

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:
[And Mail Tax Statements To:]

Alameda Boys & Girls Club
1900 Third Street, Rear Building
Alameda, CA 94501
Attn: Chief Executive Officer

Space Above This Line Reserved for Recorder's Use

The undersigned Grantor declares:

Jill Keimach, City Manager

County transfer tax is \$ _____.

City transfer tax is \$ _____.

(X) This is a conveyance where the consideration and Value is less than \$100.00 (R&T 11911) or

() computed on full value of property conveyed, or

() computed on full value less value of liens and encumbrances remaining at time of sale.

() Unincorporated area; or (X) City of Alameda

**GRANT OF NON-EXCLUSIVE EASEMENT TO
ALAMEDA BOYS & GIRLS CLUB AND ALAMEDA UNIFIED SCHOOL DISTRICT
FOR ACCESS AND MAINTENANCE**

This Grant of Non-Exclusive Easement Agreement ("Easement Agreement") is made the _____ day of April, 2017, by the City of Alameda, a California municipal corporation ("City or "Grantor") and the Alameda Boys and Girls Club, Inc., a California nonprofit corporation ("ABGC") and the Alameda Unified School District ("AUSD") (ABGC and AUSD being collectively referred to herein as "Grantees"). The City and Grantees are collectively referred to herein as the "Parties".

RECITALS

WHEREAS, The Grantor owns real property in the City of Alameda along Ralph Appezato Memorial Parkway ("RAMP") (formerly Atlantic Avenue) between 3rd Street and Poggi Street ("City Property") adjacent to property ground leased by ABGC from AUSD located at 1900 Third Street, Alameda, California ("Boys & Girls Club Property"), both as shown in the Site Map attached as Exhibit A.

WHEREAS, The Grantees have historically used portions of City Property (defined below) for pedestrian and vehicular ingress to and egress from the Boys and Girls Club Property.

WHEREAS, The Grantor has plans to design and construct the Cross Alameda Trail Project on City Property, which will require an alteration of the size and area of City Property that Grantees have historical used.

WHEREAS, The Grantees have requested a non-exclusive easement over portions of City Property for pedestrian and vehicular ingress to and egress from the Boys and Girls Club Property and for routine maintenance purposes, said portions are referred to herein as “Easement Area A” and “Easement Area B” (collectively the “Easement Property”) as described in the Legal Descriptions attached as Exhibit B-1 and Exhibit B-2 and as shown in the Site Map attached as Exhibit A.

WHEREAS, The Grantor would like to clarify the boundaries of the Easement Property and grant the non-exclusive easement in order to facilitate the design and construction of the Cross Alameda Trail Project.

WHEREAS, This Easement Agreement is required to allow Grantees, their agents, successors, and assigns to continue to access, use and maintain the Easement Property in order to provide pedestrian and vehicular ingress to and egress from the Boys and Girls Club Property.

WHEREAS, The Grantor has determined that the grant of this Easement (defined below) on the terms and conditions set forth herein is in the public interest and will not substantially injure the interest of the City in the underlying real property, and that the uses permitted under its terms are consistent with the protection of human health and the environment.

NOW, THEREFORE, for and in consideration of mutual entry into this Easement Agreement by the Parties hereto, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each Party, the Parties hereby agree as follows:

1. **EASEMENT.** Grantor does hereby remise, release and grant to Grantees, their successors and assignees, a non-exclusive easement (“Easement”) over the Easement Property, shown on Exhibit A, attached hereto and made a part hereof to access, use and maintain the Easement Property for purposes of pedestrian and vehicular ingress to and egress from the Boys and Girls Club Property. Grantees shall, for the term of the Easement Agreement and at their sole cost and expense, maintain the Easement Property in good repair and in a neat and clean condition, including making all necessary repairs.
2. **TERM.** The term of this Easement Agreement shall commence and be effective upon execution by the Parties and shall continue in perpetuity except for: (i) any portion of said Easement for which the Grantor conveys the underlying fee to one or both Grantees at which point the Easement with respect to the conveyed portion shall automatically terminate; or (ii) any portion of the Easement otherwise terminated in accordance with the termination provisions of Section 12.
3. **USE.** The sole purpose of this Easement is for non-exclusive access, use and maintenance of the Easement Property for pedestrian and vehicular ingress and egress.
4. **CONDITION OF EASEMENT PROPERTY.** The Easement shall be granted to Grantees “AS IS” “with all faults” condition. Grantor makes no warranty as to the usability of the Easement generally or as to its fitness for any particular purpose.

5. **ASSIGNMENT AND TRANSFER.** Grantees shall not assign or transfer this Easement Agreement, or any interest therein, without prior written consent of Grantor, which consent shall be granted or denied in Grantor's reasonable discretion. The foregoing notwithstanding, consent shall not be required for Grantees to assign or transfer an interest in the Easement to a contractor or vendor who will then provide landscaping, paving, janitorial or similar services for the purposes of maintaining the Easement Property in good repair and in a neat and clean condition.

6. **NOTICE REQUIRED FOR WORK.**

6.1 Except in the case of an emergency, Grantees shall not conduct any subsurface excavation, digging, drilling or other disturbance of the surface (other than maintenance, repair and landscaping) without prior written consent of Grantor. For purposes of this Section, "emergency" shall mean an unexpected, serious occurrence or situation urgently requiring prompt action. Grantees shall submit written notice of any work performed in an emergency as soon as is practicable.

6.2 Grantees shall immediately cease any excavation conducted in accordance with Section 6.1 if it discovers the presence of hazardous substances or wastes, pollutants or contaminants in any soil or groundwater, and shall promptly notify Grantor and cognizant regulators in writing of such fact. Thereafter, Grantees may proceed in accordance with all applicable laws and regulations.

7. **NON-INTERFERENCE WITH GOVERNMENT OPERATIONS.** Grantees shall not conduct operations on the Easement Property that will interfere with or otherwise restrict waste water treatment operations, environmental clean-up, remediation or restoration activities by the Grantor, state environmental regulators or their contractors.

8. **GRANTEES ACTIVITIES UNDER THE EASEMENT.** The Grantees shall jointly and severably be responsible for direct costs related to their access, use and maintenance of the Easement Property. Any and all damage to the Easement Property resulting from the activities of Grantees under this Easement Agreement shall be repaired by Grantees at no expense to Grantor and the Easement Property shall be restored to its pre-damaged condition within sixty (60) days of written notice from Grantor to Grantees.

9. **COMPLIANCE WITH ALL LAWS, REGULATIONS AND PERMITS.**

9.1 Grantees and its contractors shall comply with all applicable federal, state and local laws, regulations, rules, orders and standards that are or may become applicable to Grantees' activities on the Easement Property.

9.2 Grantees shall be solely responsible for obtaining at their cost and expense any and all regulatory approvals and permits required for its operations, if any, under the Easement, independent of any existing regulatory approvals and permits held by Grantor. Grantees each acknowledge that notwithstanding Grantor being named as owner of the Easement Property in any permit granted to Grantees, Grantees are solely responsible for complying with all permit terms and conditions, including payment of associated fees.

9.3 Grantor's rights retained under this Easement Agreement specifically include the right for Grantor to inspect for compliance with environmental, safety and occupational health laws

and regulations, whether or not Grantor is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted regulatory enforcement officials to make such inspections. Grantees shall have no claim on account of any inspections against Grantor or any of its officers, agents, employees, contractors or subcontractors.

10. **HAZARDOUS MATERIAL INDEMNIFICATION.** Each Grantee shall indemnify, defend and hold harmless Grantor, its City Council, boards, commissions, officials, and employees ("Indemnitees") from any costs, expenses, liabilities, fines or penalties resulting from discharges, emissions, spills, storage or disposal caused or created by Grantees' access, use and/or maintenance of the Easement Property or any other action by Grantees (whether individually or jointly) giving rise to Grantor liability, civil or criminal, or any other action by Grantees giving rise or responsibility under federal, state or local environmental laws. This provision shall not apply to the extent that claims, demands, actions, proceedings, losses, liens, costs and judgments (including fines and penalties) are caused or created by the willful misconduct or active or sole negligence of the Indemnitees. This provision shall survive the expiration or termination of the Easement Agreement.

11. **GENERAL INDEMNIFICATION.** Grantees shall indemnify, defend, and hold harmless the Indemnitees from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees (Claims), arising from or in any manner connected to Grantees' (whether individually or jointly) negligent act or omission, whether alleged or actual, regarding its access, use and/or maintenance on or about the Easement Property. If Claims are filed against Indemnitees which allege negligence on behalf of Grantees (whether individually or jointly), Grantees shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence is not found on the part of Grantees (whether individually or jointly). However, Grantees shall not be obligated to indemnify Indemnitees from Claims arising from the willful misconduct or sole or active negligence of Indemnitees.

12. **TERMINATION.** All or any part of this Easement shall automatically terminate when the Grantor conveys the underlying fee to one or both Grantees with respect to the conveyed portion. All or any part of this Easement shall terminate upon abandonment of the rights granted herein, or upon nonuse of such rights for a period of two (2) consecutive years with the exception of the survival of Grantees' indemnification obligations pursuant to Sections 10 and 11 above.

13. **SUBMISSION OF NOTICES.**

All notices, requests or other communications required or permitted to be given in connection with this Easement Agreement shall be in writing and shall be personally delivered (with prompt confirmation by registered or certified mail, postage prepaid), or by commercial courier service, or by registered or certified mail, postage pre-paid, at the following addresses, or at such other addresses as may be designated by notice from such Party in the manner provided herein:

To Grantor:

City of Alameda
Alameda City Hall, Rm 320
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Manager

With a copy to:

City of Alameda
Alameda City Hall, Rm 280
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Attorney

To Alameda Boys &
Girls Club, Inc.:

Alameda Boys & Girls Club, Inc.
1900 Third Street, Rear Building
P.O. Box 1069
Alameda, CA 94501
Attn: Chief Executive Officer

With a copy to:

Alameda Boys & Girls Club, Inc.
1900 Third Street, Rear Building
P.O. Box 1069
Alameda, CA 94501
Attn: Chair Board of Directors

With a copy to:

Alameda Unified School District
2060 Challenger Drive
Alameda, CA 94501
Attn: Superintendent

Notices which are delivered by hand shall be deemed received upon delivery or the date on which delivery is refused; Notices which are deposited in the United States Mail in accordance with the terms of this Section shall be deemed received three (3) days after the date of mailing and notices delivered by commercial courier service shall be deemed received the date of actual delivery, or the date on which delivery is refused. The foregoing addresses may be changed by notice to the other Parties as herein provided.

14. FAILURE TO INSIST ON COMPLIANCE. The failure of Grantor or Grantees to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this Easement Agreement shall not be construed as a waiver or relinquishment of said parties' right to the future performance of any such terms, covenants or conditions and the obligations of the parties in respect to such future performance shall continue in full force and effect.

15. CONDITIONS, RESTRICTIONS, RESERVATIONS, AND COVENANTS. The conditions, restrictions, reservations, and covenants set forth in this Easement, unless subsequently released, are a binding servitude on the Easement Property; shall inure to the benefit of the Grantor and Grantees, their successors and assigns, and will be deemed to run with the land in perpetuity.

16. MISCELLANEOUS PROVISIONS.

16.1 The singular includes the plural. The masculine gender includes the feminine. "Shall" is mandatory. "Should" and "may" are permissive.

16.2 This Easement Agreement constitutes the entire understanding and agreement of the Parties with respect to the matters set forth herein. This Easement Agreement supersedes all negotiations or previous agreements between the Parties respecting this Easement Agreement. All waivers of the provisions of this Easement Agreement must be in writing and signed by the appropriate representatives of each Grantee and Grantor.

16.3 The recitals set forth in this Easement Agreement are a part of this Easement Agreement.

16.4 The captions of this Easement Agreement are for convenience and reference only and shall not define, explain, modify, limit, amplify or aid in the interpretation, construction or meaning of any of the provisions of this Easement Agreement.

16.5 Where the consent or approval of a Party is required or necessary under this Easement Agreement, the consent or approval shall not be unreasonably withheld.

16.6 This Easement Agreement shall be governed by, and construed in accordance with the laws of the State of California. The venue of any action brought pursuant to this Easement Agreement shall be the County of Alameda.

16.7 List of Exhibits:

Exhibit A Site Map of Easement Property

Exhibit B-1 Legal Description of Easement Area A

Exhibit B-2 Legal Description of Easement Area B

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have signed this Grant of Non-Exclusive Easement Agreement on the dates indicated below.

GRANTOR:

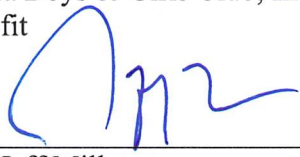
City of Alameda,
a charter city and municipal corporation

By: _____
Jill Keimach
City Manager

Date: _____

GRANTEE:

Alameda Boys & Girls Club, Inc., a California
Nonprofit

By: 
Name: Jeff Miller
Chief Executive Officer

Date: 6-21-17

Recommended For Approval


By: ML for J.O.
Jennifer Ott
Director of Base Reuse and
Transportation Planning

Date: 6-21-17

By: Bill Dal Porto
Name: Bill Dal Porto
Chair Board of Directors

Date: 6-21-17

Approved as to Form

By: 
Andrico Q. Penick 6/28/17
Chief Real Estate Counsel

GRANTEE:

Alameda Unified School District

By: _____
Sean McPhetridge
Superintendent

Authorized by City Council Ordinance No. _____

[Signatures of Principals Must Be Notarized]

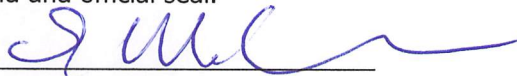
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Alameda

On the June 21, 2017 before me, E. Morales a Notary Public, personally appeared Jeff Miller & Bill Dal Porto, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

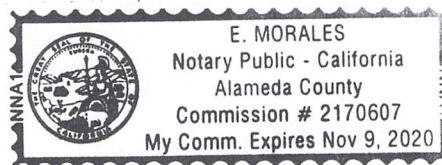
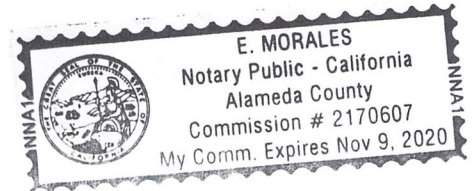
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: 

Name: E. Morales
(Typed or Printed)

(Seal)



IN WITNESS WHEREOF, the Parties have signed this Grant of Non-Exclusive Easement Agreement on the dates indicated below.

GRANTOR:

City of Alameda,
a charter city and municipal corporation

By: _____
Jill Keimach
City Manager

Date: _____

Recommended For Approval

By: _____
Jennifer Ott
Director of Base Reuse and
Transportation Planning

Date: _____

Approved as to Form

By: _____
Andrico Q. Penick
Chief Real Estate Counsel

GRANTEE:

Alameda Boys & Girls Club, Inc., a California
Nonprofit

By: _____
Name: Jeff Miller
Chief Executive Officer

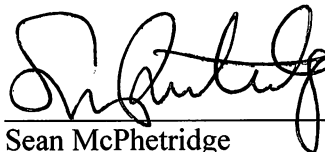
Date: _____

By: _____
Name: Bill Dal Porto
Chair Board of Directors

Date: _____

GRANTEE:

Alameda Unified School District

By:  _____
Sean McPhetridge
Superintendent

Authorized by City Council Ordinance No. _____

[Signatures of Principals Must Be Notarized]

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

STATE OF CALIFORNIA

COUNTY OF Alameda

On May 19, 2017 before me, Cora Angel, Notary Public

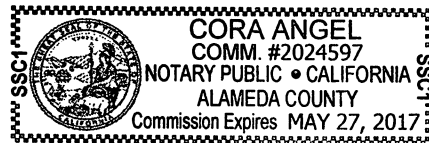
(here insert name and title of the officer)

personally appeared Sean McPhetridge

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

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

WITNESS my hand and official seal.



Cora Angel
Cora Angel

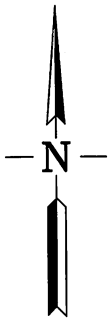
Name (typed or printed), Notary Public in

and for said County and State

(Seal)

EXHIBIT A

Site Maps



SCALE 1"=60'

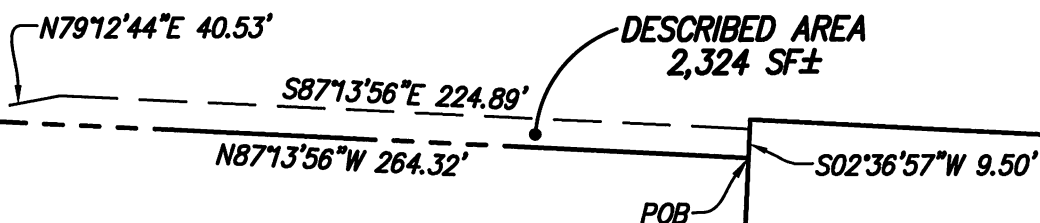
LEGEND

POB
SF

POINT OF BEGINNING
SQUARE FEET

RALPH APPEZZATO MEMORIAL PARKWAY

CITY OF ALAMEDA
PARCEL 3, 2010-074484



ALAMEDA UNIFIED SCHOOL
DISTRICT
5745 OR 487
APN: 074-0457-001-02



ALVIN LEUNG, PLS 6630
MARCH 17, 2017

EXHIBIT A-1
PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR
EASEMENT AREA A
BOYS AND GIRLS CLUB
CITY OF ALAMEDA, ALAMEDA COUNTY, CALIFORNIA

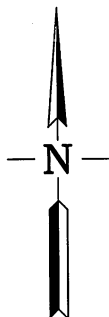


RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:
1"=60'

DATE:
03-17-2017

JOB NO.:
121033-60



SCALE 1"=60'

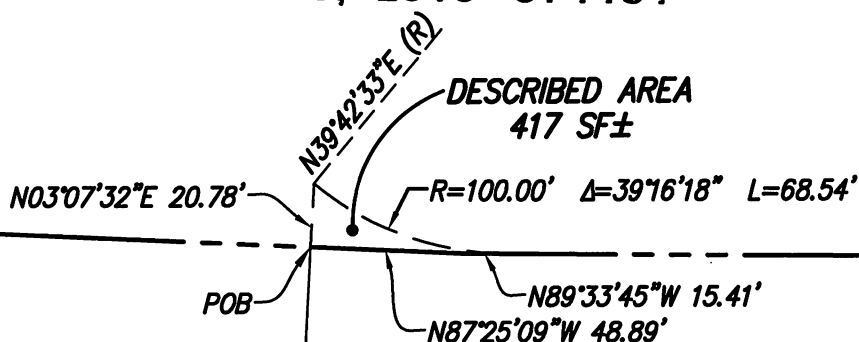
LEGEND

POB
SF

POINT OF BEGINNING
SQUARE FEET

RALPH APPEZZATO MEMORIAL PARKWAY

CITY OF ALAMEDA
PARCEL 3, 2010-074484



HOUSING AUTHORITY
CITY OF ALAMEDA
APN: 074-0475-001-07

ALAMEDA UNIFIED SCHOOL
DISTRICT
5745 OR 487
APN: 074-0457-001-02

THIRD STREET



ALVIN LEUNG, PLS 6630
MARCH 30, 2017

EXHIBIT A-2
PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR
EASEMENT AREA B
BOYS AND GIRLS CLUB
CITY OF ALAMEDA, ALAMEDA COUNTY, CALIFORNIA

RJA

RUGGERI-JENSEN-AZAR

ENGINEERS • PLANNERS • SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:
1"=60'

DATE:
03-30-2017

JOB NO.:
121033-60

EXHIBIT B-1

Legal Description for Easement Area A

**EXHIBIT B-1
LEGAL DESCRIPTION
EASEMENT AREA A
BOYS AND GIRLS CLUB
PORTION OF PARCEL 3 (2010-074484)
ALAMEDA, CALIFORNIA**

REAL PROPERTY SITUATE IN THE CITY OF ALAMEDA, COUNTY OF ALAMEDA,
STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 3 AS SAID PARCEL IS DESCRIBED IN THE DEED
TO THE CITY OF ALAMEDA, RECORDED ON APRIL 23, 2010 IN DOCUMENT NO.
2010-74484, OFFICIAL RECORDS OF ALAMEDA COUNTY AND MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

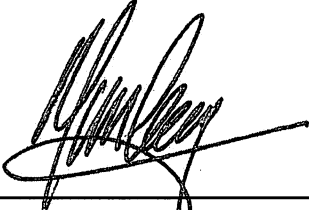
BEGINNING AT THE NORTHEASTERLY CORNER OF THE PARCEL OF LAND
DESCRIBED IN THE DEED TO ALAMEDA UNIFIED SCHOOL DISTRICT RECORDED
IN BOOK 5745, PAGE 487, OFFICIAL RECORDS OF ALAMEDA COUNTY, SAID
CORNER BEING ON THE GENERALLY SOUTHERLY LINE OF SAID PARCEL 3;
THENCE ALONG LAST SAID LINE NORTH 87°13'56" WEST 264.32 FEET; THENCE
NORTH 79°12'44" EAST 40.53 FEET; THENCE SOUTH 87°13'56" EAST 224.89 FEET
TO SAID GENERALLY SOUTHERLY LINE; THENCE ALONG LAST SAID LINE
SOUTH 02°36'57" WEST 9.50 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 2,324 SQUARE FEET, MORE OR LESS.

SEE EXHIBIT A – PLAT TO ACCOMPANY LEGAL DESCRIPTION WHICH IS
ATTACHED HERETO AND MADE A PART HEREOF.

END OF DESCRIPTION

THIS DESCRIPTION AND ITS ACCOMPANYING PLAT WERE PREPARED BY OR
UNDER THE DIRECTION OF:



ALVIN LEUNG, PLS 6630 March 17, 2017
DATE



EXHIBIT B-2

Legal Description for Easement Area B

**EXHIBIT B-2
LEGAL DESCRIPTION
EASEMENT AREA B
BOYS AND GIRLS CLUB
PORTION OF PARCEL 3 (2010-074484)
ALAMEDA, CALIFORNIA**

REAL PROPERTY SITUATE IN THE CITY OF ALAMEDA, COUNTY OF ALAMEDA,
STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 3 AS SAID PARCEL IS DESCRIBED IN THE DEED
TO THE CITY OF ALAMEDA, RECORDED ON APRIL 23, 2010 IN DOCUMENT NO.
2010-74484, OFFICIAL RECORDS OF ALAMEDA COUNTY AND MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

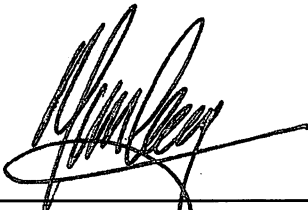
BEGINNING AT THE INTERSECTION OF THE SOUTHERLY LINE OF SAID PARCEL
3 WITH THE NORTHERLY EXTENSION OF THE EASTERLY LINE OF THIRD
STREET, AS SAID STREET IS SHOWN ON THE RECORD OF SURVEY FILED ON
AUGUST 13, 1951 IN BOOK 3 OF RECORD OF SURVEYS, PAGE 16, ALAMEDA
COUNTY RECORDS; THENCE ALONG SAID EXTENSION NORTH 03°07'32" EAST
20.78 FEET; THENCE SOUTHEASTERLY ALONG A NON-TANGENT CURVE
CONCAVE TO THE NORTHEAST, WHICH A RADIAL BEARS NORTH 39°42'33"
EAST TO THE RADIUS POINT, HAVING A RADIUS OF 100.00 FEET, A CENTRAL
ANGLE OF 39°16'18" AND AN ARC LENGTH OF 68.54 FEET TO SAID SOUTHERLY
LINE; THENCE ALONG LAST SAID LINE NORTH 89°33'45" WEST 15.41 FEET AND
NORTH 87°25'09" WEST 48.89 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 417 SQUARE FEET, MORE OR LESS.

SEE EXHIBIT A – PLAT TO ACCOMPANY LEGAL DESCRIPTION WHICH IS
ATTACHED HERETO AND MADE A PART HEREOF.

END OF DESCRIPTION

THIS DESCRIPTION AND ITS ACCOMPANYING PLAT WERE PREPARED BY OR
UNDER THE DIRECTION OF:



ALVIN LEUNG, PLS 6630

March 30, 2017

DATE



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

STATE OF CALIFORNIA
COUNTY OF ALAMEDA

On _____, 2017 before me, Rina M. Winston, Notary personally appeared Jill Keimach, City Manager for the City of Alameda who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

(Seal)

Rina M. Winston

Notary Public in and for said County and State