

Recording requested by and when recorded mail to:

City of San Leandro
835 E 14th Street
San Leandro, CA 94577
Attn: Public Works Director

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

APN:

Space above this line for Recorder's use.

MAINTENANCE AGREEMENT BETWEEN THE CITY OF SAN LEANDRO AND 13847 SAN LEANDRO PARTNERS LLC

This Maintenance Agreement ("Agreement") is made and entered into as of the latest date the City and the Owner executes this Agreement as set forth on the date line following each signature (the "Effective Date"), by and between the City of San Leandro, a California municipal corporation (the "City"), and 13847 San Leandro Partners LLC, a California limited liability company (the "Owner"). The City and the Owner may be referred to individually as the "Party" or collectively as the "Parties".

RECITALS

- A. City is the owner of the that certain real property located at 13909 E 14th St, San Leandro, CA 94578, also known as Alameda County APN 77D-1429-3-6. ("City Property"). The City owns and operates a senior center located on the City Property.
- B. The Owner is the owner of that certain real property adjacent to the City Property known as Alameda County APN 77D-1429-19-4, as more particularly described in Exhibit A and depicted in Exhibit B, attached hereto and incorporated herein (the "Property").
- C. The Property is burdened with a non-exclusive easement for ingress and egress and an exclusive easement for Parking in favor of the City (the "Easement"). A detailed depiction of the easement area is attached as Exhibit C and incorporated herein (the "Easement Area").
- D. The City and Owner desire to enter into this Agreement to establish the maintenance and repair obligations of each Party with respect to the Easement Area.

NOW, THEREFORE, in consideration of the covenants contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Term.** The term (the "Term") of this Agreement shall commence on the Effective Date and shall remain in effect until terminated as provided for herein.
2. **Utilities.**

2.1 Water. As of the Effective Date, the East Bay Municipal Utility District (“EBMUD”) water meter (# 36645894) serving the Easement Area (the “Water Meter”) is in an account under the Owner’s name. The Parties agree to cooperate to place the Water Meter into EBMUD account established and maintained by the City as soon as possible. The City shall be responsible for paying all bills and invoices issued by EBMUD, or its successor, for the Water Meter from and after the Effective Date, without any reimbursement or contribution from Owner. The EBMUD invoice for the Water Meter for the billing period covering the Effective Date shall be prorated between the Parties based on the timing of the Effective Date.

2.2 Electricity. The Owner shall be responsible for maintaining electricity service with Pacific Gas & Electric (“PG&E”) to serve the Easement Area. Owner shall pay all bills and invoices issued by PG&E, or its successor, for electricity used on the Easement Area without any reimbursement or contribution from the City.

3. Maintenance

3.1 Landscaping & Grounds. The City shall provide, at its costs, monthly landscaping and periodic maintenance for vegetation and trees located in the Easement Area, and will perform minor repairs and maintenance of the irrigation system. The City shall have the sole discretion to determine what vegetation to plant and to determine the appropriate methods and schedule for maintenance. The City shall also be responsible for keeping the Easement Area in a clean and safe condition. The Parties acknowledge and agree that the frequency of cleaning and landscape maintenance by the City will depend on a variety of factors, including but not limited to any applicable drought regulations.

3.2 Pavement Maintenance. At its sole cost and expense, the City will: a) repair potholes in the pavement of the Easement Area as needed, and b) restripe the parking lot in the Easement Area as is reasonably required by the condition of the Easement Area, subject to the provisions of Section 3.4 .

3.3 Lighting Maintenance. At its sole cost and expense, the City shall conduct minor lighting repair and maintenance of the light poles in the Easement Area, such as replacing light bulbs and minor repairs to lighting fixtures. All other repair and maintenance of lighting fixtures and facilities in the Easement Area shall be performed by the City, subject to the provisions of Section 3.4. If PG&E must repair or replace any equipment or facilities owned and/or maintained by PG&E, it shall be the Owner’s responsibility to request and coordinate such repairs with PG&E, the expense of such work being the responsibility of pg&e and not the owner.

3.4 Major Repairs. For any repairs or alterations of the Easement Area with an estimated cost of over Ten Thousand Dollars (\$10,000), the City shall notify the Owner of the necessary repair or alteration. The City and Owner shall agree upon the scope of the repair and alteration. Thereafter, the City shall perform the work itself or hire a contractor to perform the repair, in accordance with the applicable competitive bidding requirements of the San Leandro Municipal Code and the City’s Purchasing Policy, and the City shall be responsible for managing the project. The City shall pay the first Ten Thousand Dollars (\$10,000) of such repair or alteration, with any cost above that amount split equally between the City and Owner. This

Section shall not apply to the renovation or replacement of the improvements previously made by the City to the Easement Area, the costs and expenses of which shall be borne solely by the City

3.5 Unauthorized Repairs. Neither Party shall be responsible for reimbursing the other Party for repairs or alterations performed without compliance with this Agreement. If Owner determines a repair that is the responsibility of the City is necessary, it shall promptly notify the City of the need to make the repair in compliance with this Agreement. If Owner makes such repair itself, it does so at its own cost and expense and shall not be entitled to any reimbursement from or by the City, unless Owner has notified City of the need for the repair or alteration (the "Repair Notice") and the City has failed to undertake the repair or alteration within sixty (60) days after the date the Repair was delivered to City.

4. Prior Repairs and Expenses.

4.1 Payments. The City shall make the following payments to the Owner within thirty (30) days after the Effective Date:

- a. Six Thousand Eight Hundred Eighty Eight Dollars (\$6,888) for irrigation system leak repairs performed by Owner (the "Leak Repairs"); and
- b. Five Hundred Sixty Dollar (\$560) for excess water use due to the irrigation system leak (the "Excess Water Usage").

4.2 Release. In consideration for payments listed in Section 4.1 Settlement payment, Owner hereby irrevocably and unconditionally releases, acquits and forever discharges the City from any and all claims, demands, obligations, actions, liability and losses of every kind and nature whatsoever from any and all liability for claims known or unknown arising prior to the execution of this Agreement, related only to the Leak Repairs and the Excess Water Usage. The Owner hereby states that it is its intention in executing this Agreement that the same shall be effective as a bar to each and every claim, demand, cause of action, obligation, damages, charge, liability, attorney's fees and costs herein above released. The Owner hereby expressly waive and relinquish all rights and benefits, if any, arising under the provisions of California Civil Code § 1542 which provides: "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

5. Payments. Any payment due from one Party to the other Party under this Agreement shall be paid within thirty (30) days of receipt of a written invoice for the amount owed. The invoice shall be accompanied by all documentation reasonably necessary to support the invoice, including a copy of any invoices from contractors, vendors or other parties, as appropriate.

6. Default. The failure of either Party to perform any obligation contained herein, after written notice from the non-defaulting party and a reasonable opportunity to cure of not less

than thirty (30) days, shall be a default. If within the applicable cure period, the defaulting Party fails to cure a default or fails to commence to cure and diligently pursue completion of a cure, the non-defaulting Party may terminate this Agreement or pursue any other available remedy at law or in equity.

7. **Notice.** Any notice or communication required or permitted to be delivered hereunder shall be made in writing and sent to the Parties at their respective addresses specified below or to such other address as the Parties may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by:

- a. Personal delivery, in which case notice is effective upon delivery;
- b. Certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt or upon attempted delivery if delivery is refused;
- c. Nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;

If to City:

City of San Leandro
835 E 14th St
San Leandro, CA 94577
Attn: Public Works Director

If to Owner:

13847 San Leandro Partners LLC
PO Box 14176
Fremont, CA 94539

8. **Miscellaneous**

8.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

8.2 **Applicable Law.** Each Party shall comply with all applicable federal, state and local laws while performing their obligations under this Agreement. The laws of the State of California shall govern this Agreement.

8.3 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.

8.4 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

8.5 Amendments. The parties may amend this Agreement only by a writing signed by all the parties.

8.6 No Implied Waiver of Breach. Any waiver by either Party of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by a Party to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by a Party at any time to require strict performance by the other Party of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

8.7 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. City and Owner shall at all times remain independent parties.

8.8 Assignment. No assignment by a Party hereto of any rights under or interests in this Agreement will be binding on another Party hereto without the written consent of the Party sought to be bound; and specifically but without limitation monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment. This Section shall not apply to the assignment of Owner's interest in this Agreement to any successor in interest to Owner, or an assignment by a successor in interest to another successor in interest.

8.9 Binding Upon Successors; Covenants to Run with the Land. The City and Owner hereby declare their express intent that the rights, duties, and obligations set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and City, regardless of any sale, assignment, conveyance or transfer of the Property, the City Property or any part thereof or interest therein.

8.10 Recordation. The Agreement shall be recorded against the Property in the Official Records of Alameda County.

8.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

8.12 Indemnity. Each Party shall defend, hold harmless and indemnify the other Party, its officers, agents and employees against any and all claims, demands, damages, costs, expenses or liability costs arising out of the performance of this Agreement to the proportionate extent caused by the indemnifying party's negligence or willful misconduct.

SIGNATURES FOLLOW ON THE NEXT PAGE

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF SAN LEANDRO
a California Charter City

By: _____
Francis M. Robustelli, City Manager
Dated: _____, 2023

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Richard D. Pio Roda, City Attorney

13847 San Leandro Partners LLC,
a California limited liability company

By: _____
Danny Hoady

Title: Manager
Dated: 3/18/ _____, 2023

SIGNATURES 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)

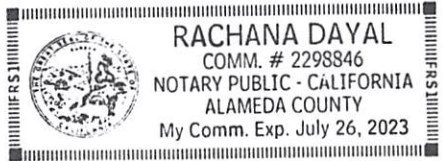
On MARCH 18th, 2023 before me, RACHANA DAYAL,

Notary Public, personally appeared DANNY HOADY, 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.

Rachana
Name: RACHANA DAYAL
Notary Public



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 _____)

On _____, before me, _____, Notary Public, personally appeared _____, 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.

Name: _____
Notary Public

**EXHIBIT A TO MAINTENANCE AGREEMENT BETWEEN THE CITY OF SAN
LEANDRO AND 13847 SAN LEANDRO PARTNERS LLC**

Legal Description of the Property

The land situated in the County of Alameda, City of San Leandro, State of California, described as follows:

Being a portion of Parcel A as shown on that certain Map designated Parcel Map 5309, filed for record on October 5, 1987 in Book 172 of Maps at Page 23 and a portion of Parcel 2 of the Lot Line Adjustment recorded September 30, 2005, at Series No. 2005-424901, Alameda County Records and lying within the City of San Leandro, County of Alameda and State of California more particularly described as follows:

Beginning at the northeast corner of Parcel A herein described; Thence along the easterly line of Parcel A and its southerly projection, also being the easterly line of Parcel 2 of said Lot Line Adjustment, South 47° 20' 00" East, 422.45 feet to the southeasterly corner of said Parcel 2; Thence along the southerly line of said Parcel 2, South 50° 40' 00" West, 17.88 feet; Thence continuing along the southerly line of Parcel 2, along the arc of a tangent curve concave northerly, having a radius of 120.00 feet, through a central angle of 21° 00' 00", for a distance of 43.98 feet; Thence South 71° 40' 00" West, 77.11 feet; Thence along the arc of a tangent curve concave southerly, having a radius of 120.00 feet; through a central angle of 28° 47' 50", for a distance of 60.31 feet to a point on the northwesterly line of the aforementioned.

Parcel B;

Thence along said northwesterly line South 42° 52' 10" West, 324.80 feet to a point on the easterly line of said Parcel A;

Thence along said easterly line North 47° 07' 50" West, 177.90 feet;

Thence along the northerly line of said Parcel A, North 42° 52' 10" East, 226.39 feet;

Thence along the westerly line of said Parcel A, North 47° 07' 50" West, 176.28 feet;

Thence along the northerly line of said Parcel A, North 42° 50' 37" East, 281.53 feet to the Point of Beginning.

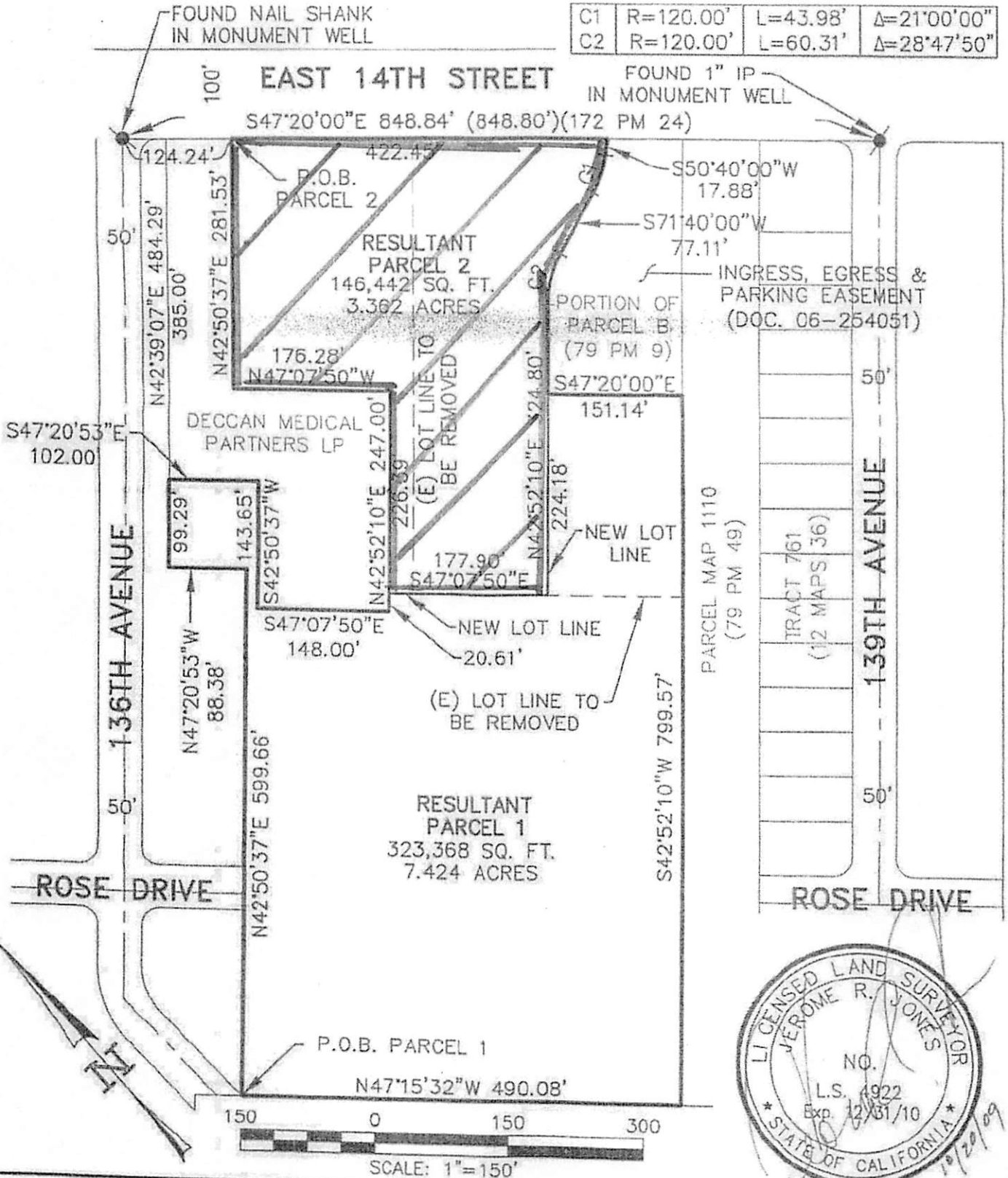
**EXHIBIT B TO MAINTENANCE AGREEMENT BETWEEN THE CITY OF SAN
LEANDRO AND 13847 SAN LEANDRO PARTNERS LLC**

Depiction of the Property

[See Attached]

CURVE TABLE

C1	R=120.00'	L=43.98'	Δ=21°00'00"
C2	R=120.00'	L=60.31'	Δ=28°47'50"



NOLTE
BEYOND ENGINEERING
2495 MATOMAS PARK DRIVE, 4TH FLOOR, SACRAMENTO, CA 95833
916.641.9700 TEL 916.641.9222 FAX WWW.NOLTE.COM

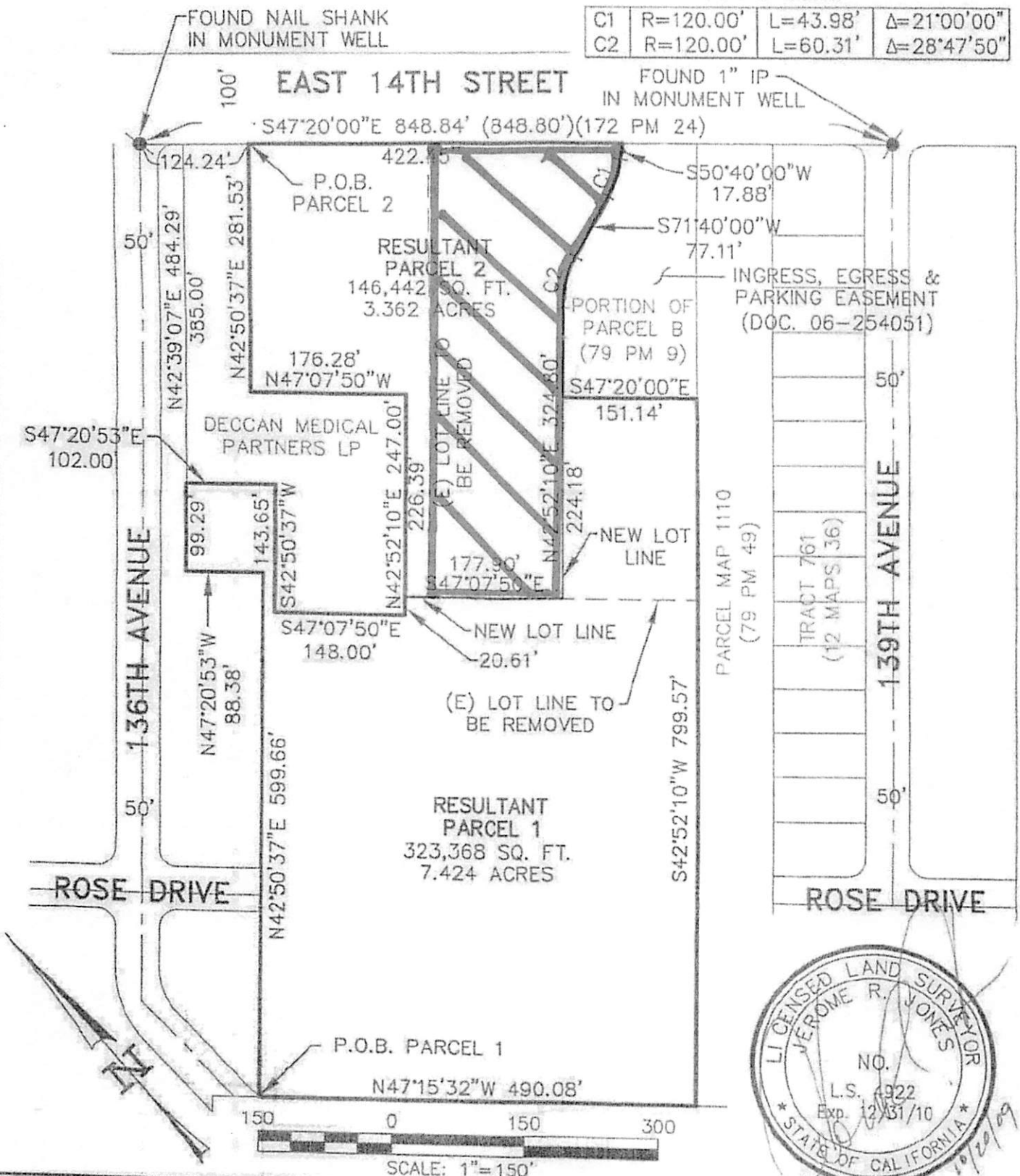
CITY OF SAN LEANDRO, COUNTY OF ALAMEDA, STATE OF CALIFORNIA		SHEET NUMBER
PREPARED FOR: CITY OF SAN LEANDRO		1
DATE SUBMITTED: 10-19-2009		OF 1 SHEETS
		JOB NUMBER
		SAB040800

***EXHIBIT C TO MAINTENANCE AGREEMENT BETWEEN THE CITY OF SAN
LEANDRO AND 13847 SAN LEANDRO PARTNERS LLC
Depiction of the Easement Area***

[See Attached]

CURVE TABLE

C1	R=120.00'	L=43.98'	Δ=21°00'00"
C2	R=120.00'	L=60.31'	Δ=28°47'50"



NOLTE
 BEYOND ENGINEERING
 2495 NATOMAS PARK DRIVE, 8TH FLOOR SACRAMENTO, CA 95833
 916.441.9001 916.441.9222 FAX WWW.NOLTE.COM

CITY OF SAN LEANDRO, COUNTY OF ALAMEDA, STATE OF CALIFORNIA
 PREPARED FOR: CITY OF SAN LEANDRO DATE SUBMITTED: 10-19-2009

SHEET NUMBER	1
OF 1 SHEETS	
JOB NUMBER	SAB040800