

RESOLUTION NO. 19-117

Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Enter Into An Easement Agreement With LBA RIV-Company XII, LLC To Construct, Operate, And Maintain A Stormwater Treatment Facility Relating To Improvements To The Property At 3100 San Pablo Avenue

WHEREAS, City owns certain property between Folger Avenue and 67th Street within the City's Greenway identified as Alameda County APN 49-1513-010, as more particularly described within the Easement Agreement as Exhibit A, attached hereto; and

WHEREAS, LBA RIV-Company XII, LLC ("Grantee") owns that certain property adjacent to the City Property in the Cities of Berkeley, Oakland and Emeryville known as 3100 San Pablo Avenue, as more particularly described in Exhibit B attached hereto; and

WHEREAS, on April 16, 2013, the City Council of the City of Emeryville approved (Resolution No. 13-63) a Memorandum of Understanding regarding the Cities' consideration of planning and building applications related to Grantee's development plans for the property, including a Stormwater Treatment Facility ("SWTF"); and

WHEREAS, the Cities of Berkeley and Emeryville and Grantee intend to enter into a Stormwater Treatment Measures Maintenance Agreement with respect to the Grantee's development of the Grantee Property; and

WHEREAS, the portion of the SWTF on City property conveys stormwater flows from the Grantee Property and the City of Berkeley, including the adjacent Greenway on property of the City of Berkeley; now, therefore, be it

RESOLVED, by the City Council of The City of Emeryville that the City Manager is authorized to enter into an Easement Agreement, in the form attached hereto as Exhibit A, with LBA RIV-Company XII, LLC for access to construct, operate, and maintain a SWTF relating to improvements to the Property At 3100 San Pablo Avenue.


ADOPTED, by the City Council of the City of Emeryville at a regular meeting held Tuesday, July 23, 2019, by the following vote:

AYES:	<u>5</u>	Mayor Medina, Vice Mayor Patz, and Council Members Bauters, Donahue, and Martinez
NOES:	<u>0</u>	_____
ABSTAIN:	<u>0</u>	_____
ABSENT:	<u>0</u>	_____


MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

LBA RIV-COMPANY XII, LLC
c/o R. Zachary Wasserman
Wendel, Rosen, Black & Dean LLP
1111 Broadway, 24th Floor
Oakland, CA 94607

Space Above This Line for Recorder's Use

EASEMENT AGREEMENT

This EASEMENT AGREEMENT ("Agreement") is entered into on July 31st, 2018^{CA} ("Effective Date") by and between the CITY OF EMERYVILLE, a municipal corporation ("City") and LBA RIV-COMPANY XII, LLC, a Delaware limited liability company ("Grantee"), collectively the "Parties."

RECITALS

WHEREAS, City owns certain property between Folger Avenue and 67th Street within the City's Greenway identified as Alameda County APN 49-1513-010, as more particularly described in Exhibit A attached hereto ("City Property").

WHEREAS, Grantee owns that certain property adjacent to the City Property in the Cities of Berkeley, Oakland and Emeryville formerly known as 6701 San Pablo Avenue, Oakland, and currently commonly known as 3100 San Pablo Ave., Berkeley, CA 94702, as more particularly described in Exhibit B attached hereto ("Grantee Property").

WHEREAS, on April 30, 2013, the Cities of Berkeley, Oakland and Emeryville (collectively, the "Cities") entered into that certain Memorandum of Understanding ("MOU") regarding the Cities' consideration of planning and building applications related to Grantee's development plans for the Grantee Property.

WHEREAS, the Cities of Berkeley and Emeryville and Grantee intend to enter into a Stormwater Treatment Measures Maintenance Agreement ("Maintenance Agreement") with respect to Grantee's development of the Grantee Property. The Maintenance Agreement, which is recorded separately, is incorporated herein by this reference.

WHEREAS, the Maintenance Agreement requires Grantee to construct a Stormwater Treatment Facility ("SWTF") and related improvements (also referred to as "stormwater treatment measures"), and given the configuration of the existing building on the Grantee Property, the Parties and the city of Berkeley have determined that the only feasible location for a significant portion of such improvements is upon property owned by the Cities of Berkeley and Emeryville.

WHEREAS, the City acknowledges the City of Berkeley has lead permitting and oversight authority for the improvements to the Grantee Property and the design, construction and maintenance of the SWTF;

WHEREAS, the portion of the SWTF on City Property conveys stormwater flows from the Grantee property and the City of Berkeley, including the adjacent Greenway on property of the City of Berkeley.

WHEREAS, City desires to grant a nonexclusive appurtenant easement over a portion of the City Property in order to allow Grantee to construct and maintain said improvements thereon.

NOW, THEREFORE, the City and Grantee hereby agree as follows:

1. EASEMENT

a. City hereby grants a nonexclusive easement ("Easement") to Grantee, subject to all the terms and conditions herein, for the use of that portion of the City Property more particularly described in Exhibit C and made a part hereof ("Premises"), to construct the SWTF and related improvements as described in Section 4 hereof.

b. This Easement is granted for the purpose of Grantee using the Premises to construct, operate, and maintain a SWTF on the Premises in a manner that will not adversely impact the existing City uses of City Property and any utility undergrounding included in this Agreement. This SWTF will treat urban water runoff to control the pollutants from the roof of 3100 San Pablo Avenue as well as pollutants from portion of an adjoining public street, Folger Avenue and the existing paved public bike path within the Greenway, as generally shown in Exhibit D attached hereto and made a part hereof. If Grantee fails to use the Premises for such purposes, or to perform the construction, improvements and maintenance described herein, or uses the Premises for unauthorized purposes, City may, in its sole discretion, immediately terminate this Easement.

c. Grantee agrees that Grantee is solely responsible for complying with all state stormwater treatment requirements and that the City does not make any guarantees that use of the Premises through this Agreement waives or lessens stormwater treatment requirements.

d. Grantee agrees that Grantee is solely responsible for properly routing all flow entering the stormwater treatment facility and leaving the Premises, and further agrees to indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of the stormwater treatment facility and for improper maintenance or negligence by any person or entity (including Grantee, its contractor and subcontractors).

e. City and Grantee acknowledge that the Easement granted hereby shall be appurtenant to the Grantee Property.

2. TERM

The term of this Agreement and the Easement shall commence following approval hereof by the City Council for the City of Emeryville, and full execution by both the City and Grantee and shall continue in perpetuity unless terminated pursuant to the terms of this Agreement.

a. The City has the right to terminate this Agreement with thirty (30) days prior written notice to Grantee upon Grantee's failure to comply with any of the terms and conditions herein set forth, provided that Grantee shall have thirty (30) days to cure the failure or a longer period if the failure reasonably requires such longer period to cure the failure.

b. If the Agreement is terminated by either party pursuant to this agreement, the City shall have the option of requiring Grantee to remove the Stormwater Treatment Facility within six (6) months of said termination, but shall assume responsibility for constructing, operating and maintaining stormwater treatment and conveyance facilities as required by and in accordance with then applicable laws. Until the SWTF is removed by election of the City, Grantee shall maintain the SWTF. Grantee shall have no further responsibility for maintaining SWTF after six (6) months following termination, or such earlier date as may be established by the City.

3. NOTICES

A written notice shall be deemed served upon mailing said notice to the other party and depositing the same with the U.S. Post Office, first class mail, with postage paid. For purposes of this Agreement, all notices to the City shall be addressed to:

City of Emeryville
Dept. Public Works
1333 Park Avenue
Emeryville, CA 94608

with a copy sent to:

City of Emeryville
City Attorney's Office
1333 Park Avenue
Emeryville, CA 94608

For purposes of this Agreement, all notices to Grantee shall be addressed to the address below. Grantee shall promptly notify City of any change of address within two weeks of any such change.

LBA Realty
Corporate Office
3347 Michelson Drive, Suite 200
Irvine, CA 92612

4. CONSTRUCTION, MAINTENANCE AND ALTERATIONS

a. Grantee shall, to the City's satisfaction, maintain the Premises, and any improvements thereto, in good order and repair and reasonably free and clear of all debris, trash and rubble.

b. Except as set forth in this paragraph, Grantee shall not construct any facilities or improvements, install any equipment, or make any alterations to the Premises without the City's prior written consent, which consent shall not be unreasonably withheld. Grantee shall complete the following improvements within the initial term of the Agreement and will obtain all necessary approvals and permits, and perform all environmental review required by the City of Berkeley, and State and Federal agencies:

- Construct, operate and maintain a SWTF within the City's Greenway as shown on the Conceptual Improvement Site Plan attached hereto as **Exhibit D**. Grantee shall construct the SWTF in accordance with the approved plans and specification identified for the development and other requirements thereto which have been approved by the City of Berkeley in conformance with appropriate ordinance, guidelines, criteria and other written direction as outlined in the Maintenance Agreement.
- Provide adequate maintenance for the SWTF and ensure it operates in a good working order that is acceptable to the City and in accordance with manufacture recommended requirements maintenance schedule. Adequate maintenance is herein defined as maintaining the SWTF so the system continues to operate as originally designed and approved, as outlined in the Maintenance Agreement.
- Arrange for removal and disposal of accumulated sediments from the SWTF in accordance with the Maintenance Plan.
- Underground the overhead utility within the Greenway which the exact location is to be determined with the Cities and necessary utility agencies.
- Construct and maintain drainage within the Greenway for the SWTF to treat water runoff from Folger Ave, the Greenway and Grantee Property. Perform all required grading and drainage improvements according to approved site plans or similar document as generally shown in **Exhibit D**.
- Install the landscaping and required irrigation system.

c. Grantee shall pay for all approved or required improvements and/or alterations to Premises used by Grantee for the SWTF. Upon termination of this Agreement, all improvements to the Premises shall remain on and with the Premises, except that, if requested by City, Grantee shall, at its own expense, remove any alterations, equipment, materials or improvements installed or placed upon the Premises by Grantee. If Grantee fails to remove any alterations, equipment, materials or improvements pursuant to City's request, City may arrange to have them removed and may recover such costs from Grantee. Grantee shall otherwise surrender the Premises to City in the same condition as at the commencement of this Agreement, subject to reasonable wear and tear. Upon termination, City shall assume responsibility for constructing, operating and maintaining stormwater treatment and conveyance facilities as required by and in accordance with then applicable laws.

d. Grantee shall not destroy, remove or modify the SWTF in a manner that lessens its effectiveness, and shall at its sole expense, adequately maintain the stormwater treatment measures in good working order acceptable to the City and in accordance with the Maintenance Plan as specified in the Maintenance Agreement. This includes all pipes, channels or other conveyances built to convey stormwater to the SWTF, all well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance is herein defined as maintaining the described facilities in good working condition such that these facilities continue to operate as originally designed and approved. The Maintenance Plan shall include a detailed description of and schedule for long-term maintenance activities as outlined in the Maintenance Agreement.

e. Grantee shall obtain at its expense all licenses and permits required to perform the work and shall comply with all applicable laws affecting the work. All work and materials shall be in accordance with the latest published and approved editions of the California Code of Regulations, Title 19, Public Safety, and Title 8, Industrial Relations; National Electric Code; Uniform Plumbing and Building Codes; and all other applicable codes and regulations.

f. During construction of the SWTF, Grantee shall ensure that Premises is maintained in a safe condition and that only those involved in supervising and performing the construction work shall be permitted access to the Premises.

5. PREVAILING WAGES

Grantee has been alerted to the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the work to be performed under this Agreement by Grantee is being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, Grantee agrees to fully comply with such Prevailing Wage Laws. Grantee shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Grantee and its contractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815), public works contractor registration (Labor Code Sections 1725.5 and 1771.1) and debarment of contractors and subcontractors (Labor Code Sections 1777.1). It shall be the sole responsibility of Grantee to determine whether to comply with Prevailing Wage Laws for any or all work required by this Agreement. As a material part of this Agreement, Grantee agrees to assume all risk of liability arising from any decision not to comply with Prevailing Wage Laws for work required by this Agreement.

6. SEDIMENT MANAGEMENT

Sediment accumulation resulting from normal operation of stormwater measures will be managed by Grantee. Grantee will provide for the removal and disposal of accumulated

sediments Disposal of accumulated sediments shall not occur on the Premises, unless provided for in the maintenance plan. Any disposal or removal of accumulated sediments or debris shall be in compliance with all federal, state and local law and regulations.

7. ANNUAL INSPECTION AND REPORT

At City's request, Grantee shall transmit to City a copy of annual reports submitted to the City of Berkeley pursuant to Maintenance Agreement.

8. CHANGES AND MODIFICATIONS

The City may propose changes or modifications to the SWTF and/or the Maintenance Plan, and, in consultation with Grantee, the City of Berkeley may make such changes it determines reasonably necessary to ensure that SWTF is properly maintained and continues to operate as originally designed and approved.

9. FAILURE TO MAINTAIN SWTF

In the event Grantee fails to maintain the stormwater treatment measures as shown on the approved Site Plan or comparable document in good working order acceptable to the City and in accordance with the Maintenance Agreement, the City, and its authorized agents and employees shall notify the Grantee and City of Berkeley of its concerns and with reasonable notice, may enter the Premises and take whatever steps it deems necessary and appropriate to return the treatment measures to good working order, and pursue enforcement actions including monetary penalty. Such notice will not be necessary if emergency conditions require immediate remedial action. It is expressly understood and agreed that the City is under no obligation to maintain or repair the treatment measures and in no event shall this Agreement be construed to impose any such obligation on the City.

10. USE OF PUBLIC PROPERTY

a. Grantee shall keep any public and/or common areas in or adjacent to the Premises free and clear of any obstructions, barricades or barriers placed or created by Grantee or resulting from Grantee's use of the Premises, other than for temporary periods to protect the health and safety of the public.

b. City at all times shall have the right and privilege of making such changes in and to the Premises and adjacent areas which in its sole opinion are deemed to be desirable or appropriate, including the location and relocation of stairways, sidewalks, pathways, driveways, streets, entrances, exits, automobile parking spaces, the direction and flow of traffic, designation of prohibited areas, landscaped areas, utilities and all other facilities; provided, however, that the foregoing is not intended to entitle City to unreasonably effect changes that would materially and adversely affect the design, function of or access to the SWTF, except temporarily during periods of construction. City shall have the right to establish, promulgate and enforce such reasonable rules and regulations concerning the Premises and adjacent areas as it may deem necessary or advisable for the proper, safe and efficient management, operation, maintenance and use thereof, and Grantee shall comply with the same.

c. City at all times shall have the sole and exclusive management and control of the Premises, so long as such actions do not interfere with Grantee's purpose in using and use of the Premises.

d. Nothing contained herein shall be deemed to create any liability to City for any personal injury, or any damage to motor vehicles, vessels, or other property of Grantee's members, tenants, employees or others, unless solely caused by the gross negligence or willful misconduct of City, its agents, servants or employees. Grantee is responsible for the security of the Premises, and for the safety of those using the Premises in connection with the proposed improvements. Grantee acknowledges that City does not represent, guarantee or assume responsibility that Grantee or any person or entity will be secure from losses or injury caused by the acts of third parties and does not assume responsibility for any such acts. City shall not be obligated to provide any public liability or property damage or loss insurance for the benefit of Grantee or any other person or entity.

e. City reserves to itself the right to grant to others in the future nonexclusive utility easements over, under, through, across or on the Premises in locations that will not unreasonably interfere with Grantee's access to, or use, or proper operations and maintenance of the Premises or the SWTF therein. Any interference shall be temporary, and all work on the Premises shall proceed expeditiously. Grantee shall be given reasonable notice before commencement of any work on the Premises. In the event the installation or maintenance of such future utility lines in such easements causes any damage to the Premises, or any portion thereof, or to the SWTF, or other facilities located upon the Premises, including but not limited to pavement, curbs and sidewalks, the same shall be repaired by City at its expense, if not so repaired by the party installing and maintaining the line. City shall hold harmless and indemnify Grantee from all claims arising out of the grant or use of such a utility easement, except to the extent they result from the negligence or willful misconduct of Grantee.

11. TAXES, ASSESSMENTS, AND OTHER CHARGES

Grantee shall pay all applicable personal property lawfully levied on account of personal property owned by Grantee on the Premises, and pay any in-lieu, possessory interest, or use taxes lawfully imposed by reason of Grantee's use of the Premises pursuant to the Easement granted hereby.

12. UTILITIES AND SERVICE FEES

Grantee shall make all arrangements for and pay for all utilities and services furnished to or used on the Premises, including without limitation, water, electricity, gas, telephone, and garbage service, and for any connection charges thereof.

13. SUCCESSORS AND ASSIGNS

The Easement and the provisions of this Agreement shall run with the lands of Grantor and Grantee and shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of Grantor and Grantee.

14. INDEMNIFICATION

a. To the fullest extent permitted by law, Grantee shall (1) immediately defend and (2) indemnify the City, and its directors, officers, and employees from and against all liabilities regardless of nature, type, or cause, arising out of or resulting from or in connection with this Agreement. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. Grantee's obligation to indemnify applies regardless of whether a liability is a result of the negligence of any other person, unless it is adjudicated that the liability is caused by the active negligence or willful misconduct of an indemnified party in which case principles of contributory negligence shall apply.

b. The duty to defend is a separate and distinct obligation from Grantee's duty to indemnify. Grantee shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the City, the City and its directors, officers, and employees, immediately upon submittal to Grantee of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. A determination of comparative active negligence or willful misconduct by an indemnified party does not relieve Grantee from its separate and distinct obligation to defend the City. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if the City asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the active negligence or willful misconduct of an indemnified party, Grantee may submit a claim to the City for reimbursement of reasonable attorneys' fees and defense costs.

c. The review, acceptance or approval of any of Grantee's work or work product by any indemnified party shall not affect, relieve or reduce Grantee's indemnification or defense obligations. This Section survives the termination of this Agreement. The provisions of this Section are not limited by and do not affect the provisions of this Agreement relating to insurance.

15. DEFAULT

The occurrence of any one of the following shall constitute an event of default on the part of Grantee:

a. Failure To Use Premises. Failure to use the Premises as specified in Paragraph 4 and as shown on Exhibit D, with such failure continuing for thirty (30) days after notice from the City of said default.

b. Other Obligations. Failure to perform any obligation, agreement or covenant under this Agreement, such failure having continued for thirty (30) days after notice of such failure from the City or such longer period as is reasonably necessary to remedy such default, provided that Grantee has commenced to remedy the default within such thirty (30) day period and shall continuously and diligently pursue such remedy until such default is cured.

c. Release of Hazardous or Toxic Substances or Materials and Other Environmental Impacts. Any release or discharge in, on, under, around, or from the Premises by Grantec, its agents or employees of Hazardous Substances which has not been fully cleaned up within ten (10) days after such release or discharge. Any negative impacts to the natural habitat and environment caused by Grantee that are documented by a qualified, independent source and for which reasonable remediation measures are not available, or Grantee fails to cooperate with the City in implementing in a timely manner reasonable measures intended to mitigate any negative impacts.

d. Illegal Drugs. Any release or discharge of chemicals, toxics, solution in connection with the manufacturing and mixing of any illegal substances on the Premises by Grantee, its agents or employees.

16. REMEDIES UPON DEFAULT

a. Enforcement of Maintenance Agreement. In the event of material failure to operate and maintain the SWTF in accordance with Maintenance Agreement and failure of the City of Berkeley to take action to compel compliance with the Maintenance Agreement after any allowed cure periods, the City shall have the right to enforce the Maintenance Agreement, as provided in paragraphs 16.b.-16.3 hereof.

b. Termination. In the event of the occurrence of any event of default following any allowed cure periods, the City shall have the right immediately to terminate this Agreement by written notice and at any time thereafter to recover possession of the Premises or any part thereof and to expel and remove Grantee or any other person or party occupying the Premises by any lawful means and to reenter the Premises without prejudice to any of the remedies that the City may have under this Agreement or under law or equity.

c. Continuation After Default. In the event of any default, this Agreement shall continue in effect for so long as the City does not terminate this Agreement under subparagraph A above. In such case, the City may enforce all its rights and remedies under this Agreement, including without limitation, all of its rights and remedies under law. Acts of maintenance or preservation shall not constitute an election to terminate this Agreement or Grantee's right to possession.

d. Remedies Cumulative. All rights, privileges and elections or remedies of the Parties are cumulative and not alternative to the extent permitted by law and except as otherwise specifically provided herein.

e. No Waiver. The City's waiver of any breach of a covenant or condition hereof, or the City's failure to declare any default immediately upon occurrence thereof or a delay in taking any action in connection therewith shall not waive such breach or such covenant or condition or any subsequent breach thereof. The subsequent acceptance of rent or other monies by the City shall not be deemed a waiver of any preceding default by Grantee, other than the failure of Grantee to pay the particular rent or other sum so accepted, regardless of the City's knowledge of such default at the time of its acceptance of rent.

17. INSURANCE

Grantee at its cost shall maintain public liability and property damage insurance with a single combined liability limit of \$2,000,000 and property damage limits of not less than \$200,000 insuring against all liability of Grantee and its authorized representatives arising out of and in connection with Grantee's use or occupancy of the Premises. All such insurance shall insure performance by Grantee of the indemnity provisions contained in this Agreement. All insurance shall name the City of Emeryville, its officers, agents, volunteers and employees as additional insureds and shall provide primary coverage with respect to the City.

18. RISK OF LOSS

Grantee bears all risk of loss under this Agreement.

19. CONFORMITY WITH LAW

Grantee shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all activities of Grantee hereunder, including the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health, and all applicable federal, state, municipal and local regulations relating to health, safety, noise, environmental protection, waste disposal, hazardous materials, water and air quality. All activities conducted by Grantee on the Premises must be in accordance with these laws, ordinances, codes and regulations. Grantee shall defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from any and all damages, liability, fines, penalties and consequences from any noncompliance or violation by Grantee, or its officers, employees, partners, directors, agents, invitees, or guests, of any laws ordinances, code or regulations.

20. INDEPENDENT CAPACITY

For purposes of this Agreement, and for the duration of this Agreement, Grantee, including its agents and employees shall be, and are, an independent contractor and not an agent or employee of the City. Grantee has and shall retain the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting Grantee in the performance of this Agreement. Grantee shall be solely responsible for all matters relating to the payment of its employees, including compliance with Social Security, withholding, and all other regulations governing such matters, and shall be solely responsible for its own acts and those of its agents and employees.

21. GOVERNING LAW

The laws of the State of California shall govern this Agreement. The Parties agree that in any dispute venue shall be in Alameda County, California.

22. AMENDMENTS

The terms of this Agreement shall not be altered or otherwise modified except by a written amendment to this Agreement executed by City and Grantee and recorded in the Official Records of Alameda County.

23. SEVERABILITY

If any part of this Agreement or the application thereof is declared invalid for any reason, such invalidity shall not affect the other terms of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are declared to be severable.

24. SURRENDER OF PROPERTY, REMOVAL OR PERSONAL PROPERTY

At the termination of this Agreement, Grantee shall: 1) give up and surrender the Premises, in as good state and condition as reasonable use and wear and tear thereof will permit, damage by fire and the elements excepted; and 2) remove all property which is not a fixture of or permanent attachment to the Premises and which is owned and was installed by Grantee during the term of this Agreement except improvements designated in Paragraph 5 or improvements to the Premises approved subsequent to the Agreement approval.

25. EFFECT ON SUCCESSORS AND ASSIGNS

This Agreement shall be binding on and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the Parties hereto.

26. SIGNS

Grantee shall not install or letter any signs on the Premises without the prior written consent of City.

27. AGREEMENT JOINTLY DRAFTED

Grantee and City and counsel for each, if applicable, has reviewed and revised, or had the opportunity to revise this Agreement, and accordingly the normal rule of construction that any ambiguities are to be resolved against the drafting party is not applicable and therefore shall not be employed in the interpretation of this Agreement or any amendment to it.

28. COVENANT RUNNING WITH THE LAND

This Agreement and the Easement granted hereby shall be deemed an equitable servitude and covenant appurtenant to the Premises, running with the land, and binding upon the Parties' successors and assigns.

29. ENTIRE AGREEMENT

a. The terms and conditions of this Agreement, all exhibits attached and any documents incorporated by reference represent the entire agreement between the Parties with respect to the subject matter of this Agreement. This Agreement shall supersede any and all prior agreements, oral or written, regarding the subject matter between City and Grantee. No other agreement, statement, or promise relating to the subject matter of this Agreement shall be valid or binding except by a written amendment to this Agreement.

b. If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this Agreement shall control.

30. EXHIBITS

The following exhibits are attached to and made a part of this agreement.

- Exhibit A: Legal Description of City Property
- Exhibit B: Legal Description of Grantee Property
- Exhibit C: Legal Description of Premises subject to this Agreement
- Exhibit D: Conceptual Improvement Site Plan

IN WITNESS WHEREOF, City and Grantee have executed this Agreement as of the date written below:

Approved as to form:

CITY OF EMERYVILLE

Michael Guina July 9, 2019
City Attorney Date

By: _____

Its: _____ Date

GRANTEE

Bob Kubichek
Digitally signed by Bob Kubichek
Date: 2019.07.03 12:38:12 -07'00'

By: DIRECTOR OF DEVELOPMENT

Its: AND CONSTRUCTION

Dated: July 3, 2019

EXHIBIT A
LEGAL DESCRIPTION OF CITY PROPERTY

EXHIBIT "A"
LEGAL DESCRIPTION

Real property situated in the City of Emeryville, County of Alameda, State of California, being a portion of Lots 9 and 10 as shown on that certain map entitled, "Map of the Property of the Villa Homestead Association", filed August 20, 1870, in Book 5, at Page 32 of Maps, in the Alameda County Recorder's Office, being more particularly described as follows:

Commencing at the southeast corner of said Lot 9, as said corner is also the Point of Beginning for Parcel Seventeen as described in that certain deed recorded July 21, 2011, as Document Number 2011-203716, Official Records of Alameda County, thence along the southerly line of said Lot 9, South 75°29'00" West, 83.42 feet to the True Point of Beginning for this description; thence continuing along said southerly line of said Lot 9, South 75°29'00" West, 54.88 feet; thence leaving said southerly line of Lot 9, North 06°36'00" East, 133.98 feet to the northwest corner of said Lot 9; thence along the northerly line of said Lot 9, North 75°29'00" East, 77.51 feet; thence leaving said northerly line of Lot 9, South 04°39'25" East, 15.22 feet to a point on the city limit line between Berkeley and Emeryville; thence along said city limit line, South 75°29'00" West, 10.36 feet; thence leaving said city limit line, South 13°19'20" West, 124.40 feet to the True Point of Beginning.

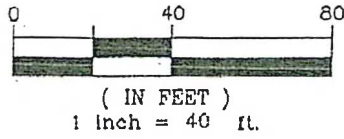
Said parcel contains an area of 8,083 square feet, or 0.05 acres, more or less, measured in ground distances and shown on the plat entitled Exhibit 'A' attached and made a part hereof.

END OF DESCRIPTION

Vince D'Alo, L.S. 4210

Date

EXHIBIT "A"



FOLGER AVE. (70' WIDE)

51
(5 M 32)

52
CITY OF BERKELEY
(2007-523223 PARCEL THREE)

53
LBA RIV-COMPANY XII, LLC
(2011-203716 PARCEL 9)

LBA RIV-COMPANY XII, LLC
(2011-203716 PARCEL 11)

CITY OF EMERYVILLE
(2003-576980)
EXCEPTION TO PARCEL ONE)

LBA RIV-COMPANY XII, LLC
(2011-203716 PARCEL 17)

10
N14°30'00"W
125.00'

N6°36'00"E 133.98'

APPROX. CITY LIMIT LINE OAKLAND
EMERYVILLE
S13°19'20"W 124.40'

110.00'
S14°30'00"E (T)
125.00'

8,083± SQ. FT.

P.O.B. PARCEL 11

67TH STREET (40' WIDE)

CITY OF EMERYVILLE

ALAMEDA COUNTY

CALIFORNIA



Planners
Civil Engineers
Surveyors

Allquot Associates, Inc.
1390 S. Main St. - Ste. 310
Walnut Creek, CA 94596
Telephone: (925) 475-2300
Fax: (925) 475-2350

Subject CITY OF EMERYVILLE PARCEL
Job No. 213122.00 Scale 1"=40'
By MC Date 12/05/2018 Chkd. VJD
SHEET 1 OF 1

EXHIBIT B

LEGAL DESCRIPTION OF GRANTEE PROPERTY

EXHIBIT B

LEGAL DESCRIPTION OF GRANTEE PROPERTY

Real property in Alameda County, State of California, more particularly described as follows:

PARCEL ONE: (CITY OF BERKELEY)

THE EASTERN 45 FEET OF LOT 65, AS SAID LOT IS SHOWN ON THE "MAP OF THE PROPERTY OF THE VILLA HOMESTEAD ASSOCIATION, OAKLAND, ALAMEDA COUNTY, CALIFORNIA", FILED AUGUST 20, 1870 IN BOOK 5 OF MAPS, PAGE 32, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

APN: 053-1634-008

PROPERTY ADDRESS: 1035 FOLGER AVENUE, BERKELEY, CALIFORNIA

PARCEL TWO: (CITY OF BERKELEY)

THE WESTERN 50 FEET OF LOT 64, AS SAID LOT IS SHOWN ON THE "MAP OF THE PROPERTY OF THE VILLA HOMESTEAD ASSOCIATION, OAKLAND, ALAMEDA COUNTY, CALIFORNIA", FILED AUGUST 20, 1870 IN BOOK 5 OF MAPS, PAGE 32, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

APN: 053-1634-007

PROPERTY ADDRESS: 1039 FOLGER AVENUE, BERKELEY, CALIFORNIA

PARCEL THREE: (CITY OF BERKELEY)

LOTS 21, 22, 23 AND 24, AS SAID LOTS ARE SHOWN ON THE "MAP OF THE POTTER TRACT, BERKELEY, ALAMEDA CO., CAL.", FILED JUNE 3, 1892 IN BOOK 17 OF MAPS, PAGE 19, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

APN: 053-1634-021 (LOTS 22, 23 AND 24)

PROPERTY ADDRESS: 928 MURRAY STREET, BERKELEY, CALIFORNIA

APN: 053-1634-022 (LOT 21)

PROPERTY ADDRESS: (VACANT LAND, MURRAY STREET), BERKELEY, CALIFORNIA

PARCEL FOUR: (CITY OF BERKELEY)

A PORTION OF LOT 69, AS SAID LOT IS SHOWN ON THE "MAP OF THE PROPERTY OF THE VILLA HOMESTEAD ASSOCIATION", FILED AUGUST 20, 1870 IN BOOK 5 OF MAPS, PAGE 32, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERN LINE OF FOLGER AVENUE, DISTANT THEREON WESTERLY 733 FEET, 1 INCH FROM THE INTERSECTION THEREOF WITH THE WESTERN LINE OF SAN PABLO AVENUE, AS SAID AVENUES ARE SHOWN ON SAID MAP; RUNNING THENCE WESTERLY ALONG SAID LINE OF FOLGER AVENUE, 50 FEET TO A POINT ON THE WESTERN LINE OF SAID LOT 69; THENCE AT RIGHT ANGLES NORTHERLY, ALONG SAID LAST MENTIONED LINE, 125 FEET TO A POINT ON THE NORTHERN LINE OF SAID LOT 69; THENCE AT RIGHT ANGLES EASTERLY, ALONG SAID LAST MENTIONED LINE, 77 FEET, MORE OR LESS, TO A POINT THAT IS 20 FEET DISTANT WESTERLY, MEASURED RADIALLY FROM THE CENTER LINE OF THE MOST WESTERN RAILROAD TRACK OF THE SOUTHERN PACIFIC RAILROAD COMPANY; THENCE SOUTHERLY, CONCENTRIC WITH AND DISTANT 20 FEET WESTERLY, MEASURED RADIALLY FROM SAID CENTER LINE OF THE MOST WESTERLY RAILROAD TRACK, A DISTANCE OF 103.75 FEET, MORE OR LESS, TO A POINT ON THE EASTERN LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED FROM SOUTHERN PACIFIC COMPANY TO JOAQUIN F. SILVA AND MARIA M. SILVA, HIS WIFE, DATED APRIL 12, 1916, RECORDED APRIL 17, 1916, IN BOOK 2440 OF DEEDS, PAGE 231, ALAMEDA COUNTY RECORDS; THENCE SOUTHERLY ALONG SAID LAST MENTIONED LINE, 25 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

APN: 053-1634-012

PROPERTY ADDRESS: (VACANT LAND, FOLGER AVENUE), BERKELEY, CALIFORNIA

PARCEL FIVE: (CITY OF EMERYVILLE)

BEGINNING AT A POINT ON THE NORTHERN LINE OF 67TH STREET, FORMERLY UNION AVENUE, DISTANT THEREON WESTERLY 872 FEET, 4-1/4 INCHES, FROM THE INTERSECTION THEREOF WITH THE WESTERN LINE OF SAN PABLO AVENUE, AS SAID AVENUES ARE SHOWN ON THE MAP HEREIN REFERRED TO; AND RUNNING THENCE WESTERLY ALONG SAID LINE OF 67TH STREET, 90 FEET; THENCE AT RIGHT ANGLES NORTHERLY 125 FEET; THENCE AT RIGHT ANGLES EASTERLY 90 FEET; THENCE AT RIGHT ANGLES SOUTHERLY 125 FEET TO THE POINT OF BEGINNING.

BEING LOT 11, AS SAID LOT IS SHOWN ON THE "MAP OF THE PROPERTY OF THE VILLA HOMESTEAD ASSOCIATION, OAKLAND, ALAMEDA COUNTY, CALIFORNIA", P.W. HAMEL, SURVEYOR AND CITY ENGINEER, FILED AUGUST 20, 1870 IN BOOK 5 OF MAPS, PAGE 32, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

APN: 049-1513-002
PROPERTY ADDRESS: (VACANT LAND, 67TH STREET), EMERYVILLE, CALIFORNIA

PARCEL SIX: (CITY OF EMERYVILLE)

THE EASTERN 45 FEET, FRONT AND REAR MEASUREMENT, OF LOT 16, AS SAID LOT IS SHOWN ON THE "MAP OF THE PROPERTY OF THE VILLA HOMESTEAD ASSOCIATION, OAKLAND, ALAMEDA COUNTY, CALIFORNIA", FILED AUGUST 20, 1870 IN BOOK 5 OF MAPS, PAGE 32, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.
APN: 049-1513-006
PROPERTY ADDRESS: 1302 67TH STREET, EMERYVILLE, CALIFORNIA

PARCEL SEVEN: (CITY OF EMERYVILLE)

LOTS 13, 14 AND 15, AS SAID LOT IS SHOWN ON THE "MAP OF THE PROPERTY OF THE VILLA HOMESTEAD ASSOCIATION, OAKLAND, ALAMEDA COUNTY, CALIFORNIA", FILED AUGUST 20, 1870 IN BOOK 5 OF MAPS, PAGE 32, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.
APN: 049-1513-004-01
PROPERTY ADDRESS: 1284 67TH STREET, EMERYVILLE, CALIFORNIA

PARCEL EIGHT: (CITIES OF BERKELEY AND OAKLAND)

LOTS 1, 2, 3, 4, 5, 55, 56, 57, 58, 59 AND 60, AS SAID LOT IS SHOWN ON THE "MAP OF THE PROPERTY OF THE VILLA HOMESTEAD ASSOCIATION, OAKLAND, ALAMEDA COUNTY, CALIFORNIA", FILED AUGUST 20, 1870 IN BOOK 5 OF MAPS, PAGE 32, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.
APN: 016-1514-008 (OAKLAND)
PROPERTY ADDRESS: 6711 SAN PABLO AVENUE, OAKLAND, OAKLAND, CALIFORNIA
APN: 016-1514-008 (OAKLAND)
PROPERTY ADDRESS: 6711 SAN PABLO AVENUE, OAKLAND, OAKLAND, CALIFORNIA

APN: 052-1512-001-03 (BERKELEY)
PROPERTY ADDRESS: 6701 SAN PABLO AVENUE, BERKELEY, CALIFORNIA

PARCEL NINE: (CITY OF BERKELEY)

BEGINNING AT A POINT IN THE NORTHEASTERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED FROM F.W. HULLER TO SOUTHERN PACIFIC COMPANY, DATED JANUARY 8, 1912, RECORDED JANUARY 11, 1912, IN BOOK 2020, PAGE 65, ALAMEDA COUNTY RECORDS, AT THE MOST SOUTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED FROM M.H. & J.E. GROVE TO SOUTHERN PACIFIC COMPANY, DATED OCTOBER 5, 1940, RECORDED OCTOBER 9, 1940, IN BOOK 3983, PAGE 149, OFFICIAL RECORDS OF ALAMEDA COUNTY; THENCE SOUTH 14° 30' EAST, ALONG SAID NORTHEASTERLY LINE, 86.45 FEET TO A POINT IN THE NORTHWESTERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED FROM SOUTHERN PACIFIC RAILROAD COMPANY, A CORPORATION, AND ITS LESSEE, SOUTHERN PACIFIC COMPANY, A CORPORATION, TO M.H. & J.E. GROVE, DATED SEPTEMBER 24, 1940, RECORDED OCTOBER 9, 1940, IN BOOK 3983, PAGE 150, OFFICIAL RECORDS OF ALAMEDA COUNTY; THENCE SOUTH 75° 29' WEST ALONG LAST SAID NORTHWESTERLY LINE, 15.00 FEET; THENCE NORTH 4° 39' 25" WEST, LEAVING LAST SAID NORTHWESTERLY LINE, 87.75 FEET TO THE POINT OF BEGINNING.

EXCEPTING AND RESERVING, HOWEVER, TO SAID FIRST PARTIES, THEIR SUCCESSORS AND ASSIGNS, FOREVER, THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS AND MINERAL ORES OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED UPON, WITHIN OR UNDERLYING SAID LAND, OR THAT MAY BE PRODUCED THEREFROM, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL PETROLEUM, OIL, NATURAL GAS AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, TOGETHER WITH THE EXCLUSIVE AND PERPETUAL RIGHT OF SAID FIRST PARTIES, THEIR SUCCESSORS AND ASSIGNS, OF INGRESS AND EGRESS BENEATH THE SURFACE OF SAID LAND TO EXPLORE FOR, EXTRACT, MINE AND REMOVE THE SAME, AND TO MAKE SUCH USE OF THE SAID LAND BELOW THE SURFACE AS IS NECESSARY OR USEFUL IN CONNECTION THEREWITH, WHICH USE MAY INCLUDE LATERAL OR SLANT DRILLING, BORING, DIGGING OR SINKING OF WELLS, SHAFTS OR TUNNELS; PROVIDED, HOWEVER, THAT SAID FIRST PARTIES, THEIR SUCCESSORS AND ASSIGNS, SHALL NOT USE THE SURFACE OF SAID LAND IN THE EXERCISE OF ANY OF SAID RIGHTS AND SHALL NOT DISTURB THE SURFACE OF SAID LAND, OR ANY IMPROVEMENTS THEREON, OR REMOVE OR REPAIR THE LATERAL OR SUBJACENT SUPPORT OF SAID LAND, OR ANY IMPROVEMENTS THEREON, AS RESERVED IN THE DEED BY SOUTHERN PACIFIC RAILROAD COMPANY, A CORPORATION, ET AL., DATED OCTOBER 14, 1953, RECORDED JANUARY 21, 1954, IN BOOK 7231, PAGE 207, OFFICIAL RECORDS.

APN: 052-1512-001-03
PROPERTY ADDRESS: 6701 SAN PABLO AVENUE, BERKELEY, CALIFORNIA

PARCEL TEN: (CITY OF BERKELEY)

LOTS 50 AND 51, MAP OF THE PROPERTY OF THE VILLA HOMESTEAD ASSOCIATION, FILED AUGUST 20, 1870, MAP BOOK 5, PAGE 32, ALAMEDA COUNTY RECORDS.
APN: 052-1512-009
PROPERTY ADDRESS: 940 FOLGER AVENUE, BERKELEY, CALIFORNIA

PARCEL ELEVEN: (CITY OF EMERYVILLE)

BEGINNING AT THE MOST SOUTHERLY CORNER OF LOT 10, AS SAID LOT IS SHOWN ON THE "MAP OF THE PROPERTY OF THE VILLA HOMESTEAD ASSOCIATION, OAKLAND, ALAMEDA COUNTY, CALIFORNIA", FILED AUGUST 20, 1870 IN MAP BOOK 5, PAGE 32, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY; THENCE NORTH 14° 30' WEST ALONG THE WESTERLY LINE OF SAID LOT 10, A DISTANCE OF 125 FEET TO THE MOST WESTERLY CORNER OF SAID LOT 10; THENCE NORTH 75° 29' EAST ALONG THE NORTHERLY LINE OF SAID LOT 10, A DISTANCE OF 89.95 FEET; THENCE SOUTH 6° 36' WEST, 133.98 FEET TO THE SOUTHERLY LINE OF SAID LOT 10; THENCE SOUTH 75° 29' WEST THEREON, 41.72 FEET TO THE POINT OF BEGINNING, BEING A PORTION OF SAID LOT 10.
APN: 049-1513-001
PROPERTY ADDRESS: (VACANT LAND, 67TH STREET), EMERYVILLE, CALIFORNIA

PARCEL TWELVE: (CITY OF BERKELEY)

BEGINNING AT THE MOST SOUTHERLY CORNER OF LOT 52, AS SAID LOT IS SHOWN ON THE "MAP OF THE PROPERTY OF THE VILLA HOMESTEAD ASSOCIATION, ALAMEDA COUNTY, CALIFORNIA", FILED AUGUST 20, 1870 IN BOOK 5 OF MAPS, PAGE 32, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY; THENCE NORTH 14° 30' WEST ALONG THE WESTERLY LINE OF SAID LOT 52, A DISTANCE OF 125 FEET TO THE MOST WESTERLY CORNER OF SAID LOT 52; THENCE NORTH 75° 29' EAST ALONG THE NORTHERLY LINE OF SAID LOT 52, A DISTANCE OF 33 FEET; THENCE SOUTH 0° 17' 17" WEST 129.28 FEET TO THE POINT OF BEGINNING. BEING A PORTION OF SAID LOT 52.
APN: 052-1512-009
PROPERTY ADDRESS: 940 FOLGER AVENUE, BERKELEY, CALIFORNIA

PARCEL THIRTEEN: (CITY OF BERKELEY)

THE EASTERN 45 FEET OF LOT 47, MAP OF THE PROPERTY OF THE VILLA HOMESTEAD ASSOCIATION, FILED AUGUST 20, 1870, MAP BOOK 5, PAGE 32, ALAMEDA COUNTY RECORDS.
APN: 052-1513-004
PROPERTY ADDRESS: (VACANT LAND, FOLGER AVENUE) BERKELEY, CALIFORNIA

PARCEL FOURTEEN: (CITY OF BERKELEY)

BEGINNING AT A POINT ON THE SOUTHERN LINE OF FOLGER AVENUE, A DISTANCE THEREON WESTERLY 1330 FEET, 5 - 1/2 INCHES FROM THE INTERSECTION THEREOF WITH THE WESTERN LINE OF SAN PABLO AVENUE, AS SAID AVENUES ARE SHOWN ON THE MAP HEREIN REFERRED TO; RUNNING THENCE WESTERLY ALONG SAID LINE OF FOLGER AVENUE, 52 FEET, 6 INCHES; THENCE AT RIGHT ANGLES SOUTHERLY 125 FEET; THENCE AT RIGHT ANGLES EASTERLY 52 FEET, 6 INCHES; THENCE AT RIGHT ANGLES NORTHERLY 125 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF LOT 45, MAP OF THE PROPERTY OF THE VILLA HOMESTEAD ASSOCIATION, FILED AUGUST 20, 1870, MAP BOOK 5, PAGE 32, ALAMEDA COUNTY RECORDS.
APN: 052-1513-006-01
PROPERTY ADDRESS: 840 FOLGER AVENUE, BERKELEY, CALIFORNIA

PARCEL FIFTEEN: (CITY OF BERKELEY)

BEGINNING AT A POINT ON THE SOUTHERN LINE OF FOLGER AVENUE, DISTANT THEREON WESTERLY 1277 FEET, 11 - 1/2 INCHES FROM THE INTERSECTION THEREOF WITH THE WESTERN LINE OF SAN PABLO AVENUE, AS SAID AVENUES ARE SHOWN ON THE MAP HEREIN REFERRED TO; RUNNING THENCE WESTERLY ALONG SAID LINE OF FOLGER AVENUE, 52 FEET, 6 INCHES; THENCE AT RIGHT ANGLES SOUTHERLY 125 FEET; THENCE AT RIGHT ANGLES EASTERLY 52 FEET, 6 INCHES; THENCE AT RIGHT ANGLES NORTHERLY 125 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF LOTS 45 AND 46, MAP OF THE PROPERTY OF THE VILLA HOMESTEAD ASSOCIATION, FILED AUGUST 20, 1870, MAP BOOK 5, PAGE 32, ALAMEDA COUNTY RECORDS.
APN: 052-1513-006-01
PROPERTY ADDRESS: 840 FOLGER AVENUE, BERKELEY, CALIFORNIA

PARCEL SIXTEEN: (CITIES OF BERKELEY AND OAKLAND)

LOTS 6, 7, 8, 53 AND 54, MAP OF THE PROPERTY OF THE VILLA HOMESTEAD ASSOCIATION, FILED AUGUST 20, 1870, MAP BOOK 5, PAGE 32, ALAMEDA COUNTY RECORDS.

EXCEPTING FROM LOT 53, THAT CERTAIN PORTION THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHERN LINE OF FOLGER AVENUE, AS SAID AVENUE IS SHOWN ON SAID MAP, WITH THE WESTERN LINE OF SAID LOT 53; RUNNING THENCE ALONG SAID LINE OF FOLGER AVENUE, NORTH 75° 30' EAST, 17.10 FEET; THENCE SOUTH 3° 22' 55" WEST, 55.69 FEET TO A POINT ON THE WESTERN LINE OF SAID LOT 53, DISTANT THEREON SOUTH 14° 30' EAST, 53 FEET FROM THE POINT OF BEGINNING; THENCE NORTH 14° 30' WEST, 53 FEET TO THE POINT OF BEGINNING.

APN: 016-1514-008 (OAKLAND)

PROPERTY ADDRESS: 6711 SAN PABLO AVENUE, OAKLAND, OAKLAND, CALIFORNIA

APN: 052-1512-001-03 (BERKELEY)

PROPERTY ADDRESS: 6701 SAN PABLO AVENUE, BERKELEY, CALIFORNIA

PARCEL SEVENTEEN: (CITY OF OAKLAND)

PORTION OF LOT 9, MAP OF THE PROPERTY OF THE VILLA HOMESTEAD ASSOCIATION, FILED AUGUST 20, 1870, MAP BOOK 5, PAGE 32, ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 9; THENCE SOUTH 75° 29' WEST ALONG THE SOUTHERN LINE OF SAID LOT 9, A DISTANCE OF 83.42 FEET TO A POINT; THENCE NORTH 13° 19' 20" EAST, A DISTANCE OF 124.40 FEET TO A POINT IN THE LINE BETWEEN THE CITIES OF OAKLAND AND BERKELEY; THENCE NORTH 75° 29' EAST, ALONG THE LINE BETWEEN SAID CITIES, A DISTANCE OF 25.36 FEET TO A POINT IN THE EASTERN LINE OF SAID LOT 9; THENCE SOUTH 14° 30' EAST THEREON, A DISTANCE OF 110 FEET TO THE POINT OF BEGINNING.

APN: 016-1514-008

APN: 016-1514-009

PROPERTY ADDRESS: 6711 SAN PABLO AVENUE, OAKLAND, OAKLAND, CALIFORNIA

PARCEL EIGHTEEN: (CITY OF BERKELEY)

COMMENCING AT A POINT ON THE SOUTHERN LINE OF FOLGER AVENUE, DISTANT THEREON 1187 FEET AND 11-1/2 INCHES WESTERLY FROM THE POINT OF INTERSECTION OF THE SOUTHERN LINE OF FOLGER AVENUE WITH THE WESTERN LINE OF SAID SAN PABLO AVENUE; RUNNING THENCE WESTERLY ALONG SAID LINE OF FOLGER AVENUE, 90 FEET; THENCE AT RIGHT ANGLES SOUTHERLY 125 FEET; THENCE AT RIGHT ANGLES EASTERLY 90 FEET; THENCE AT RIGHT ANGLES NORTHERLY 125 FEET TO THE POINT OF COMMENCEMENT.

BEING THE EASTERN 1/4 OF LOT 46 AND THE WESTERN 1/4 OF LOT 47, AS SAID LOTS ARE SHOWN ON THAT CERTAIN MAP ENTITLED "MAP OF THE PROPERTY OF THE VILLA HOMESTEAD ASSOCIATION, OAKLAND, ALAMEDA COUNTY, CALIFORNIA", FILED AUGUST 20, 1870, MAP BOOK 5, PAGE 32, ALAMEDA COUNTY RECORDS.

APN: 052-1513-005

PROPERTY ADDRESS: 900 FOLGER AVENUE, BERKELEY, CALIFORNIA

EXHIBIT C

LEGAL DESCRIPTION OF PREMISES

EXHIBIT "C"
LEGAL DESCRIPTION

Real property situated in the City of Emeryville, County of Alameda, State of California, being a portion of Lots 9 and 10 as shown on that certain map entitled, "Map of the Property of the Villa Homestead Association", filed August 20, 1870, in Book 5, at Page 32 of Maps, in the Alameda County Recorder's Office, being more particularly described as follows:

Commencing at the southeast corner of said Lot 9, as said corner is also the Point of Beginning for Parcel Seventeen as described in that certain deed recorded July 21, 2011, as Document Number 2011-203716, Official Records of Alameda County, thence along the southerly line of said Lot 9, South 75°29'00" West, 94.76 feet to the True Point of Beginning for this description; thence continuing along said southerly line of said Lot 9, South 75°29'00" West, 10.60 feet; thence leaving said southerly line, North 05°29'06" East, 117.06 feet to a point on the city limit line between Berkeley and Emeryville; thence along said city limit line, North 75°29'00" East, 26.96 feet; thence leaving said city limit line, South 03°18'53" West, 8.60 feet; thence South 13°19'20" West, 115.13 feet to the True Point of Beginning.

Said parcel contains an area of 2,152 square feet, or 0.05 acres, more or less, measured in ground distances and shown on the plat entitled Exhibit 'A' attached and made a part hereof.

END OF DESCRIPTION

Vince D'Alo, L.S. 4210

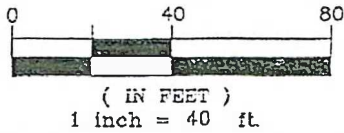
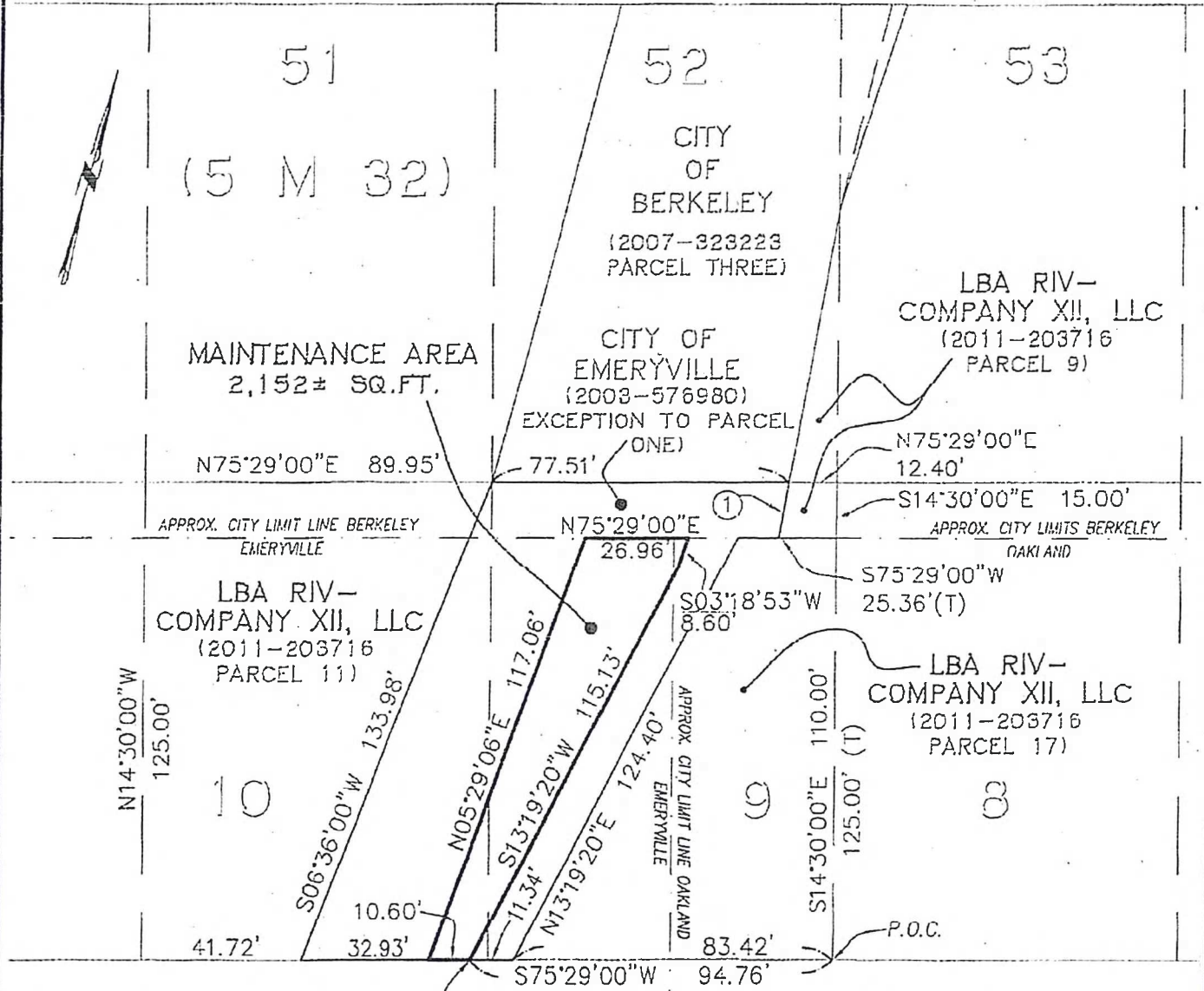
Date

LEGEND

EXHIBIT "C"

- CITY OF EMERYVILLE EASEMENT PARCEL
- P.O.C. POINT OF COMMENCEMENT
- T.P.O.B. TRUE POINT OF BEGINNING
- (T) TOTAL
- () RECORD DATA
- ① N04°39'25"W 15.22'

FOLGER AVE. (70' WIDE)



67TH STREET (40' WIDE)

CITY OF EMERYVILLE ALAMEDA COUNTY CALIFORNIA



Planners
 Civil Engineers
 Surveyors

Aliquot Associates, Inc.
 1390 S. Main St. - Ste. 310
 Walnut Creek, CA 94596
 Telephone: (925) 476-2300
 Fax: (925) 476-2350

Subject MAINTENANCE AREA
 Job No. 213122.00 Scale 1"=40'
 By MC Date 12/04/2018 Chkd. VJD
 SHEET 1 OF 1

EXHIBIT D
CONCEPTUAL IMPROVEMENT SITE PLAN

EXHIBIT D

(1 of 2)

CONCEPTUAL IMPROVEMENT SITE PLAN

Grantee shall only use the Premises described in Exhibit C. Improvements shall be as listed below and per the attached plan.

1. Construct and maintain a Storm Water Treatment Facility
2. Underground utilities within the City's Greenway
3. Install two flashing beacon signal lights
4. Install educational signage for the flow thru planters
5. Install a "3-Cities" property marker
6. Install new landscaping and irrigation
7. Install a public seating area

Grantee must submit detailed plans for City approval prior to installing the above improvements. City will have the right to require changes as deemed necessary by the City.

