

ORDINANCE NO. 7,843-N.S.

ACCESS ROAD EASEMENT AND INSTALLATION WITH PAULONIA INVESTMENT, LLC AND LITTLE TREE INVESTMENT, INC. ON APN: 063-2969-034-44 FOR ACCESSING SEWER PIPE FACILITIES

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That the City Manager and City Clerk are hereby authorized and directed to make, execute and deliver for and on behalf of the City of Berkeley, as its corporate act and under its corporate name and seal, access road easement deed and installation agreement with Paulonia Investment, LLC and Little Tree Investment, Inc. on APN 063-2969-034-44, a copy of which easement agreement is attached hereto, (Exhibit A) made a part hereof.

Section 2. That the City Clerk is hereby authorized and directed to cause the executed access road easement deed and installation agreement to be recorded in the Official Records of Alameda County, California.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on November 15, 2022, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.

ATTACHMENT 3, EXHIBIT A

Access Road Easement and Installation Agreement
Sanitary Sewer

This Access Road Easement and Installation Agreement ("Agreement") is entered into as of the 6th day of October 2022, by and between Paulonia Investment, LLC and Little Tree Investment, Inc., ("Grantors") and the City of Berkeley ("Grantee").

- 1. Grant of Easement.** For good and valuable consideration, receipt of which is hereby acknowledged, Grantors hereby grant to the Grantee the following easement subject to the following terms and conditions.
- 2. Scope of Easement.** The easement granted is a non-exclusive easement for access to operate, clean, maintain, repair, replace sewer pipeline and maintenance holes on adjacent properties.
- 3. Location of Easement.** The real property parcel ("Property") affected by this Agreement is APN 063-2969-034-44, more specifically described as Parcel A in Lot Line Adjustment Number 339 recorded at Alameda County September 13, 2019, Instrument Number 2019182632.
- 4. Location of Access Road.** The access road allowed under this easement shall be located entirely within the Easement Area as described in Exhibit A. The access road shall be constructed and maintained by the property owner to allow vehicle access to maintain the maintenance holes and pipeline located in the sewer easement.
- 5. Restoration of Surface.** Within twenty-five (25) days of the completion of any construction, installation, inspection, maintenance, repair, replacement, removal or other activity by Grantee on the Easement Area that disturbs the surface of the ground or any structure, facility, or installation of Grantors, Grantee shall remove any debris and restore the surface and any structure, facility, or installation of Grantors as near to its pre-disturbance condition as possible, including re-vegetation limited to starting plant material available through general nurseries open to the public. If Grantee fails to do so, Grantors may do so at Grantee's risk and expense, and Grantee agrees to reimburse the Grantors for the cost of removal and restoration.
- 6. Right of Access.** Grantee shall have the right of ingress and egress to and from the Easement Area for the purpose described in this Agreement.
- 7. Term of Easement.** The rights granted in this Agreement shall be possessed and enjoyed by the Grantee, its successors and assigns, so long as the Grantee, its successors and assigns, are required to operate, maintain, repair Grantee's sewer pipeline and maintenance holes on parcel with APN 063-2969-034-23. If Grantee ceases to use and abandons the access road allowed under this Agreement, Grantee shall execute and deliver to Grantors, within forty-five (45) days after service of a written demand, a good and sufficient quitclaim deed to all rights granted in this Agreement. Should Grantee fail or refuse to deliver this quitclaim deed, a written notice by Grantors reciting the failure or refusal of Grantee to execute and deliver the quitclaim deed, and terminating this Agreement, shall, after forty-five (45) days from the date of recording

ATTACHMENT 3, EXHIBIT A

of the notice, be conclusive evidence against Grantee, and all persons claiming under Grantee, of the termination of Grantee's rights under this Agreement.

8. Rights and Duties of Grantors. Grantors shall retain the right to use and enjoy the Property to the fullest extent without unreasonable interference with the exercise by Grantee of the rights granted by this Agreement. Grantor shall construct and maintain roadway covering full extent of the easement.

Grantors shall not change the dimensions of the access road by any Grantors' action. Grantors are solely responsible for accurately locating the easement limits before planning, designing, applying for permits, and constructing any improvements.

9. Liability and Indemnification. Grantor agrees that it is solely responsible for the operation, inspection, maintenance, repair, replacement, rehabilitation of the access road authorized herein. Grantee agrees to indemnify and hold harmless Grantors against all claims, suits, costs, losses and expenses that may in any manner result from or arise out of Grantee's usage of the access road, except any maintenance or repair to the roadway and roadway supports.

10. Cooperation. Grantors and Grantee agree to promptly take whatever steps are necessary to execute, acknowledge, and deliver the documents necessary to effectuate the terms and purpose of this Agreement.

11. Governing Law; Choice of Forum. This Agreement shall be interpreted in accordance with and governed in all respects by the laws of the State of California. Each party agrees that any claim arising out of this Agreement shall be filed in Alameda County Superior Court, and each party consents to personal jurisdiction in the State of California and Alameda County.

12. Entire Agreement. This Agreement contains the entire understanding between the parties hereto with regard to the matters set forth herein and is intended to be and is a final integration thereof. There are no representations, warranties, agreements, arrangements, undertakings, oral or written between or among the parties hereto relating to the terms and conditions of this Agreement which are not fully expressed herein. The terms hereof are contractual and not a mere recital and it is understood that no alterations, modifications or changes may be affected except by a writing duly executed by all the parties to this Agreement.


13. Binding Effect. This Agreement shall be binding on the heirs, legal representatives, successors and assigns of the parties.

ATTACHMENT 3, EXHIBIT A

IN WITNESS WHEREOF, the parties have executed this Agreement at Berkeley, California as of the date first above written.

OWNER/GRANTOR

Paulonia Investment, LLC

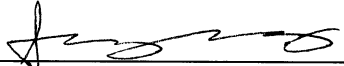
By:  [signature must be notarized]

Print Name: Fang Wang

Title: Owner

OWNER/GRANTOR

Little Tree Investment, Inc.

By:  [signature must be notarized]

Print Name: Fang Wang

Title: CFO

CITY OF BERKELEY, a municipal corporation/GRANTEE:

By: _____ [signature must be notarized]

Name: Bedwendolyn Williams-Ridley

Title: City Manager of the City of Berkeley

Approved as to Form

By: _____

Print Name: _____

Title: Assistant City Attorney

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 California
County of Alameda

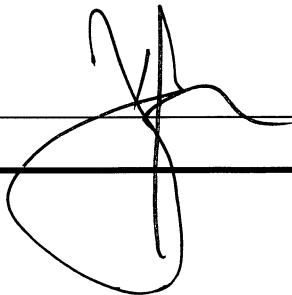
On 10 / 06 / 2022 before me, David Lee, Notary Public
(insert name and title of the officer)

personally appeared FANG WANG
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.

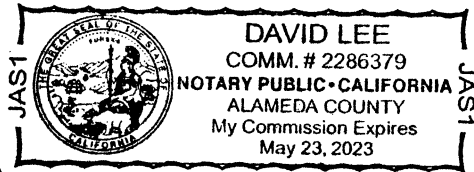
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

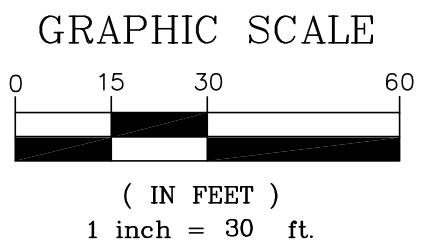
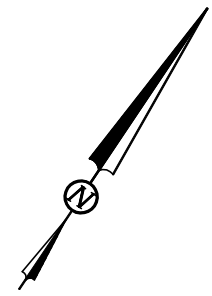
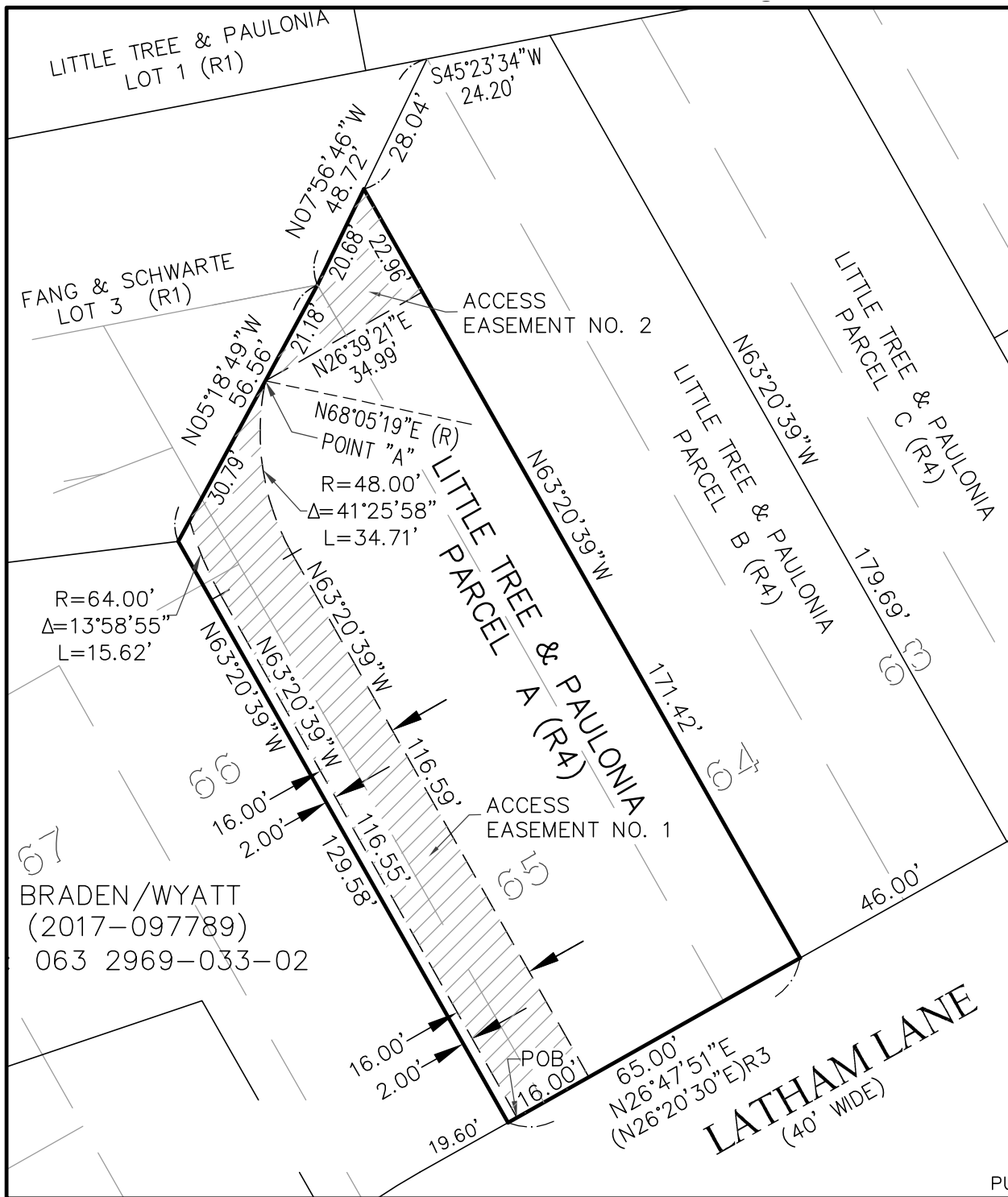
Signature _____



(Seal)

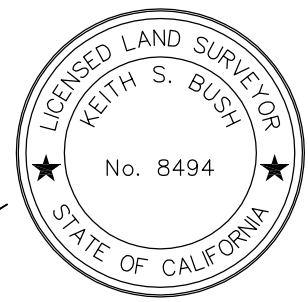


ATTACHMENT 3 EXHIBIT A



BASIS OF BEARINGS:
MONUMENT LINE IN GRIZZLY PEAK BLVD.,
TAKEN AS N 63°16'00" W, AS SHOWN
ON MAP OF RESUBDIVISION OF A PART
OF NORTH CRAGMONT (24 M. 74).

REFERENCES:
R1= LOLA 296 (2018-000094)
R2= LOLA 330 (2018-171906)
R3= RESUBDIVISION OF A PORTION OF
NORTH CRAGMONT (BOOK 24 M 74)
R4= LOLA 339 (2019-182632)



Keith A Bush
KEITH S. BUSH, L.S. 8494
DATE: January 28, 2022

EXHIBIT B PLAT TO ACCOMPANY LEGAL DESCRIPTION

JANUARY, 2022 SCALE 1" = 30'
BAY AREA LAND SURVEYING INC.
3065 RICHMOND PARKWAY, SUITE 101
RICHMOND, CA 94806
(510) 223-5167

ATTACHMENT 3

EXHIBIT "A" LEGAL DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY IN THE CITY OF BERKELEY, COUNTY OF ALAMEDA COUNTY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS.

PUBLIC SEWER ACCESS EASEMENT NO. 1

BEING A PORTION OF PARCEL "A", AS SHOWN ON THE LOT LINE ADJUSTMENT NO. 339, RECORDED SEPTEMBER 13, 2019, AS SERIES NUMBER 2019-182632 IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF SAID PARCEL "A" DISTANT THEREON NORTH 26°47'51" EAST 2.00 FEET FROM THE MOST SOUTHERLY CORNER SAID PARCEL "A";

THENCE LEAVING SAID SOUTHEASTERLY LINE OF PARCEL "A", NORTH 63°20'39" WEST, 116.55 FEET TO THE BEGINNING OF A CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 64.00 FEET;

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE 15.62 FEET, THROUGH A CENTRAL ANGLE OF 13°58'55" TO WESTERLY LINE OF SAID PARCEL "A";

THENCE ALONG THE WESTERLY LINE OF PARCEL "A", NORTH 5°18'49" WEST, 30.79 FEET TO THE BEGINNING OF A CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 48.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 68°05'19" EAST, SAID POINT HEREINAFTER SHALL BE KNOWN AS POINT "A";

THENCE SOUTHEASTERLY ALONG THE ARC OF LAST SAID CURVE, 34.71 FEET, THROUGH A CENTRAL ANGLE OF 41°25'58";

THENCE SOUTH 63°20'39" EAST, 116.59 FEET TO THE SOUTHEASTERLY LINE OF SAID PARCEL "A";

THENCE ALONG SAID SOUTHEASTERLY LINE OF PARCEL "A", SOUTH 26°47'51" WEST, 16.00 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF APPROXIMATELY 2,240 SQUARE FEET.

ATTACHMENT 3 EXHIBIT A

PUBLIC SEWER ACCESS EASEMENT NO. 2

BEING A PORTION OF PARCEL A, AS SHOWN ON THE LOT LINE ADJUSTMENT NO. 339, RECORDED SEPTEMBER 13, 2019, AS SERIES NUMBER 2019-182632 IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT AFORESAID POINT "A", SAID POINT LYING ON WESTERLY LINE OF SAID PARCEL "A";

THENCE ALONG THE EXTERIOR LINES OF SAID PARCEL "A" THE FOLLOWING THREE (3) COURSES:

1. NORTH 5°18'49" WEST, 21.18 FEET;
2. NORTH 7°56'46" WEST, 20.68 FEET;
3. SOUTH 63°20'39" WEST, 22.96 FEET;

THENCE SOUTH 26°39'21" WEST, 34.99 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF APPROXIMATELY 392 SQUARE FEET.

END OF DESCRIPTION

