

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

City Attorney

Introduced by Councilmember _____

RESOLUTION SUMMARILY VACATING AN UNUSED PUBLIC SEWER EASEMENT LOCATED AT 500 LAKE PARK AVENUE TO THE PROPERTY OWNERS, LAKE PARK OAKLAND EAH, LLC

WHEREAS, Lake Park Oakland EAH, LLC (“Owners”), owners of real property known as 500 Lake Park Avenue and described in a Grant Deed, recorded August 27, 2020, Series No. 2020213320, by the Alameda County Clerk-Recorder, and identified by the Alameda County Assessor as APN 011-0837-086-02, APN 011-0837-087, and APN 011-0837-080, and more particularly described in *Exhibit A* attached hereto, have made an application (PPE 2000056) to the City Engineer of the City of Oakland to summarily vacate an unused public service easement which serves said parcel; and

WHEREAS, said Owners have applied for a design review for construction of a mixed-use building including fifty-three (53) housing units and three-thousand (3,000) square feet of retail space (PLN 16-276); and

WHEREAS, the proximity of said easement to said building is such that the proposed structures would encroach into the existing public sewer easement; and

WHEREAS, said easement was dedicated through the map “Map of Piedmont by the Lake” filed November 14, 1906, in book 21 Page 81 of Maps, Official Records of Alameda County; and

WHEREAS, the limits of the public service easement proposed for vacation are delineated diagrammatically and described textually in *Exhibits B and C* attached hereto and incorporated herein; and

WHEREAS, the City Engineer has determined that the public service easement proposed for vacation has never been used for the purposes for which it was dedicated in 1906; and

WHEREAS, the City Engineer has also determined that there are no public utilities within the public service easement proposed for vacation, and that such easement is no longer needed by the City and the utility companies for future infrastructure improvements; and

WHEREAS, pursuant to the California Streets and Highways Code, sections 8333 and 8334.5, the legislative body of a local agency may summarily vacate a public service easement when the easement has not been used for the purpose for which it was dedicated for five (5) consecutive years immediately preceding the proposed vacation and there are no public utilities within the existing easement; and

WHEREAS, each as a separate and independent basis, this action is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15183 (projects consistent with General Plan and Zoning), and 15532 (Class 32, “In-fill Development projects); now, therefore, be it

RESOLVED: That the City Council has reviewed all relevant documents relating to the summary vacation of the existing public service easement that is the subject of this resolution; and be it

FURTHER RESOLVED: That the summary vacation of the public service easement to the Owners, as delineated in *Exhibit B* and as conditioned herein, is hereby granted; and be it

FURTHER RESOLVED: That said vacation is hereby conditioned by the following special requirements:

1. the Owners (Lake Park Oakland EAH, LLC), by the acceptance of this vacation of the existing public service easement, agree and promise to indemnify, defend, and hold harmless the City of Oakland and its officials, officers, agents, employees, representatives and volunteers, to the maximum extent permitted by law, from any and all claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever arising out of or caused by the vacation of said public service easement and regardless of responsibility for negligence; and
2. the Owners acknowledge that the City of Oakland makes no representations or warranties as to the conditions beneath the existing public service easement; and that by accepting this vacation, the Owners agree that they will use the easement area in the future at their own risk, and are responsible for their activities and the activities of their workmen operating within the vacated area and for their own safety and the safety of any of their personnel; and
3. the Owners acknowledge that the City of Oakland is unaware of the existence of any hazardous substances beneath the easement areas, and hereby waive and fully release and forever discharge the City of Oakland and its officials, officers, directors, employees, agents, representatives and volunteers from any and all claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise out of or in any way connected with the physical condition, or required remediation of the vacated area or any law or regulation applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Section 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100 et seq.), the Porter-Cologne Water Quality Control Act (California Health and Safety Code Section 13000 et seq.), the Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section

25249.5 et seq.); and

4. the Owners further acknowledge that they understand and agree that they hereby expressly waive all rights and benefits which they now have or in the future may have, under and by virtue of the terms of California Civil Code Section 1542, which reads as follows: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR”; and
5. the Owners recognize that by waiving the provisions of Civil Code Section 1542, they will not be able to make any claims for damages that may exist, and to which, if known, would materially affect their decision to request said vacation, regardless of whether Owner’s lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and
6. the hereinabove conditions shall be binding upon the Owners and their successors, heirs, and assigns, and upon the successive owners of said property; and be it

FURTHER RESOLVED: That the City Clerk of the City of Oakland is hereby directed to file a certified copy of this resolution for recordation by the Alameda County Clerk-Recorder.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2019

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND PRESIDENT FORTUNATO BAS

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

Asha Reed
Acting City Clerk and Clerk of the Council
of the City of Oakland, California

- Exhibit A:** Description of the Private Property Encumbered by the Easement (2 pages)
Exhibit B: Graphic Delineation of the Public Service Easement Proposed for Vacation (1 page)
Exhibit C: Legal Description of the Public Service Easement Proposed for Vacation (1 page)

EXHIBIT A: Description of the Private Property Encumbered by the Easement

Address 500 Lake Park Avenue **Parcel no.** 011-0837-080; 011-0837-086-02; 011-0837-087

Deed no. 2020-213320

Recorded August 27, 2020

**EXHIBIT A
LEGAL DESCRIPTION OF RESULTANT PARCEL**

REAL PROPERTY SITUATED IN THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING LOTS 111, 119, 120 AND THE WESTERLY 10.00 FEET OF LOT 121 AS SHOWN ON THAT CERTAIN MAP ENTITLED, "MAP OF PIEDMONT BY THE LAKE, OAKLAND, CALIFORNIA", FILED NOVEMBER 14, 1906, IN BOOK 21 OF MAPS, AT PAGE 87, ALAMEDA COUNTY RECORDS, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 111;

THENCE ALONG THE NORTHERLY LINE OF SAID LOT 111, NORTH 49°32'00" WEST 50.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 111;

THENCE ALONG THE WESTERLY LINE OF SAID LOT 111, SOUTH 40°28'00" WEST 110.00 FEET TO THE NORTHERLY LINE OF SAID LOT 119;

THENCE ALONG THE NORTHERLY LINE OF SAID LOT 119, NORTH 49°32'00" WEST 16.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 119;

THENCE ALONG THE WESTERLY LINE OF SAID LOT 119, SOUTH 55°06'00" WEST 138.90 FEET TO THE SOUTHWESTERLY CORNER OF SAID LOT 119;

THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 119, SOUTH 17°45'00" EAST 41.82 FEET THE BEGINNING OF A TANGENT CURVE, TO THE LEFT, HAVING A RADIUS OF 20.00 FEET;

THENCE ALONG SAID CURVE AND ALONG THE SOUTHERLY LINE OF SAID LOT 119, THROUGH A CENTRAL ANGLE OF 45°30'00", AN ARC LENGTH OF 15.88 FEET;

THENCE ALONG THE SOUTHERLY LINES OF SAID LOTS 119, 120 AND 121, SOUTH 63°15'00" EAST 96.50 FEET TO POINT ON A LINE PARALLEL WITH AND 10.00 FEET EASTERLY OF THE EASTERLY LINE OF SAID LOT 120;

THENCE ALONG SAID PARALLEL LINE, NORTH 26°45'00" EAST 102.40 FEET TO THE NORTHERLY LINE OF SAID LOT 121;

THENCE ALONG THE NORTHERLY LINE OF SAID LOT 121, NORTH 63°15'00" WEST 10.00 FEET TO THE EASTERLY LINE OF SAID LOT 120;

THENCE ALONG THE EASTERLY LINE OF SAID LOT 120, NORTH 26°45'00" EAST 40.00 FEET TO THE NORTHEASTERLY CORNER OF SAID LOT 120, SAID CORNER ALSO BEING THE SOUTHEAST CORNER OF SAID LOT 111;

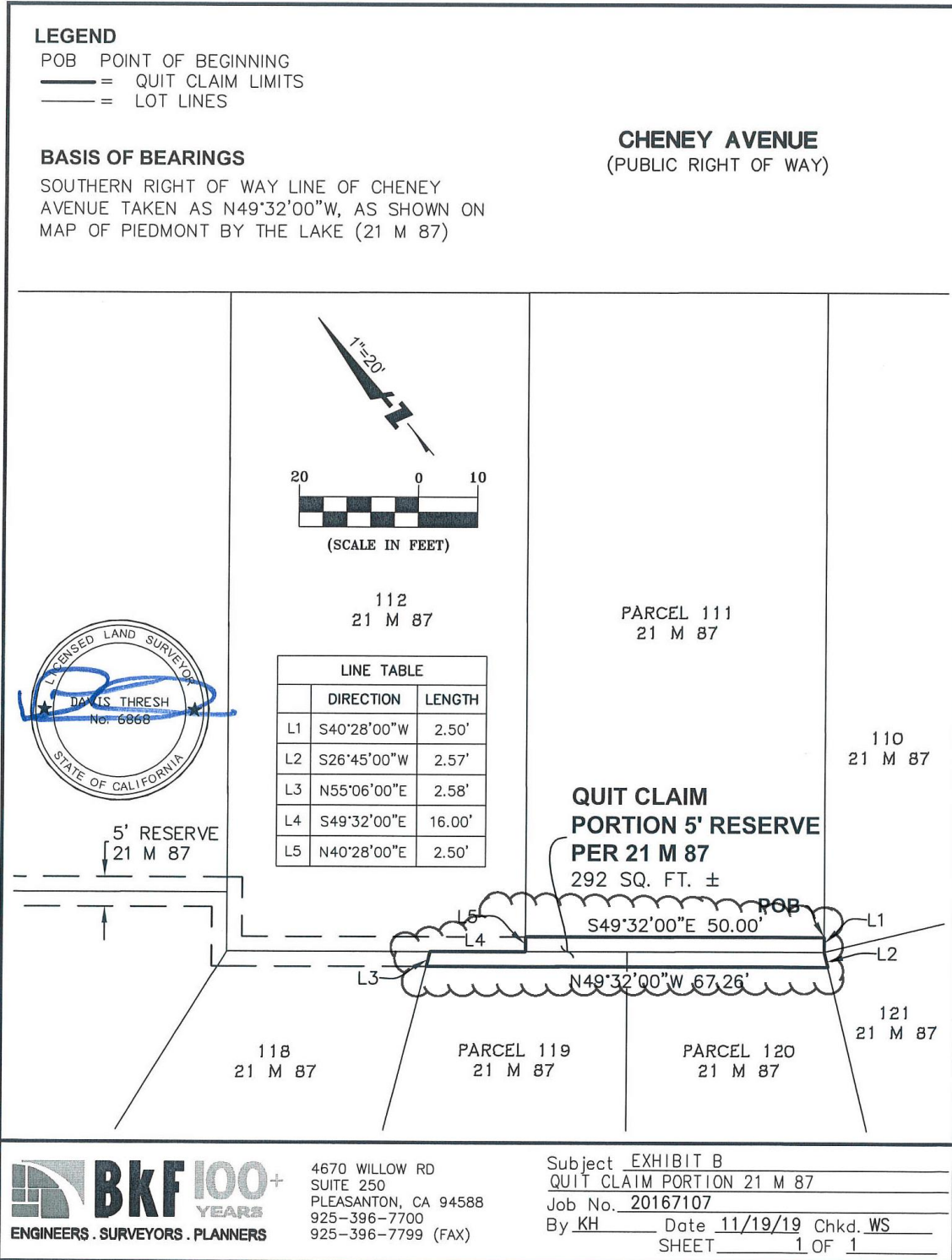
THENCE ALONG THE EASTERLY LINE OF SAID LOT 111, NORTH 40°28'00" EAST 110.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 21,910 SQ. FT.; 0.50 ACRES, MORE OR LESS.

EXHIBIT "B" ATTACHED HERETO GRAPHICALLY DEPICTS THE AFORESAID DESCRIPTION.

END OF DESCRIPTION.

EXHIBIT B: Graphic Delineation of the Public Service Easement Proposed for Vacation



A more legible copy is available at the Office of the Director, DOT, City of Oakland, 250 Frank H. Ogawa Plaza, 4th floor.

EXHIBIT C: Legal Description of the Public Service Easement Proposed for Vacation



ENGINEERS
SURVEYORS
PLANNERS

100+
YEARS

November 19, 2019
BKF Job No: 20167107

LEGAL DESCRIPTION
EXHIBIT A: QUIT CLAIM PORTION 5' RESERVE

Real property situate in the City of Oakland, County of Alameda, State of California, described as follows:

Being that portion of the "5' RESERVE" within Parcels 111, 119 and 120, as shown and dedicated on that certain map entitled "Map of Piedmont by the Lake" filed on November 14, 1906 in Book 21 Page 81 of Maps, Official Records of Alameda County, more particularly described as follows:

BEGINNING at a point on the southeasterly line of said Parcel 111, said point being 2.50 feet northeasterly of the southerly corner of said Parcel 111;

Thence along said southeasterly line, South 40°28'00" West, 2.50 feet to the easterly corner of said Parcel 120;

Thence along the southeasterly line of said Parcel 120, South 26°45'00" West, 2.57 feet;

Thence leaving said southeasterly line, North 49°32'00" West, 67.26 feet to the northwesterly line of said Parcel 119;

Thence along said northwesterly line, North 55°06'00" East, 2.58 feet to the northerly corner of said Parcel 119;

Thence along the northeasterly line of said Parcel 119, South 49°32'00" East, 16.00 feet to the westerly corner of said Parcel 111;

Thence along the northwesterly line of said Parcel 111, North 40°28'00" East, 2.50 feet;

Thence leaving said northwesterly line, South 49°32'00" East, 50.00 feet to the **POINT OF BEGINNING**.

Containing an area of 292 square feet, more or less.

As shown on plat attached hereto and by this reference made part hereof as "Exhibit B."

For: BKF Engineers

Davis Thresh, P.L.S. No. 6868

Nov. 19, 2019
Dated



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Pleasanton
California 94588
phone 925.396.7700
fax 925.396.7799
www.bkf.com

A more legible copy is available at the Office of the Director, DOT, City of Oakland, 250 Frank H. Ogawa Plaza, 4th floor.