claims, damages and liabilities relating to or arising out of Buyer's exercise of its rights

under this Section. This indemnity provision will survive the Close of Escrow or any earlier termination of this Agreement. Buyer will assure that all costs associated with its conduct of the investigations are fully satisfied and that the Property is not subjected to any liens with respect thereto.

E. Representations and Warranties. Subject to the information disclosed in the Property Profile, each of the representations and warranties by Seller contained in Section 7.1 was, to Seller's actual knowledge, true and correct in all material respects as of the date made and continues to be, to Seller's actual knowledge, true and correct in all material respects as of the Close of Escrow.

F. Delivery of Close of Escrow Documents. Execution, delivery and acknowledgement as appropriate by Seller of the Close of Escrow documents set forth in Section 4.1B(i).

G. No Material Change. As of the date of this Agreement, to Seller's actual knowledge, no material change in the status of the use, title, occupancy or physical condition of the Property, unless caused by Buyer or its agents, shall have occurred with respect to the Property prior to Close of Escrow that has not been approved in writing by Buyer, which approval can be withheld in Buyer's reasonable discretion. Additionally, Seller shall (i) maintain its existing insurance policies in full force and effect up to the Close of Escrow; (ii) provide prompt written notice to Buyer of any casualty or condemnation affecting any portion of the Property after the date of this Agreement up to the Close of Escrow; (iii) deliver to Buyer, promptly after receipt by Seller, copies of all notices of violation issued by any governmental authority with respect to the Property received by Seller after the date of this Agreement up to the Close of Escrow; (iv) advise Buyer promptly of any litigation, arbitration or other judicial or administrative proceeding which concerns or affects the Property up to the Close of Escrow; and (v) comply in material respects with the requirements of all contracts, licenses, permits, approvals, guaranties and warranties applicable to this Agreement up to Close of Escrow.

H. Seller Performance. Seller shall have performed each and every undertaking, covenant and agreement required to be performed by Seller under this Agreement prior to or at the Close of Escrow.

### **3.3 Conditions to Seller's Obligations.**

A. Delivery of Purchase Price. Buyer shall have deposited the Purchase Price and Buyer's share of costs described in Section 4.2 A. (ii) below with Escrow/Title Company.

B. Representations and Warranties. Each of the representations and warranties by Buyer contained in Section 7.2 below shall be determined to have been true and correct in all material respects as of the date made and shall continue to be true and correct in all material respects as of the Close of Escrow.

C. Delivery of Close of Escrow Documents. Execution, delivery and acknowledgement as appropriate by Buyer of the Close of Escrow documents set forth in Section 4.1B(ii).

D. Buyer Performance. Buyer shall have performed each and every undertaking, covenant and agreement required to be performed by Buyer under this Agreement prior to or at the Close of Escrow.

**3.4 Failure of Conditions.** The failure of Seller or Buyer to satisfy any of the conditions precedent contained in this Article III within the times specified in this Agreement shall constitute a default hereunder and unless such conditions are waived or the time for satisfaction extended by the party

to whose benefit the conditions run, the party to whose benefit the conditions run shall have the right to terminate this Agreement by delivering written notice to the other party and Escrow/Title Company.

#### **ARTICLE IV** **CLOSE OF ESCROW**

**4.1 Close of Escrow.** The purchase and sale of the Property shall be consummated on or prior to the Closing Date in accordance with the following:

A. Time. When Escrow/Title Company is in a position to issue the Title Policy and all required documents and funds have been deposited with Escrow/Title Company, and Buyer and Seller have advised the Escrow/Title Company in writing that the Conditions of Close of Escrow set forth herein have been satisfied or waived, Escrow/Title Company shall immediately close Escrow as provided below.

B. Close of Escrow Documents.

(i) Seller. No later than the day prior to the Closing Date, Seller shall duly execute and acknowledge as appropriate and deliver to Escrow/Title Company the following:

(a) A grant deed ("Deed") conveying the Property to Buyer in the form attached to this Agreement as Attachment No. 1;

(b) A Non-foreign Entity Affidavit ("Affidavit"), in the form attached to this Agreement as Attachment No. 3, pursuant to Section 9.1; and

(c) Such documents and instruments as Escrow/Title Company may reasonably require to evidence the due authorization and execution of the documents and instruments to be delivered by Seller under this Agreement and to issue the Title Policy.

The obligations of Seller to deliver documents and instruments into Escrow in accordance with this Section 4.1B(i) are separate, independent covenants of Seller and shall not be conditioned upon Buyer's deliveries in accordance with Section 4.1B(ii).

(ii) Buyer. No later than the day prior to the Closing Date, Buyer shall duly execute and acknowledge as appropriate and deliver to the Escrow/Title Company the following:

(a) The amount of the Purchase Price, along with Buyer's share of any costs and expenses to be paid to or through Escrow/Title Company, less the Deposit;

(b) A Certificate of Acceptance accepting conveyance of the Property in the form attached to this Agreement as Attachment No. 2;

(c) A Change of Ownership Statement, as required by Escrow/Title Company or Escrow/Title Company; and

(d) Such documents and instruments as Escrow/Title Company may reasonably require to evidence the due authorization and execution of the documents and instruments to be delivered by Buyer under this Agreement and to issue the Title Policy.

The obligations of Buyer to deliver funds, documents and instruments into Escrow under this Section 4.1B(ii) shall be separate, independent covenants of Buyer and shall not be conditioned upon Seller's deliveries in accordance with Section 4.1B(i).

C. Close of Escrow Procedure. At such time as the Escrow/Title Company has received all of the items specified in Section 4.1B, and at such time as Escrow/Title Company is prepared to issue the Title Policy in accordance with Section 3.2A, Buyer and Seller hereby authorize and instruct Escrow/Title Company to: (i) cause Escrow/Title Company to record the Deed, and issue the Title Policy to Buyer; (ii) pay any applicable recordation fees and transfer taxes; (iii) compute pro-rations relating to the Property for the accounts of Seller and Buyer; (vi) pay to Seller an amount equal to the Purchase Price, less any pro-rations chargeable to Seller and any amounts payable by Seller to Escrow/Title Company for its services and expenditures in connection with this Agreement; (iv) pay to Buyer the balance of the funds then held by Escrow/Title Company, less any pro-rations chargeable to Buyer and any amounts payable by Buyer to Escrow/Title Company for its services and expenditures in connection with this Agreement; and (vii) deliver to Buyer and Seller a conformed copy of the Deed showing the recording information.

#### **4.2 Fees; Expenses; Prorations.**

A. Fees, Expenses, Transfer Taxes.

(i) Seller. Seller shall pay or satisfy, as applicable: (a) all documentary transfer taxes imposed in connection with the recording of the Deed; (b) one-half (1/2) of the Escrow fees; (c) the cost of the Title Policy for Buyer in the amount of the Purchase Price; and (d) any other customary fees and charges and expenditures authorized by Seller.

(ii) Buyer. Buyer shall pay: (a) one-half (1/2) of the Escrow fees; (b) the cost of recording the Deed and all other documents recorded at the Close of Escrow; (c) the cost of the NHZ Report; and (d) any other customary fees and charges and expenditures authorized by Buyer. Buyer shall have the right to procure an ALTA Extended Coverage Owner's Policy of Title Insurance ("ALTA Policy") and Buyer shall pay for the increased cost of such ALTA Policy above the cost of the Title Policy, the cost of any survey that the Escrow/Title Company requires for issuance of an ALTA Policy and for the cost of any other increase in the amount or scope of title insurance if Buyer elects to increase the amount or scope of title insurance coverage or to obtain endorsements to the Title Policy or ALTA Policy. All other costs, if any, shall be apportioned between Buyer and Seller in the customary manner for real estate transactions in the County of Riverside, State of California.

B. Real Property Taxes and Assessments (Prorations). Escrow shall prorate all real property taxes as of the Closing Date. If for any reason real property taxes have been paid for any period beyond the Closing Date, any rebate or payment of such taxes that may be due as a result of Buyer not being subject to property taxation, shall be rebated or paid to Seller.

C. Commissions. Buyer and Seller represent and warrant to each other that no person or entity may claim or is entitled to a real estate commission, finder's fees or any similar payments with respect to this Agreement or the sale of the Property. Buyer and Seller shall each protect, defend, indemnify and hold the other harmless from and against all such claims for real estate commissions, finder's fees or any similar payments with respect to the sale of the Property in accordance with this Agreement.

## **ARTICLE V**

### **BREACH**

**5.1 General.** If either party breaches its obligations under this Agreement prior to the Close of Escrow, then the other party may, without terminating this Agreement, suspend performance by giving written notice to the other party until such breach is cured by the other party. Except for Seller's and Buyer's respective delivery obligations under Article IV, including, without limitation, Buyer's delivery to the Escrow/Title Company of the Purchase Price, neither party shall be in default under this Agreement unless it fails to cure a breach of such party's obligations under this Agreement within five (5) days after receipt of written notice of such breach from the non-breaching party. Nothing contained in this Agreement is intended nor shall permit any party in default to terminate this Agreement or the Escrow provided for in this Agreement as a result of such default.

**5.2 Termination.** If either party breaches any of its obligations under this Agreement prior to the Close of Escrow and fails to cure such breach within the applicable cure period provided in Section 5.1 above, then the non-defaulting party may terminate this Agreement by written notice to the defaulting party and to the Escrow/Title Company. Termination of this Agreement shall be without prejudice as to whatever legal rights the party may have against the other arising out of this Agreement.

## **ARTICLE VI**

### **CONDITION OF PROPERTY**

**6.1 "As Is" Condition.** The Property is purchased and sold in "AS IS" condition. Buyer shall have inspected and conducted tests, inspections, investigations and studies of the Property as Buyer, in accordance with this Agreement, deems necessary. BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (I) VALUE; (II) THE INCOME TO BE DERIVED FROM THE PROPERTY; (III) THE NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY; (IV) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (V) COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATION, ORDERS OR REQUIREMENTS, INCLUDING BUT NOT LIMITED TO, TITLE III OF THE AMERICANS WITH DISABILITIES ACT OF 1990, CALIFORNIA HEALTH & SAFETY CODE, THE FEDERAL WATER POLLUTION CONTROL ACT, THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT, THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976, THE CLEAN WATER ACT, THE SAFE DRINKING WATER ACT, THE HAZARDOUS MATERIALS TRANSPORTATION ACT, THE TOXIC SUBSTANCE CONTROL ACT, AND REGULATIONS PROMULGATED UNDER ANY OF THE FOREGOING; (VI) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS AT, ON, UNDER, OR ADJACENT TO THE PROPERTY; (VII) THE CONTENT, COMPLETENESS OR ACCURACY OF ANY DUE DILIGENCE MATERIALS DELIVERED BY SELLER TO BUYER OR PRELIMINARY REPORT REGARDING TITLE; (VIII) DEFICIENCY OF ANY UNDERSHORING; (IX) DEFICIENCY OF ANY DRAINAGE; (X) THE FACT THAT ALL OR A PORTION OF THE PROPERTY MAY BE LOCATED ON OR NEAR AN EARTHQUAKE FAULT LINE OR A FLOOD

ZONE; OR (XI) WITH RESPECT TO ANY OTHER MATTER. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT IT HAS OR WILL HAVE BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY AND REVIEW INFORMATION AND DOCUMENTATION AFFECTING THE PROPERTY, AND THAT, EXCEPT FOR SELLER'S EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED HEREIN, BUYER IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND REVIEW OF SUCH INFORMATION AND DOCUMENTATION, AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION MADE AVAILABLE TO BUYER OR PROVIDED OR TO BE PROVIDED BY OR ON BEHALF OF SELLER WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT SELLER HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. BUYER AGREES TO FULLY AND IRREVOCABLY RELEASE ALL SUCH SOURCES OF INFORMATION AND PREPARERS OF INFORMATION AND DOCUMENTATION AFFECTING THE PROPERTY WHICH WERE RETAINED BY SELLER FROM ANY AND ALL CLAIMS THAT THEY MAY NOW HAVE OR HEREAFTER ACQUIRE AGAINST SUCH SOURCES AND PREPARERS OF INFORMATION FOR ANY COSTS, LOSS, LIABILITY, DAMAGE, EXPENSE, DEMAND, ACTION OR CAUSE OF ACTION ARISING FROM SUCH INFORMATION OR DOCUMENTATION. EXCEPT FOR SELLER'S EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN SECTION 7.1, SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT FOR SELLER'S EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN SECTION 7.1, THE CONVEYANCE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS" CONDITION AND BASIS WITH ALL FAULTS, AND THAT SELLER HAS NO OBLIGATIONS TO MAKE REPAIRS, REPLACEMENTS OR IMPROVEMENTS, WARRANTS AND COVENANTS TO SELLER THAT, EXCEPT FOR SELLER'S EXPRESS REPRESENTATIONS AND WARRANTIES SPECIFIED IN THIS AGREEMENT, BUYER IS RELYING SOLELY UPON BUYER'S OWN INVESTIGATION OF THE PROPERTY.

**6.2 General Waiver.** With respect to the waivers and releases set forth in Section 6.1, above, Buyer expressly waives any of its rights granted under California Civil Code Section 1542, which provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

---

Buyer's Initials

## **ARTICLE VII**

### **REPRESENTATIONS AND WARRANTIES**

**7.1 Seller's Representations and Warranties.** In consideration of Buyer's entering into this Agreement and as an inducement to Buyer to purchase the Property, Seller makes the following covenants, representations and warranties, each of which is material and is being relied upon by Buyer (and the continued truth and accuracy of which shall constitute a condition precedent to Buyer's obligations hereunder):



A. Authority. Seller has the full power and authority to sell the Property, and this Agreement has been duly and validly authorized, executed and delivered by Seller and no other authorization or third party consent is requisite to the valid and binding execution, delivery and performance of this Agreement by Seller.

B. Encumbrances. To Seller's actual knowledge, the Property is free and clear of all liens, encumbrances and other matters other than those set forth in the Title Policy and the Property is not subject to any outstanding contract of sale, right of first refusal or purchase option, in favor of any person or entity, except Buyer. Seller will not sell, lease, sublease, assign, mortgage or otherwise encumber the Property without Buyer's prior written approval, which may be withheld in Buyer's sole discretion.

C. Representations. All representations and warranties of Seller set forth in this Agreement shall be true on and as of the Close of Escrow as if those representations and warranties were made on and as of such time.

D. No Breach. There are no contracts or agreements relating to the leasing, operation and maintenance of the Property which will be effective as to the Property following the Close of Escrow. There are no agreements, rights or agreements under which any third person or party has any right or option to purchase the Property. This Agreement and all documents required hereby to be executed by Seller are and shall be valid, legally binding obligations of and enforceable against Seller in accordance with their terms, subject only to the applicable bankruptcy, insolvency, reorganization, moratorium laws or similar laws or equitable principles effecting or limiting the rights of contracting parties generally. To Seller's actual knowledge, neither the execution and delivery of this Agreement and the documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents reference herein, result in the breach of any terms, conditions or provisions of, or constitute a default under, any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which Seller is a party or effecting the Property.

E. Litigation. There are no suits, claims, foreclosure proceedings, property tax protests, zoning or other administrative proceedings that are pending or, to Seller's actual knowledge, threatened with respect to or in any manner affecting the Property.

F. Condemnation; Eminent Domain. Seller has neither received any written notice from any governmental authority other than Buyer, nor has any actual knowledge of any action regarding eminent domain proceedings for the condemnation of all or any portion of the Property. To Seller's actual knowledge, Seller has not received any written notices of violations, including, without limitation, any environmental law violations, that still exist from any municipal or governmental bodies regarding the Property.

G. Due Diligence. Seller has delivered to Buyer complete legible copies of all the material documents pursuant to Section 3.2.C. concerning the Property in Seller's possession or under its control.

H. Environmental Laws. To Seller's actual knowledge, Seller has not received written notice from any governmental authority that the Property or the use or operation thereof are in violation of any Environmental Laws, and to Seller's actual knowledge, no such written notice has been issued and, to Seller's actual knowledge, no violation of any Environmental Laws has occurred. To Seller's actual knowledge, no part of the Property has ever been used by any person or entity to refine, produce, use, store, handle, transfer, process, transport or dispose of any Hazardous Substances.

**7.2 Buyer's Representations, Warranties and Covenants.** In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property to Buyer, Buyer makes the following representations, warranties and covenants, each of which is material and is being relied upon by Seller (the continued truth and accuracy of which shall constitute a condition precedent to Seller's obligations hereunder):

A. Authority. Buyer has the full power and authority to buy the Property, and this Agreement has been duly and validly authorized, executed and delivered by Buyer and no other authorization or third party consent is requisite to the valid and binding execution, delivery and performance of this Agreement by Buyer.

B. Representations. All representations and warranties of Buyer set forth in this Agreement shall be true on and as of the Close of Escrow as if those representations and warranties were made on and as of such time.

## **ARTICLE VIII**

### **CONDEMNATION, DAMAGE AND DESTRUCTION**

**8.1 Condemnation.** If, between the date of this Agreement and the Closing Date, condemnation or eminent domain proceedings affecting any portions of the Property are initiated or are threatened to be initiated by any entity other than Buyer, then, Buyer shall have the right to either: (i) affirm this Agreement, which shall remain in full force and effect without any diminution of the Purchase Price and Seller shall assign to Buyer upon the Closing Date all of Seller's rights to any condemnation awards by depositing an assignment of said award with the Escrow/Title Company; or (ii) subject to and conditioned on Buyer's compliance with the remaining provisions of this Section 8.1, terminate this Agreement and neither party shall have any further obligations or liabilities to each other, except that Buyer's indemnity obligations under this Agreement shall survive any such termination. Buyer shall not propose, institute, cooperate with or permit any condemnation of all or any part of the Property prior to the Close of Escrow.

**8.2 Damage and Destruction.** If, between the date of this Agreement and the Closing Date, any portion of the Property is materially damaged or destroyed, then Buyer shall have the option by written notice to Seller to: (i) terminate this Agreement and Buyer shall have no obligation to purchase the Property and Seller shall have no obligation to sell the Property to or (ii) affirm this Agreement, which shall remain in full force and effect without delaying the Close of Escrow and without diminution of the Purchase Price.

## **ARTICLE IX**

### **MISCELLANEOUS**

**9.1 No Foreign Investors.** Seller warrants and represents to Buyer that Seller is not a foreign individual, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations). Seller shall execute and deliver to Buyer at the Close of Escrow the Affidavit in the form attached hereto as Attachment No. 3 certifying the representations and warranties made pursuant to this Section.

**9.2 Attorneys' Fees.** If any action, proceeding or arbitration is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to all other damages, all costs and expenses of such action, proceeding or arbitration, including but not limited to actual attorneys' fees (including the allocated costs of in-house counsel), witness fees' and court costs. The phrase "prevailing party" as used in this Section shall mean the party who receives

substantially the relief desired whether by dismissal, summary judgment or otherwise. The terms of this Section shall survive the Close of Escrow and shall not be merged with the Deed.

**9.3 Notices.** All notices and requests under this Agreement shall be in writing and shall be sent by personal delivery, facsimile or e-mail (with hard copy to follow the next business day by overnight mail), by nationally recognized overnight mail carrier such as FedEx or delivered in person to the following street addresses:

SELLER:	Overland Financial Company, LLC 5150 Overland Avenue Culver City, California 90230 Telephone: (310) 280 5027 E-Mail: bcayton@acs-west.com
With a copy which shall not constitute notice to:	Nossaman, LLP 18101 Von Karman, Suite 1800 Irvine, CA 92612 Attention: Ken Kramer/Jee Lee Telephone: (949) 477-7645/(949) 477-7642 E-Mail: <a href="mailto:kkramer@nossaman.com">kkramer@nossaman.com</a> / <a href="mailto:jhlee@nossaman.com">jhlee@nossaman.com</a>
BUYER:	City of Lake Elsinore 130 S. Main Street Lake Elsinore, CA 92530 Attn: Grant Yates, City Manager Telephone: (951) 674-3124 Facsimile: (951) 674-2392 E-Mail: gyates@lake-elsinore.org
With a copy which shall not constitute notice to:	Leibold McClendon & Mann PC 9841 Irvine Center Drive, Suite 230 Irvine, CA 92618 Attention: Barbara Leibold Telephone: (949) 585-6300 ext. 101 Facsimile: (949) 585-6305 E-Mail: barbara@ceqa.com.com
Escrow/Title Company:	First American Title Insurance Company 43620 Ridge Park Drive, Suite 200 Temecula, CA 92590 Attention: Debra Fritz Telephone: (951) 296-2948 E-Mail: dfritz@firstam.com

All notices shall be effective upon the earlier of personal delivery or receipt of a facsimile confirmation statement, if sent by facsimile, or receipt of confirmation of delivery, if delivered by e-mail or a nationally recognized overnight mail carrier. Either party may change its address or designate a new street address for notices under this Agreement by notice complying with the terms of this Section.

**9.4 Cooperation.** Buyer and Seller shall reasonably cooperate with the other in connection with the requirements imposed by this Agreement and agree to cooperate with each other by executing such other documents or taking such other action as may be reasonably necessary in accordance with the intent of the parties as evidenced by this Agreement, provided such documents do not create any additional liability or expense for such party not contemplated by this Agreement.

**9.5 Survival.** Buyer's and Seller's representations, warranties, and covenants shall survive the Close of Escrow for a period of one (1) year after the Close of Escrow ("Survival Period"), and any actions for any alleged breach of representations or warranties shall be brought, if at all, on or before the expiration of the Survival Period.

**9.6 Interpretation.** This Agreement shall be construed and enforced in accordance with the laws of the State of California as applicable to contracts entered into in California among parties doing business therein. This Agreement contains the entire agreement between the parties respecting the purchase and sale of the Property and supersedes all prior negotiations, discussions, understandings and agreements, both oral and written, between the parties with respect to such matters. This Agreement shall not be effective between the parties until the date this Agreement is executed and delivered into Escrow by both Seller and Buyer. This Agreement may not be modified or amended in any way except by a writing executed by both Buyer and Seller. The section headings of this Agreement are for convenience only and are not to be construed as part of this Agreement and do not in any way amplify or define the terms, conditions, and covenants of this Agreement and shall not be used in construction or interpretation of this Agreement. There are no third-party beneficiaries to this Agreement. Unless the context otherwise indicates, whenever used in this Agreement, the word "party" or "parties" means Buyer or Seller or both, as the context may require. Time is of the essence in the performance of each term of this Agreement.

**9.7 Successors and Assigns.** This Agreement shall be binding upon and inure to the benefits of the successors and assigns of the parties to this Agreement. In no event shall Buyer have any right to delay or postpone the Close of Escrow to create a partnership, corporation or other form of business association or to obtain financing to acquire title to the Property or to coordinate with any other sale, transfer, exchange or conveyance.

**9.8 Severability.** If any term or provision of this Agreement is determined to be invalid or unenforceable, the remaining terms and provisions shall not be affected thereby and shall remain in full force and effect to the maximum extent permitted by law.

**9.9 Dates.** Whenever any determination is to be made or action is to be taken on a date specified in this Agreement, if such date shall fall on Saturday, Sunday or legal holiday under the laws of the State of California, then in such event said date shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

**9.10 Counterparts; Telefacsimile or E-mail Execution.** This Agreement may be executed in counterparts, all of which shall constitute the same Agreement, notwithstanding that all parties to this Agreement are not signatory to the same or original counterpart.

**9.11 No Assumption of Seller's Liabilities.** Buyer is acquiring only the Property from Seller and is not the successor of Seller. Except only for the obligations accruing after the Closing Date or assumed in writing by Buyer, Buyer does not assume or agree to pay, or indemnify Seller or any person or entity against any liability, obligation or expense of Seller or relating to the Property.

**9.12 Limitation of Liability.** No advisor, trustee, director, officer, partner, member, employee, beneficiary, shareholder, participant or agent of or in Seller or Buyer shall have any personal

liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter. The terms of this Section survive the Close of Escrow or termination of this Agreement.

**9.13 Indemnification; Limitation on Liability.** Seller hereby agrees to indemnify, defend and hold Buyer harmless from and against any claims, damages, demands, liabilities, losses, judgments, expenses and attorneys' fees and/or costs resulting from any material breach of this Agreement by Seller, including, without limitation, the falsity of any representation or warranty made by Seller contained in this Agreement. Neither Buyer nor Seller shall in any event be entitled to, and each hereby waives, any right to seek consequential damages of any kind or nature from the other party arising out of or in connection with this Agreement.

**9.14 Tax and legal advice.** Seller represents and warrants that the buyer has not provided tax or legal advice to seller in connection with this agreement. Seller further represents and warrants that they have been advised of their right to legal counsel and tax advice and have either obtained the advice of independent legal counsel or a tax advisor with respect to the terms of this agreement and all attachments hereto and other agreements required hereby, or have knowingly and voluntarily decided not to consult with legal counsel or a tax advisor of his/her choosing.

**9.15 Time of Essence.** Time is expressly made of the essence with respect to the performance by Buyer and Seller of each and every obligation and condition of this Agreement including, without limitation, the Close of Escrow.

**9.16 Attachments Incorporated by Reference.** All attachments attached to this Agreement are incorporated in this Agreement by this reference. This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original.

**[Signatures on next page]**

**IN WITNESS WHEREOF**, the Buyer and the Seller have signed this Agreement and Escrow Instructions for Purchase and Sale of Real Property on the date set forth below.

**“SELLER”**

**OVERLAND FINANCIAL COMPANY, LLC**, a  
California limited liability company

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Barry Cayton, Manager

**APPROVED AS TO FORM:**

NOSSAMAN LLP

By: \_\_\_\_\_  
Ken Kramer, Esq

**“BUYER”**

**CITY OF LAKE ELSINORE**, a California municipal  
corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Grant Yates, City Manager

**ATTEST:**

\_\_\_\_\_  
Susan Domen, City Clerk

**APPROVED AS TO FORM:**

LEIBOLD McCLENDON & MANN, P.C.

By: \_\_\_\_\_  
Barbara Leibold, City Attorney

**ESCROW/TITLE COMPANY’S CONSENT:** Escrow/Title Company hereby acknowledges receipt of this Agreement.

**“ESCROW/TITLE COMPANY”**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
  
Dated: \_\_\_\_\_

**ATTACHMENT NO. 1**

**GRANT DEED**

Recording Requested by:

City Clerk  
City of Lake Elsinore  
130 So. Main Street  
Lake Elsinore, CA 92530

EXEMPT FROM RECORDING FEE –  
GOVERNMENT AGENCY BUSINESS PER  
GOV'T CODES 6103 and 27383

APN 363-540-002 [Portion]

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**GRANT DEED**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **OVERLAND FINANCIAL COMPANY, LLC**, California limited liability company, hereby GRANT(S) to the **CITY OF LAKE ELSINORE**, a California municipal corporation, certain real property consisting of approximately 0.51 acres situated in the County of Riverside, State of California, and legally described and depicted as:

SEE EXHIBIT "A" (LEGAL DESCRIPTION) AND EXHIBIT "B" (DEPICTION)  
ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE

**"SELLER"**

**OVERLAND FINANCIAL COMPANY, LLC**, a  
California limited liability company

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Barry Cayton, Manager



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

**Parcel 5-01-01 EXCESS LAND**


That portion of the east half (E1/2) of the west half (W1/2) of the northwest quarter (NW1/4) of Section 9, Township 6 South, Range 4 West, San Bernardino Meridian, situated in the City of Lake Elsinore, County of Riverside, State of California, described as follows:

**COMMENCING** at the intersection of the south line of the north 60.00 feet of said northwest quarter (NW1/4) and the west line of Franklin Street (35.00 feet half-width), as shown on maps by the Department of Transportation, State of California, titled MONUMENTATION MAP No. 443525 and RIGHT OF WAY MAP No. 414034, said intersection being an angle point in that certain parcel of land, SEGMENT 3, Request No. 323R, said land relinquished to the City of Lake Elsinore, per document titled "RELINQUISHMENT OF HIGHWAY RIGHT OF WAY" recorded December 2, 1982, in Book 1982, page 209014, Official Records of said County, and shown on DETAIL MAP OF RELINQUISHMENT, REQUEST No. 323R, filed June 1, 1982 in State Highway Map Book 8, pages 105A and 106A, records of said County; thence along said south line North 89°08'57" West 1.06 feet to the **POINT OF BEGINNING**; thence continuing along said south line North 89°08'57" West 499.53 feet to the beginning of a non-tangent curve, concave northeasterly, having a radius of 461.00 feet, a radial line to said point bears South 21°50'38" West; thence southeasterly along said curve, through a central angle of 18°35'27", an arc distance of 149.58 feet; thence South 86°44'49" East 43.01 feet to the beginning of a curve, concave southwesterly, having a radius of 539.00 feet; thence southeasterly along said curve, through a central angle of 25°45'31", an arc distance of 242.32 feet; thence North 71°41'16" East 55.90 feet to the beginning of a non-tangent curve, concave northwesterly, having a radius of 470.00 feet, a radial line to said point bears South 65°26'20" East; thence northeasterly, along said curve, through a central angle of 09°55'19", an arc distance of 81.39 feet to said south line and the **POINT OF BEGINNING**.

Contains 22,368 square feet, (0.51 acres) more or less.

The bearings and distances are based on the California Coordinate System of 1983, Zone 6. Divide the grid distances shown above by the combined scale factor of 0.99990950 to obtain ground level distances.

This real property description has been prepared by me or under my direction in conformance with the requirements of the Professional Land Surveyor's Act.

  
Larry D. Gill, L.S. 7814

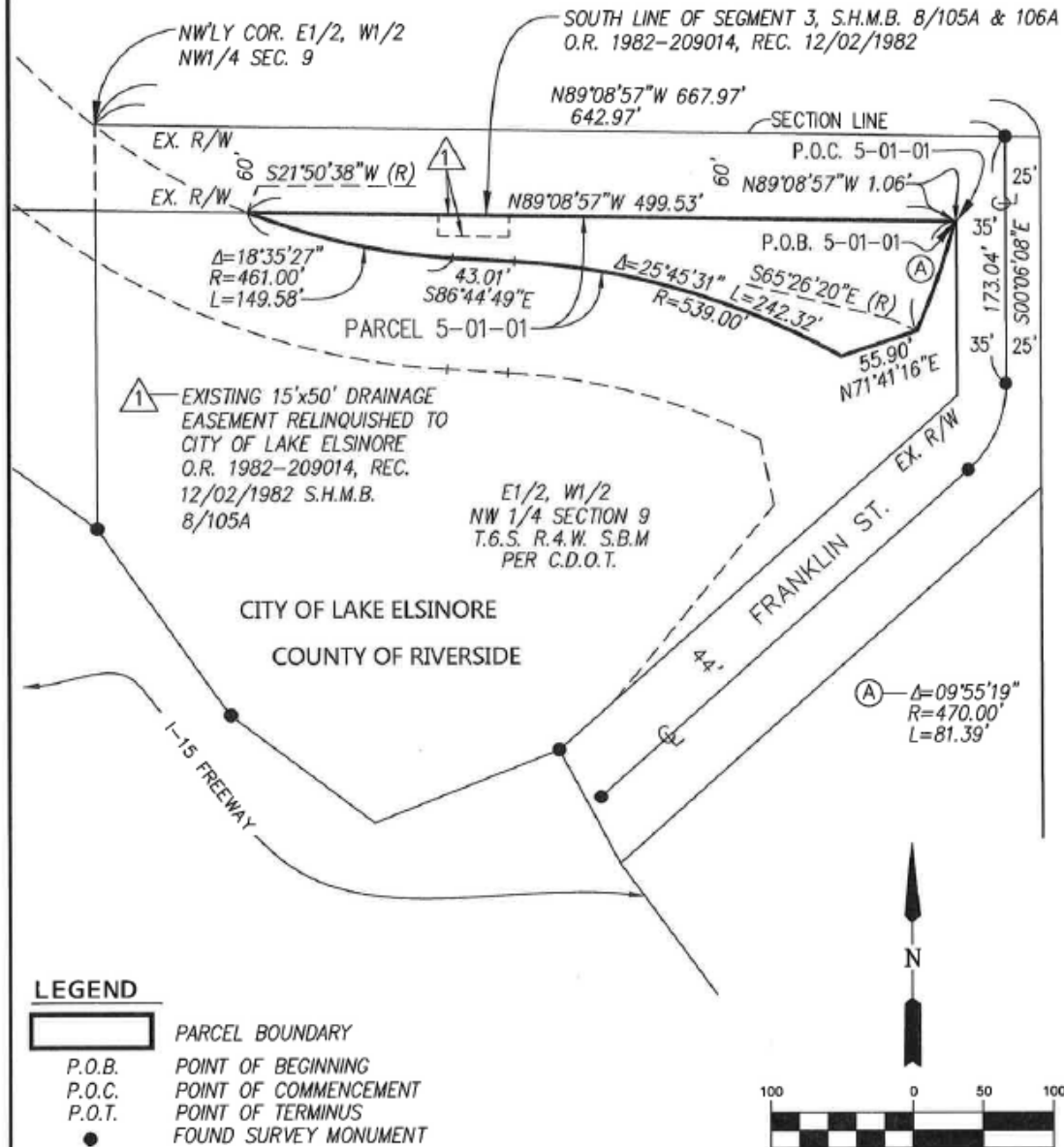


July 13, 2018

Date:

# EXHIBIT "B"

SHEET 1 OF 1



## LEGEND

	PARCEL BOUNDARY
	P.O.B. POINT OF BEGINNING
	P.O.C. POINT OF COMMENCEMENT
	P.O.T. POINT OF TERMINUS
	FOUND SURVEY MONUMENT

**G  
P  
S**

**GILL PROFESSIONAL SURVEYS**  
4815 REFUGIO AVE. CARLSBAD, CA  
(951) 323-0913

CAMINO DEL NORTE

PARCEL 5-01-01 EXCESS LAND  
APN 363-540-002

SCALE  
1" = 100'  
DOC. NO.  
DWG. NO.

S:\10003\_SC\_Engineering\10003.001\_Camino\_Del\_Norte\SUR\DWG\EXCESSLAND\Parcel 5-01-01 Excess Land.dwg

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

STATE OF CALIFORNIA )  
 ) §  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_ a Notary Public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal.

Signature of Notary

(Affix seal here)

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

STATE OF CALIFORNIA )  
 ) §  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_ a  
Notary Public, personally appeared \_\_\_\_\_ who proved to me on  
the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon  
behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal.

Signature of Notary

(Affix seal here)

**ATTACHMENT NO. 2**

**CERTIFICATE OF ACCEPTANCE**

Government Code, Section 27281

THIS IS TO CERTIFY that the interest in real property conveyed by Grant Deed dated \_\_\_\_\_ 2018 from Overland Financial Company, LLC to the City of Lake Elsinore, a municipal corporation, is hereby accepted by the undersigned officer on behalf of the City Council of the City of Lake Elsinore (“City Council”) pursuant to authority conferred by Resolution No. 99-17 of the City Council adopted on March 23, 1999 and the City of Lake Elsinore consents to recordation thereof by its duly authorized officer.

CITY OF LAKE ELSINORE,  
a California municipal corporation

By: \_\_\_\_\_  
Grant Yates, City Manager

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

STATE OF CALIFORNIA )  
 ) §  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_ a  
Notary Public, personally appeared \_\_\_\_\_ who proved to me on  
the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon  
behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary

(Affix seal here)

**ATTACHMENT NO. 3**

**SELLER'S CERTIFICATION OF NON-FOREIGN STATUS  
FIRST AMERICAN TRUST**

To inform the **CITY OF LAKE ELSINORE**, a California municipal corporation ("Transferee") that withholding of tax under Section 1445 of the Internal Revenue Code of 1986, as amended ("Code") will not be required upon the transfer of that certain unimproved portion of real property consisting of only approximately 0.51 acres (approximately 22,216 square feet of land) of the real property described as Assessor's Parcel No. 363-540-002 located in the City of Lake Elsinore, California to the Transferee by the **OVERLAND FINANCIAL COMPANY, LLC** (the "Transferor"), the undersigned hereby certify the following:

1. I/we am/are not a nonresident alien for purposes of United States income taxation;
2. My/our United States taxpayer identifying number (Social Security Number) is  
\_\_\_\_\_.
3. My/our address is

Overland Financial Company, LLC  
5150 Overland Avenue  
Culver City, California 90230

Transferor understands that this Certification may be disclosed to the Internal Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury, I/we declare that I/we have examined this Certification and to the best of my/our knowledge and belief it is true, correct, and complete, and we further declare that I/we have authority to sign this document on behalf of the Transferor.

**"SELLER"**

**OVERLAND FINANCIAL COMPANY, LLC**, a  
California limited liability company

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Barry Cayton, Manager

Exhibit "B"