

RESOLUTION NO. 21-39

Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Enter Into An Easement Agreement With Foundry31 (DE) LLC To Construct, Operate, And Maintain A Pedestrian Bridge To Access 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, is more particularly described in **Exhibit A** of the Easement Agreement attached hereto ("City Property"), and

WHEREAS, Foundry31 (DE) LLC ("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** of the Easement Agreement attached hereto ("Grantee Property"), and

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 the development plans for the Grantee Property; and

WHEREAS, on April 30, 2013, City and LBA RIV-Company, LLC ("LBA") entered into that certain Memorandum of Understanding regarding development at the Grantee Property specifically within City ("Emeryville MOU"). Section 1(h) of the Emeryville MOU provides that the development of Grantee's Property may include an opening onto City Property and the Emeryville Greenway that requires an easement granted by City, which City agrees to grant without cost, provided the opening complies with City ordinances and policies; and

WHEREAS, in compliance with applicable City and City of Berkeley ordinances and policies and the MOUS, LBA obtained requisite permits from City and the City of Berkeley for the construction of a pedestrian bridge across City Property connecting Grantee Property to the Emeryville Greenway ("Pedestrian Bridge"). On October 4, 2016, the City of Berkeley issued LBA Design Review approval DRSL2016-0014 approving construction of the Pedestrian Bridge. On January 31, 2018, City issued Grantee an Encroachment Permit for temporary closure of the Emeryville Greenway to allow for the construction of the Pedestrian Bridge; and

WHEREAS, LBA having complied with applicable City ordinances and policies in the approval and construction of the Pedestrian Bridge, Grantee, as LBA's successor-in-interest and current owner of the Grantee Property, now desires to obtain an easement from the City for the Pedestrian Bridge, which the City has expressly agreed to grant to Grantee; and now, therefore, be it

Resolution No. 21-39
Easement for 3100 San Pablo Avenue
City Council Meeting | May 4, 2021
Page 2 of 2

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, with Foundry31 (DE) LLC to access and maintain a Pedestrian Bridge relating to the Property At 3100 San Pablo Avenue.

ADOPTED, by the City Council of the City of Emeryville at a regular meeting held Tuesday, May 4, 2021, by the following vote:

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

DocuSigned by:

Dianne Martinez

BBAF287D25AB463...

MAYOR

ATTEST:

DocuSigned by:

Sheri Hartz

EB7B5D8EAB6A4BE...

CITY CLERK

APPROVED AS TO FORM:

DocuSigned by:

Andra Visveshwara

962663BD5573494...

INTERIM CITY ATTORNEY

RESOLUTION NO. 13- 63

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITIES OF BERKELEY, OAKLAND AND EMERYVILLE REGARDING REUSE OF AN EXISTING BUILDING ("MARCHANT BUILDING") LOCATED AT 6701 SAN PABLO AVENUE, OAKLAND (APNS: 52-1512-1-3, 16-1514-8 AND 16-1514-9), TO BE KNOWN IN THE FUTURE AS 3100 SAN PABLO AVENUE, BERKELEY, AND AN ASSOCIATED MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF EMERYVILLE AND LBA RIV-COMPANY XII, LLC ("LBA") REGARDING IMPROVEMENTS TO THE ADJACENT GREENWAY.

WHEREAS, on July 21, 2013 LBA Realty acquired the "Marchant" Building located at 6701 San Pablo Avenue; and

WHEREAS, the city staff of Berkeley, Oakland and Emeryville worked with LBA Realty to outline a process of obtaining land use approvals and building permits for reuse of the building; and

WHEREAS, a Memorandum of Understanding (MOU) between the three cities has been prepared that assigns lead role for land use approvals and building permits to the City of Berkeley and requires a separate side agreement between the City of Emeryville and LBA Realty to outline greenway improvements and undergrounding of utility lines (Exhibit A); and

WHEREAS, on March 19, 2013, the Berkeley City Council and the Oakland City Council authorized their respective City Manager/Administrator to enter into an agreement that would assign Berkeley as the lead city to handle land use approvals and building permits;

WHEREAS, a separate MOU between the City of Emeryville and LBA Realty has been prepared that outlines LBA's obligation to develop and implement a "Greenway Plan" for the segment between 67th Street and Folger Avenue and to underground utility wires fronting the Greenway; and obligates the City of Emeryville to provide a future easement for a design/architectural feature on the greenway at no cost to LBA (Exhibit B); and now, therefore be it

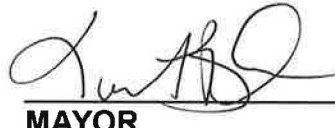
RESOLVED, that the City Council of the City of Emeryville hereby approves Memorandum of Understanding by and among the City of Berkeley, the City of Oakland and the City of Emeryville (Exhibit A); and be it further

RESOLVED, that the City Council hereby approves the Memorandum of Understanding between the City of Emeryville and LBA RIV Company XII, LLC (Exhibit B).

ADOPTED by the City Council of the City of Emeryville at a regular meeting held on Tuesday, April 16, 2013.



Resolution No. 13-63
"Marchant" Building MOU
Page 2 of 2



MAYOR

ATTEST:



CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

Attachments

Exhibit A: Memorandum of Understanding by and among the City of Berkeley, the City of Oakland and the City of Emeryville

Exhibit B: Memorandum of Understanding between the City of Emeryville and LBA RIV Company XII, LLC



DRAFT

MEMORANDUM OF UNDERSTANDING

By and Among the City of Berkeley, the City of Oakland and the City of Emeryville

This Memorandum of Understanding ("MOU") is entered into this ____ day of _____, 2013 ("Effective Date"), by and among the City of Berkeley, a municipal corporation ("Berkeley"), the City of Oakland, a municipal corporation ("Oakland") and the City of Emeryville, a municipal corporation ("Emeryville"), pursuant, respectively, to Berkeley City Council Resolution No. _____, Oakland City Council Resolution No. _____ C.M.S. and Emeryville City Council Resolution No. _____, (collectively referred to as the "Cities"). All parties to this MOU are sometimes referred as the "Parties."

RECITALS

A. LBA RIV-Company XII, LLC, a Delaware Limited Liability Company ("LBA") intends to develop a mixed use facility containing, amongst other uses, sport club facilities, retail, office space, dry research space and warehousing, and associated parking located a property with the APN 52-1512-1-3, currently known as 6701 San Pablo Avenue (the "Property") in the Cities of Berkeley and Oakland, with a small portion of the Property located in Emeryville (the "Project"). The Property is depicted in Exhibit A attached hereto and incorporated herein. The new address of the Property will be 3100 San Pablo Ave., Berkeley, CA 94702.

B. The Cities desire that the Property be developed in an efficient manner, and in a manner compatible with the surrounding properties, with uniform rules applied to the development. Each of the Cities will benefit from the development of this property. Therefore, the Cities desire to assign primary and lead responsibility for land use approvals and building inspection procedures for the Property to one of the Cities in order to promote efficient and uniform processing and approval of developments on the Property.

C. Because the largest portion of the Property by square footage is within the City of Berkeley, the Cities have determined that Berkeley should be the lead City for both land use approvals and building inspection matters, including but not limited to issuance of building and occupancy permits, consistent with the terms and conditions contained in this MOU.

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

1. LAND USE APPROVALS.

The City of Berkeley will be the lead agency for all land use approvals regarding the Property, including but not limited to zoning approvals, variances and issuance of conditional use permits or the like, to the extent any such approvals may be necessary. Berkeley shall apply its land use regulations, except as may be otherwise stated in this MOU.

(a) Berkeley will provide Oakland and Emeryville with at least 17 days' notice before any public hearing on land use matters and before any administrative approvals are issued regarding the Property.

(b) Fees for any land use approvals will be based on the Berkeley Schedule of such fees.

(c) Notwithstanding anything in the Berkeley General Plan, Zoning Ordinance, West Berkeley Specific Plan or other zoning related regulations, the following limitations shall be applied to the Property and enforced by Berkeley in its review and approval of any development for the Project. Berkeley shall:

(i) apply Oakland standards to street trees and landscaping planted in the public right of way along 67th Street and the portions of San Pablo Avenue located in Oakland except as Oakland may otherwise specify in writing.

(ii) require that the installation or modification of any telecommunication equipment on the roof of the Property that is visible from 67th Street shall be screened pursuant to Berkeley standards for such installations.

(d) Notwithstanding anything in the Berkeley General Plan, Zoning Ordinance, West Berkeley Specific Plan or other zoning related regulations, Berkeley shall not approve any "Large-Scale Combined Retail and Grocery Sales Commercial Activities," as defined in Oakland Planning Code section 17.10.345, on the Property.

(e) On an ongoing basis, each City reserves the right to take such actions as necessary to enforce the laws, conditions or requirements within each city, recognizing that the land use and building permit rules and regulations of Berkeley apply to the Property. Each City agrees to cooperate with the other cities in any action undertaken to enforce any laws applicable to and any condition or requirement imposed on the Project.

2. BUILDING AND PERMIT INSPECTIONS.

(a) Berkeley will be responsible for plan check, issuance of building permits, issuance of certificates of occupancy, building inspections and similar activities for the entire Project consistent with the appropriate procedures, fees, and standards of Berkeley.

(b) LBA shall be responsible for paying any building permits and inspection fees to Berkeley for the entire Project. Fees for building permits and inspections will be based on the Berkeley Schedule of such fees.

(c) Permits for work in the public right of way shall be issued by the jurisdiction in which the public right of way is located according to its standard process.

(d) Fire and Life Safety Systems shall be reviewed and approved, which approval shall not be reasonably denied, by all fire departments that will have primary responsibility to respond to fire and life safety issues at the Property. Copies of approved plans and permits will be provided to fire departments in all three jurisdictions.

3. EMERYVILLE BENEFITS.

The obligations and rights between LBA and Emeryville shall be governed by a separate agreement between LBA and Emeryville; provided that Emeryville shall benefitted and governed by the terms of this MOU in regard to the terms stated in this MOU. :

4. TAXES.

Property taxes, parking and business license taxes and similar taxes will be divided amongst the three Cities as follows. Property taxes shall be based on the current practice of assessing and allocating property taxes on the basis of the square footage of the Property located in each City, and the improvements located on such portion. Parking fees, to the extent applicable, will be based on the number of parking stalls located in each City. Business license taxes will be based on the location of the business in the respective City.

5. EMERGENCY AND PUBLIC SAFETY SERVICES.

The responsibility for and the allocation of costs for the provision of emergency and public safety services to the Property shall be determined under a separate agreement amongst the Parties. This agreement shall also address fire code enforcement issues, burglar and fire alarms and noise complaints related to such alarms. This agreement will be completed and prior to the issuance of the Certificate of Completion by Berkeley. Absent such agreement, the cities will provide emergency and public safety services to the Property based on the address from or to which the call for service is generated; i.e. if the call for service is generated by an Oakland address, Oakland will respond, if generated by a Berkeley address, Berkeley will respond.

Each unit will have its own address, in Berkeley, Oakland, or Emeryville, depending on where its front door is located, except as may otherwise be agreed by the City's respective Fire Departments based on fire and life safety considerations.

6. TERMINATION ON NOTICE.

No Party may terminate this MOU within five years of its Effective Date. After that time, any Party may terminate this MOU with or without cause upon giving sixty (60) calendar days written notice to the other parties. No termination of this MOU shall invalidate or have any affect on land use approvals and Building and Occupancy permits issued prior to such termination.

7. NOTICE.

(a) In undertaking noticing for actions by Berkeley, a 300-foot radius will be used to ensure that neighbors from both jurisdictions are notified.

(b) For any action related to this MOU, each City and LBA shall be sent notices at the following addresses:

To Berkeley:

[CONTACT INFORMATION]

To Oakland:

[CONTACT INFORMATION]

To Emeryville:

[CONTACT INFORMATION]

To LBA:

8. INDEMNIFICATION.

(a) **No Liability to Third Parties.** Nothing in this MOU shall be deemed to create rights or obligations in LBA or third parties not signatories to this MOU except as specifically stated herein.

(b) **Berkeley.** Berkeley shall defend, indemnify and hold harmless Oakland and Emeryville from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damage arising out of the performance of this MOU or arising from or connected to the approval process or relating to the Project, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or the result of the negligent or intentional acts or omissions of Berkeley, the Berkeley City Council, the Berkeley City Planning Commission and its respective officers, agents or employees.

(c) **Oakland.** Oakland shall defend, indemnify and hold harmless Berkeley and Emeryville from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damage arising out of the performance of this MOU or arising from or connected to the approval process or relating to the Project, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or the result of the negligent or intentional acts or omissions of Oakland, the Oakland City Council, the Oakland City Planning Commission and its respective officers, agents or employees.

(d) **Emeryville.** Emeryville shall defend, indemnify and hold harmless Berkeley and Oakland from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damage arising out of the performance of this MOU or arising from or connected to the approval process or relating to the Project, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or the result of the negligent or intentional acts or omissions of Emeryville, the Emeryville City Council, the Emeryville City Planning Commission and its respective officers, agents or employees.

9. GOVERNING LAW.

This MOU shall be governed by the laws of the State of California.

10. MODIFICATIONS.

Any modification of or amendment to this MOU will be effective only if it is signed in writing by all Parties. The Parties shall notify LBA at least 17 days before making any changes to this MOU and shall cooperate with LBA in making any such changes.

11. COUNTERPARTS.

This MOU may be executed in any number of counterparts (including by fax, pdf, or other electronic means), each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have entered into this Memorandum of Understanding as of the Effective Date.

THE CITY OF BERKELEY, a municipal
corporation

Approved as to form:

By: _____,
its City Manager

By: _____
City Attorney

THE CITY OF OAKLAND, a municipal
corporation

Approved as to form and legality:

By: _____,
its City Administrator

By: _____
Deputy City Attorney

THE CITY OF EMERYVILLE, a municipal
corporation

Approved as to form:

By: _____,
it's City Manager


By:  _____
City Attorney

EXHIBIT A
PROPERTY DESCRIPTION

[The description will be of the 6701 San Pablo Property]

DRAFT

**MEMORANDUM OF UNDERSTANDING
Between the City of Emeryville and LBA RIV Company XII, LLC**

This Memorandum of Understanding ("MOU") is entered into this ____ day of _____, 2013 ("Effective Date"), between the City of Emeryville, a municipal corporation ("Emeryville"), and LBA RIV-Company XII, LLC, a Delaware Limited Liability Company ("LBA"). LBA and Emeryville are sometimes referred herein as the "Parties."

RECITALS

A. LBA RIV-Company XII, LLC, a Delaware Limited Liability Company ("LBA") intends to develop a mixed use facility containing, amongst other uses, sport club facilities, retail, office space, dry research space and warehousing, and associated parking located at a property identified as APNs 52-1512-1-3, 16-1514-8 and 16-1514-9, currently known as 6701 San Pablo Avenue (the "Property") in the Cities of Berkeley, Oakland, and Emeryville (collectively, the "Cities"). The Property is depicted in Exhibit A attached hereto and incorporated herein. The Property will have the new address of 3100 San Pablo, Berkeley, CA 94608.

B. Because the Cities desire that the Property be developed in an efficient manner, and in a manner compatible with the surrounding properties, with uniform rules applied to the development (the "Project"), the Cities have entered into a separate memorandum of understanding which assigns primary and lead responsibility for land use approvals and building inspection procedures for the Property to the City of Berkeley.

C. Emeryville and LBA are entering into this separate agreement in order to establish their respective rights and responsibilities regarding development at the Property that lies within the City of Emeryville.

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

1. EMERYVILLE GREENWAY.

(a) The Emeryville Greenway is a pedestrian/bicycle corridor that traverses the entire City. It generally follows the alignment of the former 9th St. Drill Track, which the City acquired from Union Pacific Railroad. A portion of the Greenway is adjacent to the west side of the Property. The Greenway connects on the north to the Ninth Street Bicycle Boulevard in Berkeley via a bike path and on-street connection recently constructed by the City of Berkeley. The portion of the Greenway adjacent to the Property, between 67th Street and Folger Avenue, is partially in Emeryville and partially in Berkeley.

(b) Within two (2) years from the Effective Date, LBA will submit to City of Emeryville for approval of a Greenway upgrade plan addressing the portion of the Greenway adjacent to the Property ("Greenway Plan").

(c) LBA will complete the Greenway Plan within three (3) years of the Effective Date.

(d) At a minimum LBA will address the following with the Greenway Plan:

(i) The existing pedestrian pathway, lighting, benching and trash receptacles will stay in Greenway Plan and be reused, except that LBA may, but is not required to upgrade any of the same.

(ii) The Greenway Plan will incorporate landscaping which matches the quality, but not necessarily the specific design and/or species, of the landscaping aesthetic that is found on the block immediately to the south of the Property.

(iii) The Greenway Plan will provide an architectural or landscape feature that delineates the city border between Berkeley/Emeryville and a monument/public art feature that shows the three city intersection. This design feature will be located on the Emeryville portion of the Greenway.

(e) Undergrounding obligations:

(i) LBA will perform the work required to underground all utilities in the Greenway along the Project, as shown on page ___ of Exhibit B attached hereto.

(ii) Notwithstanding the foregoing, LBA is not obligated to remove the existing poles on either side of Folger Avenue northwest of the Property or to underground the utilities which cross Folger Avenue at this point, as shown on page ___ of Exhibit B.

(iii) LBA will perform the work required to underground the utilities which cross 67th Street immediately southwest of the Property and adjacent to the Greenway, and to remove both utility poles on the south side of 67th Street, as shown on page ___ of Exhibit B. Emeryville will permit LBA to underground utilities within the paved area of 67th Street right-of-way to the maximum extent required to remove the above-referenced utility poles.

(f) Emeryville shall not require LBA to conduct any clean-up or remediation work in connection with any work required by this MOU.

(g) Emeryville shall provide a future easement for a design/architectural feature off the greenway loading dock (as determined in the plan). This would be mutually agreeable by both LBA and Emeryville at no cost to LBA in exchange for LBA's implementation of the Greenway Plan.

(h) LBA agrees that vehicular access will be restricted on the Greenway except for maintenance and that the part of the Project facing the Greenway will not be used for loading. Emeryville recognizes that LBA intends to develop a new use of the Property facing the Greenway which includes an opening onto the Greenway that may require an easement and Emeryville agrees to cooperate in granting such an easement without cost, provided it complies with Emeryville ordinances and policies.

(i) LBA will maintain the landscaping on the part of the Greenway adjacent to the Property, once the Greenway Plan has been completed. All maintenance other than landscaping on the portion of the Greenway adjacent to the Property and owned by Emeryville will be performed by Emeryville.

2. TERMINATION ON NOTICE.

No Party may terminate this MOU within five years of its Effective Date. After that time, any Party may terminate this MOU with or without cause upon giving sixty (60) calendar days written notice to the other parties. No termination of this MOU shall invalidate or have any effect on land use approvals and Building and Occupancy permits issued prior to such termination.

3. NOTICE.

(a) For any action related to this MOU, the parties shall be sent notices at the following addresses:

To Emeryville:

[CONTACT INFORMATION]

To LBA:

4. INDEMNIFICATION.

(a) **No Liability to Third Parties.** Nothing in this MOU shall be deemed to create rights or obligations in LBA or third parties not signatories to this MOU except as specifically stated herein.

(b) **LBA.** LBA shall defend, indemnify and hold harmless Emeryville from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damage arising out of the performance of this MOU or arising from or connected to the approval process or relating to the Project, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or the result of the negligent or intentional acts or omissions of LBA and its respective officers, agents or employees.

5. GOVERNING LAW.

This MOU shall be governed by the laws of the State of California.

6. MODIFICATIONS.

Any modification of or amendment to this MOU will be effective only if it is signed in writing by both Parties.

7. COUNTERPARTS.

This MOU may be executed in any number of counterparts (including by fax, pdf, or other electronic means), each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have entered into this Memorandum of Understanding as of the Effective Date.

LBA RIV-COMPANY XII, LLC, a Delaware
limited liability company

By: _____
Name: _____
Title: _____

THE CITY OF EMERYVILLE, a municipal
corporation

Approved as to form:

By: _____
it's City Manager

By: Michael Sissle
City Attorney

**EXHIBIT A
PROPERTY DESCRIPTION**

[The description will be of the 3100 San Pablo Property]

Exhibit B
Depiction of Undergrounding Obligations

Exhibit B – Undergrounding Diagram

2 Poles to stay in-place. Overhead power wires (yellow) to be underground to pole on south side of Folger Ave.



4 poles to be removed and existing overhead wires undergrounded by LBA.

MEMORANDUM OF UNDERSTANDING
Between the City of Emeryville and LBA RIV Company XII, LLC

This Memorandum of Understanding ("MOU") is entered into this ^{30th}~~20~~ day of April, 2013 ("Effective Date"), between the City of Emeryville, a municipal corporation ("Emeryville"), and LBA RIV-Company XII, LLC, a Delaware Limited Liability Company ("LBA"). LBA and Emeryville are sometimes referred herein as the "Parties."

RECITALS

A. LBA RIV-Company XII, LLC, a Delaware Limited Liability Company ("LBA") intends to develop a mixed use facility containing, amongst other uses, sport club facilities, retail, office space, dry research space and warehousing, and associated parking located at a property identified as APNs 52-1512-1-3, 16-1514-8 and 16-1514-9, currently known as 6701 San Pablo Avenue (the "Property") in the Cities of Berkeley, Oakland, and Emeryville (collectively, the "Cities"). The Property is depicted in **Exhibit A** attached hereto and incorporated herein. The Property will have the new address of 3100 San Pablo, Berkeley, CA 94702.

B. Because the Cities desire that the Property be developed in an efficient manner, and in a manner compatible with the surrounding properties, with uniform rules applied to the development (the "Project"), the Cities have entered into a separate memorandum of understanding which assigns primary and lead responsibility for land use approvals and building inspection procedures for the Property to the City of Berkeley.

C. Emeryville and LBA are entering into this separate agreement in order to establish their respective rights and responsibilities regarding development at the Property that lies within the City of Emeryville.

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

1. EMERYVILLE GREENWAY.

(a) The Emeryville Greenway is a pedestrian/bicycle corridor that traverses the entire City. It generally follows the alignment of the former 9th St. Drill Track, which the City acquired from Union Pacific Railroad. A portion of the Greenway is adjacent to the west side of the Property. The Greenway connects on the north to the Ninth Street Bicycle Boulevard in Berkeley via a bike path and on-street connection recently constructed by the City of Berkeley. The portion of the Greenway adjacent to the Property, between 67th Street and Folger Avenue, is partially in Emeryville and partially in Berkeley.

(b) Within two (2) years from the Effective Date, LBA will submit to City of Emeryville for approval of a Greenway upgrade plan addressing the portion of the Greenway adjacent to the Property ("Greenway Plan").

(c) LBA will complete the Greenway Plan within three (3) years of the Effective Date.

(d) At a minimum LBA will address the following with the Greenway Plan:

(i) The existing pedestrian pathway, lighting, benching and trash receptacles will stay in Greenway Plan and be reused, except that LBA may, but is not required to upgrade any of the same.

(ii) The Greenway Plan will incorporate landscaping which matches the quality, but not necessarily the specific design and/or species, of the landscaping aesthetic that is found on the block immediately to the south of the Property.

(iii) The Greenway Plan will provide an architectural or landscape feature that delineates the city border between Berkeley/Emeryville and a monument/public art feature that shows the three city intersection. This design feature will be located on the Emeryville portion of the Greenway.

(e) Undergrounding obligations:

(i) LBA will perform the work required to underground all utilities in the Greenway along the Project, as shown on **Exhibit B** attached hereto.

(ii) Notwithstanding the foregoing, LBA is not obligated to remove the existing poles on either side of Folger Avenue northwest of the Property or to underground the utilities which cross Folger Avenue at this point, as shown on **Exhibit B**.

(iii) LBA will perform the work required to underground the utilities which cross 67th Street immediately southwest of the Property and adjacent to the Greenway, and to remove both utility poles on the south side of 67th Street, as shown on **Exhibit B**. Emeryville will permit LBA to underground utilities within the paved area of 67th Street right-of-way to the maximum extent required to remove the above-referenced utility poles.

(f) Emeryville shall not require LBA to conduct any clean-up or remediation work in connection with any work required by this MOU.

(g) Emeryville shall provide a future easement for a design/architectural feature off the greenway loading dock (as determined in the plan). This would be mutually agreeable to both LBA and Emeryville at no cost to LBA in exchange for LBA's implementation of the Greenway Plan.

(h) LBA agrees that vehicular access will be restricted on the Greenway except for maintenance and that the part of the Project facing the Greenway will not be used for loading. Emeryville recognizes that LBA intends to develop a new use of the Property facing the Greenway which includes an opening onto the Greenway that may require an easement and Emeryville agrees to cooperate in granting such an easement without cost, provided it complies with Emeryville ordinances and policies.

(i) LBA will maintain the landscaping on the part of the Greenway adjacent to the Property, once the Greenway Plan has been completed. All maintenance other than

landscaping on the portion of the Greenway adjacent to the Property and owned by Emeryville will be performed by Emeryville.

2. TERMINATION ON NOTICE.

No Party may terminate this MOU within five years of its Effective Date. After that time, any Party may terminate this MOU with or without cause upon giving sixty (60) calendar days written notice to the other parties. No termination of this MOU shall invalidate or have any effect on land use approvals and Building and Occupancy permits issued prior to such termination.

3. NOTICE.

(a) For any action related to this MOU, the parties shall be sent notices at the following addresses:

To Emeryville:

Charles Bryant
Director, Planning and Building Division
City of Emeryville
1333 Park Avenue
Emeryville, CA 94608

To LBA:

Mr. Chris Freise
2000 Powell Street, Suite 100
Emeryville, CA 94608

4. INDEMNIFICATION.

(a) **No Liability to Third Parties.** Nothing in this MOU shall be deemed to create rights or obligations in LBA or third parties not signatories to this MOU except as specifically stated herein.

(b) **LBA.** LBA shall defend, indemnify and hold harmless Emeryville from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damage arising out of the performance of this MOU or arising from or connected to the approval process or relating to the Project, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or the result of the negligent or intentional acts or omissions of LBA and its respective officers, agents or employees.

5. GOVERNING LAW.

This MOU shall be governed by the laws of the State of California.

6. MODIFICATIONS.

Any modification of or amendment to this MOU will be effective only if it is signed in writing by both Parties.

7. COUNTERPARTS.

This MOU may be executed in any number of counterparts (including by fax, pdf, or other electronic means), each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have entered into this Memorandum of Understanding as of the Effective Date.

LBA RIV-COMPANY XII, LLC, a Delaware
limited liability company

By: 

Name: Perry Schonfeld

Title: Authorized Signatory

THE CITY OF EMERYVILLE, a municipal
corporation

Approved as to form:

By: _____
it's City Manager

By: _____
City Attorney

7. COUNTERPARTS.

This MOU may be executed in any number of counterparts (including by fax, pdf, or other electronic means), each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have entered into this Memorandum of Understanding as of the Effective Date.

**LBA RIV-COMPANY XII, LLC, a Delaware
limited liability company**

By: _____
Name: _____
Title: _____

**THE CITY OF EMERYVILLE, a municipal
corporation**

Approved as to form:

By: Michael G. Bradd
it's City Manager

By: Michael G. Bradd
City Attorney

EXHIBIT A

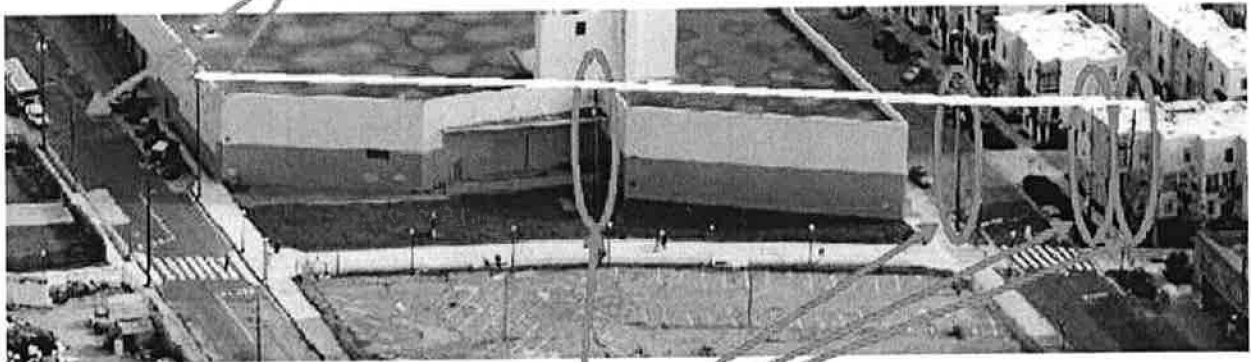
PROPERTY DESCRIPTION

Property identified as APNs 52-1512-1-3, 16-1514-8 and 16-1514-9 with the street address of 3100 San Pablo, Berkeley, CA 94702.

EXHIBIT B
DEPICTION OF UNDERGROUNDING OBLIGATIONS

Exhibit B – Undergrounding Diagram

2 Poles to stay in-place. Overhead power wires (yellow) to be undergrounded to pole on south side of Folger Ave.



4 poles to be removed and existing overhead wires undergrounded by LBA.

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

DLA Piper LLP (US)
33 Arch Street, 26th Floor
Boston, MA 02110
Attention: Primo A.J. Fontana, Esq.

EASEMENT AGREEMENT

This EASEMENT AGREEMENT (“Agreement”) is entered into on _____, 2021 (“Effective Date”) by and between the CITY OF EMERYVILLE, a municipal corporation (“City”) and FOUNDRY31 OWNER (DE) LLC, a Delaware limited liability company (“Grantee”), collectively the “Parties.”

R E C I T A L S :

WHEREAS, City owns certain property between Folger Avenue and 67th Street within the City’s Greenway identified as Alameda County APN 49-1513-010, is 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 the development plans for the Grantee Property.

WHEREAS, on April 30, 2013, City and LBA entered into that certain Memorandum of Understanding regarding development at the Grantee Property specifically within City (“Emeryville MOU”). Section 1(h) of the Emeryville MOU provides that the development of Grantee’s Property may include an opening onto City Property and the Emeryville Greenway that requires an easement granted by City, which City agrees to grant without cost, provided the opening complies with City ordinances and policies.

WHEREAS, in compliance with applicable City and City of Berkeley ordinances and policies, LBA obtained requisite permits from City and the City of Berkeley for the construction of a pedestrian bridge across City Property connecting Grantee Property to the Emeryville Greenway (“Pedestrian Bridge”). On October 4, 2016, the City of Berkeley issued LBA Design Review approval DRSL2016-0014 approving construction of the Pedestrian Bridge. On January 31, 2018, City issued Grantee an Encroachment Permit for temporary closure of the Emeryville Greenway to allow for the construction of the Pedestrian Bridge.

WHEREAS, LBA having complied with applicable City ordinances and policies in the approval and construction of the Pedestrian Bridge, Grantee, as LBA's successor-in-interest and current owner of the Grantee Property, now desires to obtain an easement from City for the Pedestrian Bridge, which City has expressly agreed to grant to Grantee.

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"), for the portion of the Pedestrian Bridge extending into the Premises.

b. This Easement is granted for the purpose of Grantee using the Premises for the placement and maintenance of the portion of the Pedestrian Bridge located on the Premises and for the Grantee accessing the Emeryville Greenway, each in a manner that will not adversely impact the existing City uses of City Property. If Grantee fails to use the Premises for such purposes, or to perform the maintenance described herein, or uses the Premises for unauthorized purposes, City may, in its sole discretion, immediately terminate this Easement.

c. 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.

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.

c/o Oxford Properties Group
450 Park Avenue, 9th Floor
New York, NY 10022
Attention: General Counsel

4. MAINTENANCE AND ALTERATIONS

a. At Grantee's sole cost, 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. Such maintenance shall include, but not be limited to maintaining the Pedestrian Bridge paint, structural elements, and slip proof texture in good repair. At least once per year, Grantee shall cause the Pedestrian Bridge to be inspected by a qualified professional, and the qualified professional shall render a written report, detailing any deficiencies in the maintenance and repair of the Pedestrian Bridge. A copy of the report shall be provided to the Public Works Director. Grantee shall promptly remedy or otherwise conduct maintenance activities to remedy any deficiencies identified in the report.

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 pay for all approved or required improvements and/or alterations to Premises used by Grantee for the Pedestrian Bridge.

c. Grantee shall obtain at its expense all licenses and permits required to perform any work hereunder 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.

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 any work 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. 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 Pedestrian Bridge, 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 Pedestrian Bridge. 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 Pedestrian Bridge 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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 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 Grantee, 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.

12. REMEDIES UPON DEFAULT

a. 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.

b. 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.

c. 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.

d. 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.

13. 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.

14. RISK OF LOSS

Grantee bears all risk of loss under this Agreement.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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 4 or improvements to the Premises approved subsequent to the Agreement approval.

21. 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.

22. SIGNS

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

23. 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.

24. 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.

25. 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 relative to the subject matter or 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.

26. 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

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

Approved as to form:

CITY OF EMERYVILLE

—

Interim City Attorney

Date

By: _____
Its: City Manager

Date

GRANTEE

FOUNDRY31 OWNER (DE) LLC,
a Delaware limited liability company

By: 
Name: Andy Field
Its: Vice President

By: _____
Name: Benjamin D. Kayden
Its: Assistant Secretary

Dated: 4/21/21

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

Approved as to form:

CITY OF EMERYVILLE

—

_____,
Interim City Attorney

Date


By: _____
Its: City Manager

Date

GRANTEE

FOUNDRY31 OWNER (DE) LLC,
a Delaware limited liability company

By: _____
Name: Andy Field
Its: Vice President

By:  _____
Name: Benjamin D. Kayden
Its: Assistant Secretary

Dated: 4/21/21 _____

ACKNOWLEDGMENT

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

State of NY)
County of NY)

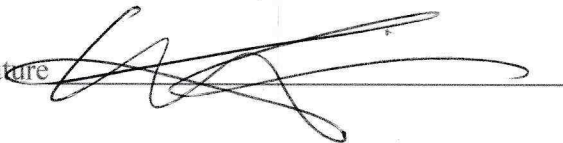
On 4/21, 2021, before me, Spencer James Tuskowski,
(insert name of notary)

Notary Public, personally appeared Andy Field and Benjamin D. Kayden, who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature



(Seal)

SPENCER JAMES TUSKOWSKI
NOTARY PUBLIC-STATE OF NEW YORK
No. 01TU6404021
Qualified in Kings County
My Commission Expires 02-10-2024



EXHIBIT A

LEGAL DESCRIPTION OF CITY PROPERTY

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

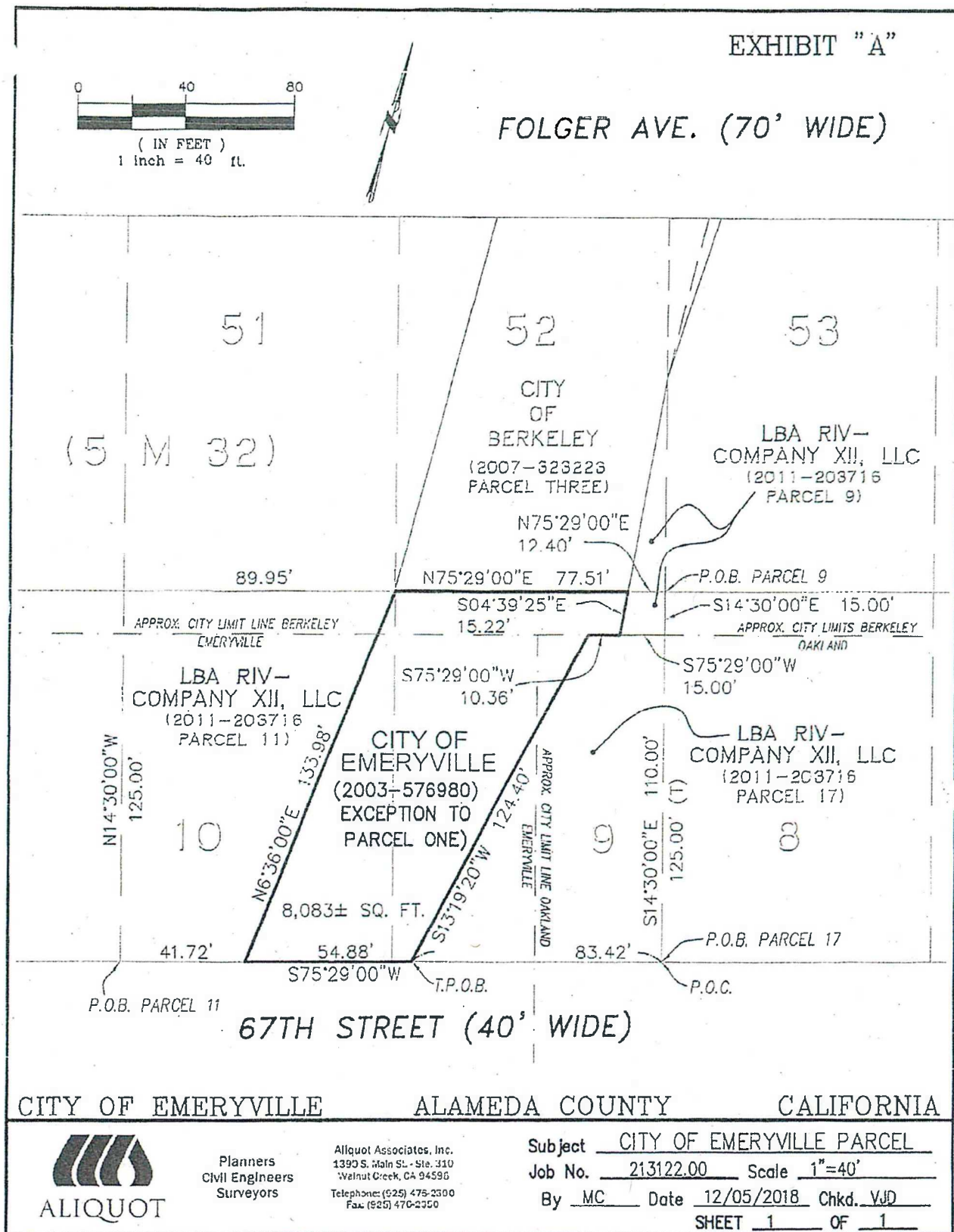


EXHIBIT B

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 TILIC 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: 926 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, 68 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° 35WEST, 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, , 5 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 25.38 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 1/2 OF LOT 46 AND THE WESTERN 1/2 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



March 01, 2021
Job. No. 18-3571

EXHIBIT "A"
LEGAL DESCRIPTION OF EASEMENT

Real property situated in the City of Emeryville, Alameda County, State of California,

Being a portion of Lot 9, as shown on the "Map of the Property of the Villa Homestead Association", filed August 20, 1870 in Book 5 of Maps at Page 32, Alameda County Records, more particularly described as follows:

BEGINNING at a point on the Westerly line of Parcel 17, as described in that certain deed recorded July 21, 2011, as document Number 2011-203716, Alameda County Records, distant thereon North 13°19'20" East, 60.98 feet from the Southwesterly corner of said Parcel 17;

Thence continuing along said westerly line of parcel 17, North 13°19'20" East, 22.00 feet;

Thence South 81°18'04" West, 32.85 feet;

Thence South 05°24'23" West, 21.03 feet;

Thence North 81°18'04" East, 29.72 to the **Point of Beginning**.

Containing an area of approximately 638 square feet, more or less.
Exhibit "B", attached hereto and by this reference is made a part of this description.

End of description



