

Meeting Date: 2/10/2015

Report Type: Consent

Report ID: 2015-00086

Title: Agreement: Construction and Maintenance of Private Recreation Facilities for McKinley Village

Location: In East Sacramento, south of Sutter's Landing Park and the Capital City Freeway (Interstate 80 Business Loop), and north and west of the Union Pacific Railroad Tracks (UPRR), District 3

Recommendation: Pass a Motion: 1) approving an agreement for private recreation facilities and parkland fee credit with Encore McKinley Village, LLC at McKinley Village to satisfy 15% of the parkland dedication requirement for the community; and 2) authorizing the City Manager or City Manager's designee to execute the agreement.

Contact: Mary de Beauvieres, Principal Planner, (916) 808-8722, Department of Parks and Recreation

Presenter: None

Department: Parks & Recreation Department

Division: Park Development Services

Dept ID: 19001121

Attachments:

- 1-Description/Analysis
- 2-Location Map
- 3-Agreement

City Attorney Review

Approved as to Form
Sheryl Patterson
1/26/2015 10:11:50 AM

Approvals/Acknowledgements

Department Director or Designee: Jim Combs - 1/15/2015 4:35:25 PM

Description/Analysis

Issue: Encore McKinley Village, LLC is the developer of the “McKinley Village,” a 49-acre planned unit development in East Sacramento. Encore McKinley Village has requested private recreational facilities credit for recreational facilities that will serve the residents of the McKinley Village development. The private facilities include a centrally located recreation center and pool, and a separate community garden area. City Code allows the City to grant parkland dedication credit for private recreational facilities under specific circumstances and upon execution of an agreement. Staff recommends the City enter into an agreement with Encore McKinley Village, LLC which will credit 15% of the project’s parkland dedication obligation for the provision of private recreational facilities to serve the community’s residents. The agreement stipulates the amount of parkland dedication credit that the City shall grant, includes a timeline for completion of the improvements, and includes requirements that the facilities shall be adequately maintained in perpetuity, and that the recreational use of the facilities cannot be changed to another use without action by City Council.

Policy Considerations: City Code Section 16.64.100 states that the City may grant partial parkland dedication credits for privately owned and maintained open space and/or local recreation facilities.

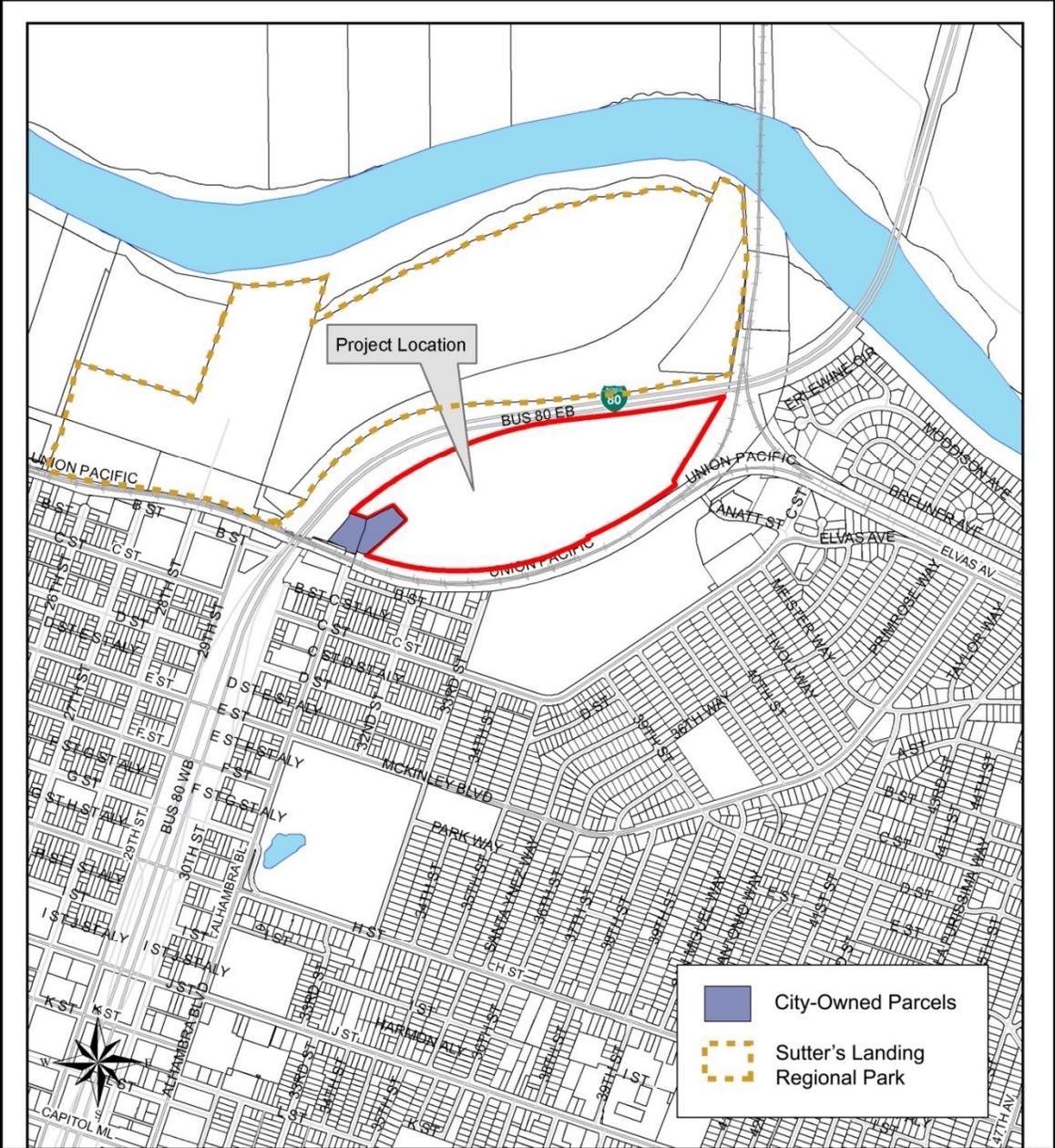
Economic Impacts: Not applicable.

Environmental Considerations: The approval of private recreational facilities credits implements the McKinley Village project. The City Council certified an EIR for the project and adopted a mitigation monitoring program per City Council Resolution No. 1014-0102. The approval of credits is a ministerial action and no further environmental review under the California Environmental Quality Act (CEQA) is required pursuant to CEQA Guidelines section 15162(c).

Rationale for Recommendation: The City has a parkland service level goal to provide five acres of parkland for every 1,000 people. The Subdivision Ordinance (Title 16 of City Code) requires each residential subdivider to either dedicate parkland, pay a fee in lieu of land dedication or a combination of the two. Section 16.64.100 of City Code allows the City to grant parkland dedication credit for certain private recreational facilities. A pool, recreation building and community garden area are eligible recreational facilities, each of which is eligible for 5% of the parkland dedication requirement needed for the development project, for a total of 15% of the parkland dedication required.

Financial Considerations: The McKinley Village subdivision has a total parkland dedication obligation of 4.464 acres. The obligation may be fulfilled through the dedication of parkland, payment of a fee in lieu of dedication, or a combination of these measures. The McKinley Village developer will fulfill its parkland dedication obligation through the dedication of five park sites, totaling 2.5 acres; the provision of private recreational facilities, eligible for 15% of the parkland dedication credit (0.669 acres, valued at \$200,700), and payment of the remainder in fees in lieu of dedication. No public funds will be used to develop the private recreation amenities. The developer is responsible for all improvement costs.

Local Business Enterprise (LBE): Not applicable.



-  City-Owned Parcels
-  Sutter's Landing Regional Park



**Vicinity Map
P08-086
McKinley Village**



Development Services
Department
Current Planning Division
November 13, 2008

Record for the benefit of)
The City of Sacramento)

Fee Exempt Pursuant to)
Government Code)
Section 6103)

When Recorded, Mail to:)

Office of the City Clerk)
New City Hall)
915 "I" Street, 5th Floor)
Sacramento CA 95814)

(Space above this line for recorder's use)

AGREEMENT TO CONSTRUCT AND MAINTAIN
PRIVATE RECREATIONAL FACILITIES
(Sacramento City Code Chapter 16.64)
McKinley Village P08-086

This Agreement is made as of _____, 2015, by and between Encore McKinley Village, LLC ("Owner") and the City of Sacramento ("City").

RECITALS

A. Owner is the master developer of, and Owner owns that real property in the City of Sacramento, County of Sacramento, shown and described in Exhibit A - Legal Description for Recreation Center and Pool Parcel and Exhibit A-1 - Plat to Accompany Description, and Exhibit B – Legal Description for Community Garden Parcel and Exhibit B-1 – Plat to Accompany Description, attached and incorporated herein by reference ("the Property").

B. Owner has obtained approval from City of a Tentative Subdivision Map and Condominium Map, see Exhibit C, also known as the McKinley Village Development Project ("Project"). The Project is subject to certain conditions relating to the dedication of parkland and/or the payment of in-lieu fees for park and recreational facilities to serve the Project pursuant to Sacramento City Code Chapter 16.64 ("Chapter 16.64").

C. Owner has proposed to construct and maintain privately owned open space and recreational facilities on the Property for the benefit of all residents within the Project. Credits against the parkland dedication and in-lieu fee requirements may be granted under sections 16.64.100 and 16.64.110 of Chapter 16.64, for the private recreation facilities to benefit the residents of the Project. The Project consists of 312 single family and 24 multi-family residential units. City has agreed to grant the credits for the private recreational facilities as follows:

The Owner shall construct a private recreational swim area (swimming pool with surrounding deck area for seating), a recreational building consisting of a 4,200 square foot clubhouse with kitchen, meeting rooms and restrooms (the "Recreation Center and Pool"), and a community garden area with 12 raised planters, a garden shed, shade structure, benches and table with chairs (the "Community Garden") to receive credit towards the required dedication for park purposes for the Project. The Recreation Center and Pool and the Community Garden are collectively referred to as the "Private Recreational Facilities". The Private Recreational Facilities are further defined in Exhibit D – Description of Private Recreational Improvements for Recreation Center and Pool (Site Plan) and Exhibit D-1 – Recreation Center and Pool Facilities Cost Estimate, and Exhibit E – Description of Private Recreation Improvements for Community Garden (Site Plan) and Exhibit E-1 - Community Garden Cost Estimate. The land on which the Private Recreational Facilities will be constructed is owned exclusively by Owner.

D. Granting of the credits is conditioned on Owner entering into an agreement with City providing that the private facilities shall be constructed and adequately maintained in perpetuity, and that use of the facilities shall be limited to park and local recreation purposes and shall not be changed to another use without the express written consent of the City Council.

E. Owner and City enter into this Agreement to provide for the construction, maintenance, and use of the private open space and/or recreational facilities and the granting of credits pursuant to Chapter 16.64.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. The Recitals are incorporated into this Agreement.

2. Owner shall construct the Private Recreational Facilities as described in Exhibits D and E to the satisfaction of the City's Director of Parks and Recreation. Construction of the Recreation Center and Pool shall be completed no later than issuance of occupancy permits for 50% of the residential units (168 units out of 336 total units) constructed within the Project. Construction of the Community Garden shall be completed no later than issuance of occupancy permits for 50% of the residential units in the phase surrounding the Community Garden; estimated to be the last phase of the Project (18 units out of 36 total units).

3. City shall grant to Owner a credit of 0.669 acres against the required parkland dedication and payment of in-lieu fees in accordance with Chapter 16.64.

4. Owner, its transferees, successors and assigns, during their respective periods of ownership of the Property, shall, in perpetuity, maintain the Private Recreational Facilities in good repair and condition and in compliance with all applicable City Code requirements. Owner and City acknowledge and agree that Owner shall, in the ordinary course of its business activities, convey after completion of construction the Private Recreational Facilities to a homeowners association formed for ownership of the Project's common areas, from which time, the association shall, in perpetuity, assume the obligations to maintain the Private Recreational Facilities in good repair and condition and in compliance with all applicable City Code requirements.

5. Owner, its transferees, successors and assigns shall, in perpetuity, allow use of the Private Recreational Facilities for the residents of the Project and shall not put the Private Recreational Facilities to another use without the express written consent of the City Council.

6. The provisions of this Agreement are in furtherance of and satisfy the conditions of approval of the Project. A breach of this Agreement shall be an abrogation of the contractual agreement that arises from the conditions of approval of the Subdivision and shall render Owner and its transferees, successors, heirs, and assigns, liable to City under the Subdivision Map Act (Government Code section 66410 et seq.), City Code Chapter 16.64, and any other applicable state and local ordinances and statutes. The provisions of this Agreement are covenants which will run with the land and will be binding in perpetuity on all parties having or acquiring any right, title, or interest in the Property, including a homeowners association or other legal entity that assumes any right, title, or interest in the Private Recreational Facilities constructed by Owner, or its transferees, successors and assigns, and will inure to the benefit of City in furtherance of the public welfare.

7. Should Owner, or its transferees, successors, heirs, and assigns, during their respective periods of ownership of the Property, breach this Agreement, City may seek injunctive relief to enforce this Agreement, or may, at City's option, recover from Owner, or its transferees, successors, heirs, and assigns, as applicable, the sum of \$200,700 (\$250,000 per acre x 0.669 acres x 1.2) with interest thereon from the date of this Agreement until the date of payment, which sum represents the amount of the City's Quimby Act park land in-lieu fee that would otherwise have been payable to City in the absence of this Agreement. Interest shall be calculated at the average rate earned during that period by City's Pool A or such other average rate earned by City on its general investments during that period.

8. In any legal action brought by either party to enforce the terms of this agreement, the prevailing party is entitled to all costs incurred in connection with such an action, including reasonable attorney fees.

9. If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected; provided that the intent of the Agreement may then be reasonably fulfilled.

10. No waiver by the City of any breach of or default by Owner under this Agreement shall be deemed to be a waiver of any other or subsequent breach or default.

11. This Agreement shall be recorded by City in the Office of the Sacramento County Recorder.

12. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute the same instrument.

(Signature page follows)

This Agreement has been entered as of the date first above written.

CITY OF SACRAMENTO

By: _____

James L. Combs, Director
Parks and Recreation Department
For: John F. Shirey, City Manager

APPROVED AS TO FORM:

By: _____
Senior Deputy City Attorney

ATTEST:

By: _____

ENCORE McKINLEY VILLAGE, LLC,
A Delaware limited liability company

By: McKinley Village, LLC, a Delaware
limited liability company
Its: Managing Member

By: The New Home Company, LLC a
Delaware limited liability
company

Its: Member

By: _____
Kevin S. Carson
Its: President

By: RCI-McKinley Village, LLC a
Delaware limited liability company

Its: Member

By: Riverview Capital Investments, Inc.,
LLC a California Corporation

Its: Managing Member

By: _____
Phil Angelides

Its: President

NOTARIZATION REQUIRED

ACKNOWLEDGMENT

State of California)
COUNTY OF Sacramento) ss.

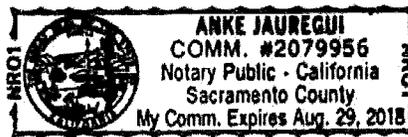
On January 09, 2015 before me, Anke Jauregui
(here insert the name and title of the officer)

personally appeared Kevin Carson
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 Anke Jauregui (Seal)



ACKNOWLEDGMENT

State of California)
COUNTY OF Sacramento) ss.

On January 13, 2015 before me, Vanessa J. Beard, Notary Public
(here insert the name and title of the officer)

personally appeared Phil Angelides
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 *Vanessa J. Beard* (Seal)

ATTACHMENTS

Exhibit A: Legal Description for a Recreation Center Parcel

Exhibit A-1: Plat Map

Exhibit B: Legal Description for Community Garden Parcel

Exhibit B-1: Plat Map

Exhibit C: Tentative Subdivision Map and Condominium Map for McKinley Village (P08-086)

Exhibit D: Description of Private Recreational Improvements for Recreation Center/Pool (Site Plan)

Exhibit D-1: Cost Estimate

Exhibit E: Description of Private Recreation Improvements for Community Garden (Site Plan)

Exhibit E-1: Cost Estimate

EXHIBIT A

**LEGAL DESCRIPTION
FOR A
RECREATION CENTER PARCEL-MCKINLEY VILLAGE**

Being a portion of the Lands of Encore McKinley Village, LLC, a Delaware Limited Liability Company, as said Lands are described in the Grant Deed recorded on June 11, 2014 in Book 2014061, Page 0869 of Official Records of Sacramento County and as depicted on that Record of Survey filed in Book 47 of Surveys, at Page 15, Sacramento County Records, and is located in the City and County of Sacramento, State of California, more particularly described as follows:

COMMENCING at the most northeasterly corner of said Lands, said corner being the northerly terminus of the course "South 29° 14' 28" West, a distance of 734.96 feet" as shown on said Record of Survey; thence from said **POINT OF COMMENCEMENT** and entering said Lands, South 67°09'26" West, a distance of 1535.24 feet to the **TRUE POINT OF BEGINNING**;
Thence from the **TRUE POINT OF BEGINNING** and continuing within said Lands, the following four (4) courses and distances:

1. South 13°36'30" East, a distance of 249.00 feet;
2. South 76°23'30" West, a distance of 242.50 feet;
3. North 13°36'30" West, a distance of 249.00 feet
4. North 76°23'30" East, a distance of 242.50 feet to the **TRUE POINT OF BEGINNING**;

Containing 60,363 square feet or 1.39 acres of land, more or less.

The Basis of Bearings for this description is the line between the two found City of Sacramento Surveyor GPS Geodetic Control Stations designated "G3505" and "G3407" as shown on the map entitled "Record of Survey, GPS Static Survey" filed in Book 63 of Survey Maps at Page 29, Sacramento County Records. The bearing being taken as North 83° 25' 54" West. Distances shown are ground values, to obtain grid values, multiply by a csf=0.99995.

See Exhibit "A-1" plat to accompany description, attached hereto and made a part hereof.

END OF DESCRIPTION

Michael E. Long P.L.S. 6815
Expires September 30, 2014.

Date: 9/4/14

PREPARED BY WOOD RODGERS, INC.
SACRAMENTO, CALIFORNIA

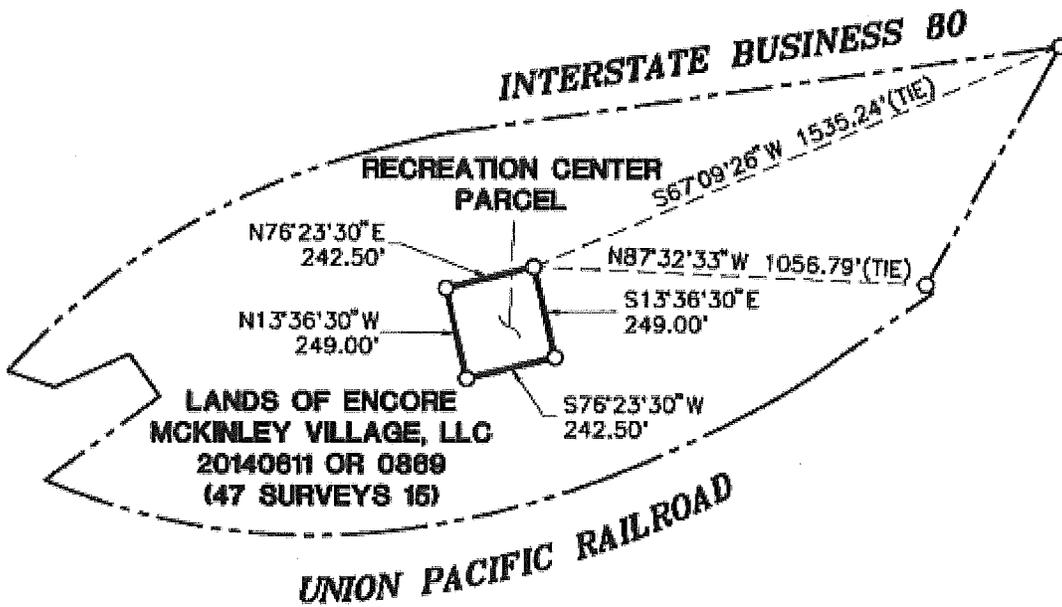


EXHIBIT A-1

PLAT TO ACCOMPANY
DESCRIPTION

RECREATION CENTER PARCEL
McKINLEY VILLAGE

CITY OF SACRAMENTO
STATE OF CALIFORNIA



LANDS OF ENCORE
MCKINLEY VILLAGE, LLC
20140811 OR 0889
(47 SURVEYS 15)



9/4/14



WOOD RODGERS
DEVELOPING INNOVATIVE DESIGN SOLUTIONS

3301 C St, Bldg. 100-B Tel 916.341.7760
Sacramento, CA 95816 Fax 916.341.7767

SEPTEMBER 4, 2014 1262.020 SHEET 1 OF 1

SEE DESCRIPTION FOR
COURSE INFORMATION

SCALE: 1"=400'

EXHIBIT B

LEGAL DESCRIPTION FOR A COMMUNITY GARDEN PARCEL-MCKINLEY VILLAGE

Being a portion of the Lands of Encore McKinley Village, LLC, a Delaware Limited Liability Company, as said Lands are described in the Grant Deed recorded on June 11, 2014 in Book 2014061, Page 0869 of Official Records of Sacramento County and as depicted on that Record of Survey filed in Book 47 of Surveys, at Page 15, Sacramento County Records, and is located in the City and County of Sacramento, State of California, more particularly described as follows:

COMMENCING at the most northeasterly corner of said Lands, said corner being the northerly terminus of the course "South 29° 14' 28" West, a distance of 734.96 feet" as shown on said Record of Survey; thence from said **POINT OF COMMENCEMENT**, coincidental with the southeasterly line of said Lands and Record of Survey, South 29°14'28" West, a distance of 103.39 feet; thence leaving said southeasterly line, North 60°45'32" West, a distance of 8.00 feet to the **TRUE POINT OF BEGINNING**;

Thence from the **TRUE POINT OF BEGINNING**, within said Lands, the following eleven (11) arcs, courses and distances:

1. North 60°45'32" West, a distance of 80.98 feet;
2. South 29°14'28" West, a distance of 60.80 feet to a point on a 40.00 foot radius non-tangent curve;
3. from a radial line which bears North 17°43'41" East, along the arc of said curve to the left, an arc distance of 54.79 feet, through a central angle of 78°29'13";
4. South 29°14'28" West, a distance of 2.61 feet;
5. North 60°45'32" West, a distance of 11.50 feet;
6. South 29°14'28" West, a distance of 78.91 feet to a point on a 15.50 foot radius tangent curve;
7. along the arc of said curve to the right, an arc distance of 4.12 feet, through a central angle of 15°14'17";
8. North 08°12'00" West, a distance of 133.56 feet;
9. along a line parallel with and 15.00 feet distant southeasterly (measured at right angles) from the southeasterly right-of-way line of Interstate

Business 80, as shown on said Record of Survey, North 81°48'00" East, a distance of 232.83 feet;

10. South 43°24'54" East, a distance of 22.40 feet;
11. along a line parallel with and 8.00 feet distant northwesterly (measured at right angles) from the southeasterly line, as shown on said Record of Survey, South 29°14'28" West, a distance of 55.32 feet to **THE TRUE POINT OF BEGINNING.**

Containing 13,940 square feet or 0.32 acres of land, more or less.

The Basis of Bearings for this description is the line between the two found City of Sacramento Surveyor GPS Geodetic Control Stations designated "G3505" and "G3407" as shown on the map entitled "Record of Survey, GPS Static Survey" filed in Book 63 of Survey Maps at Page 29, Sacramento County Records. The bearing being taken as North 83° 25' 54" West. Distances shown are ground values, to obtain grid values, multiply by a csf = 0.99995.

See Exhibit "B-1" plat to accompany description, attached hereto and made a part hereof.

END OF DESCRIPTION

Michael E. Long P.L.S. 6815
Expires September 30, 2016.

Date: 11/25/14



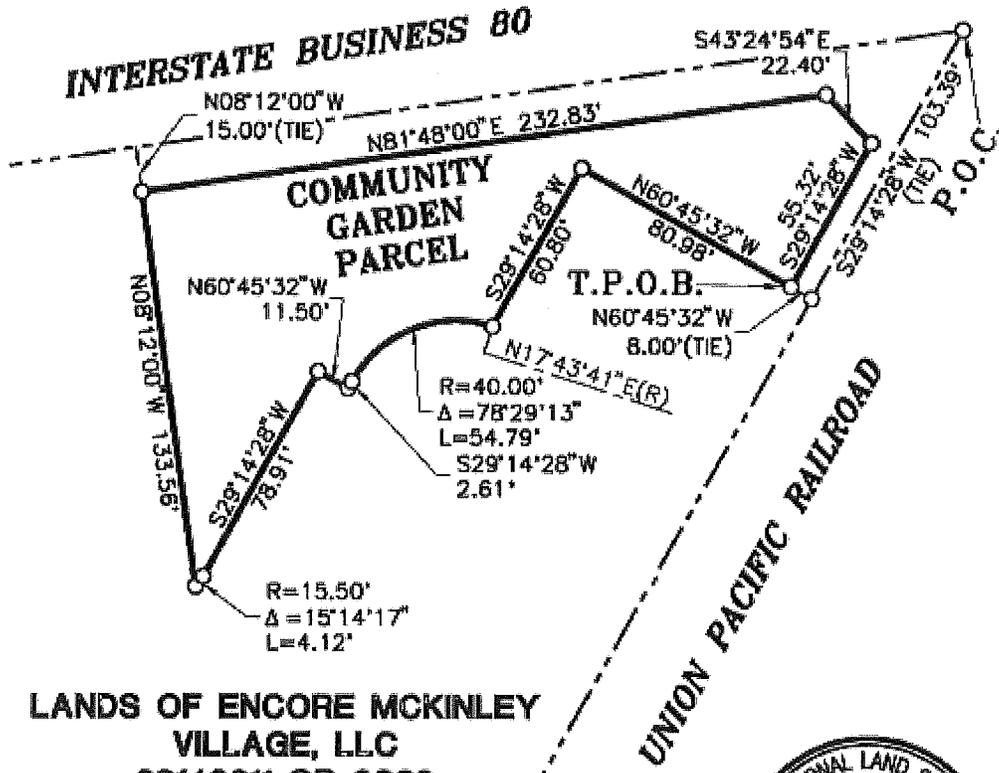
PREPARED BY WOOD RODGERS, INC.
SACRAMENTO, CALIFORNIA

EXHIBIT B-1

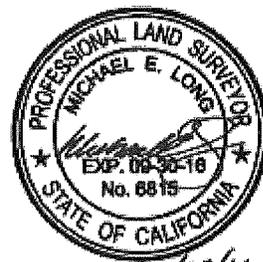
PLAT TO ACCOMPANY
DESCRIPTION

**COMMUNITY GARDEN PARCEL
McKINLEY VILLAGE**

CITY OF SACRAMENTO
STATE OF CALIFORNIA



**LANDS OF ENCORE MCKINLEY
VILLAGE, LLC**
20140611 OR 0869
(47 SURVEYS 15)



11/25/14

SEE DESCRIPTION FOR
COURSE INFORMATION

SCALE: 1"=50'

WOOD RODGERS
DEVELOPING INNOVATIVE DESIGN SOLUTIONS

3301 C St, Bldg. 100-B Tel 916.341.7760
Sacramento, CA 95816 Fax 916.341.7767

NOVEMBER 25, 2014 1262.020 SHEET 1 OF 1

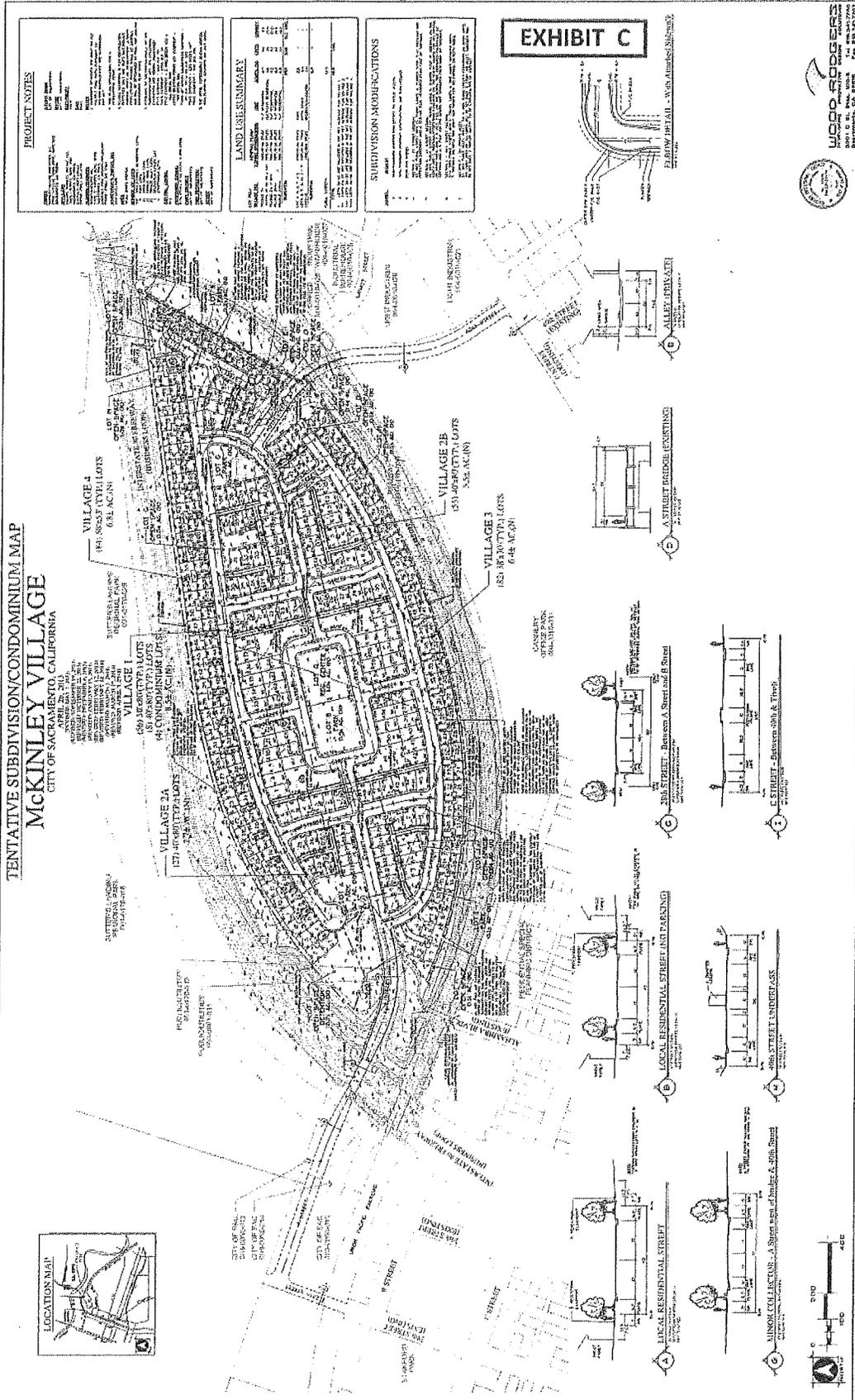


EXHIBIT D

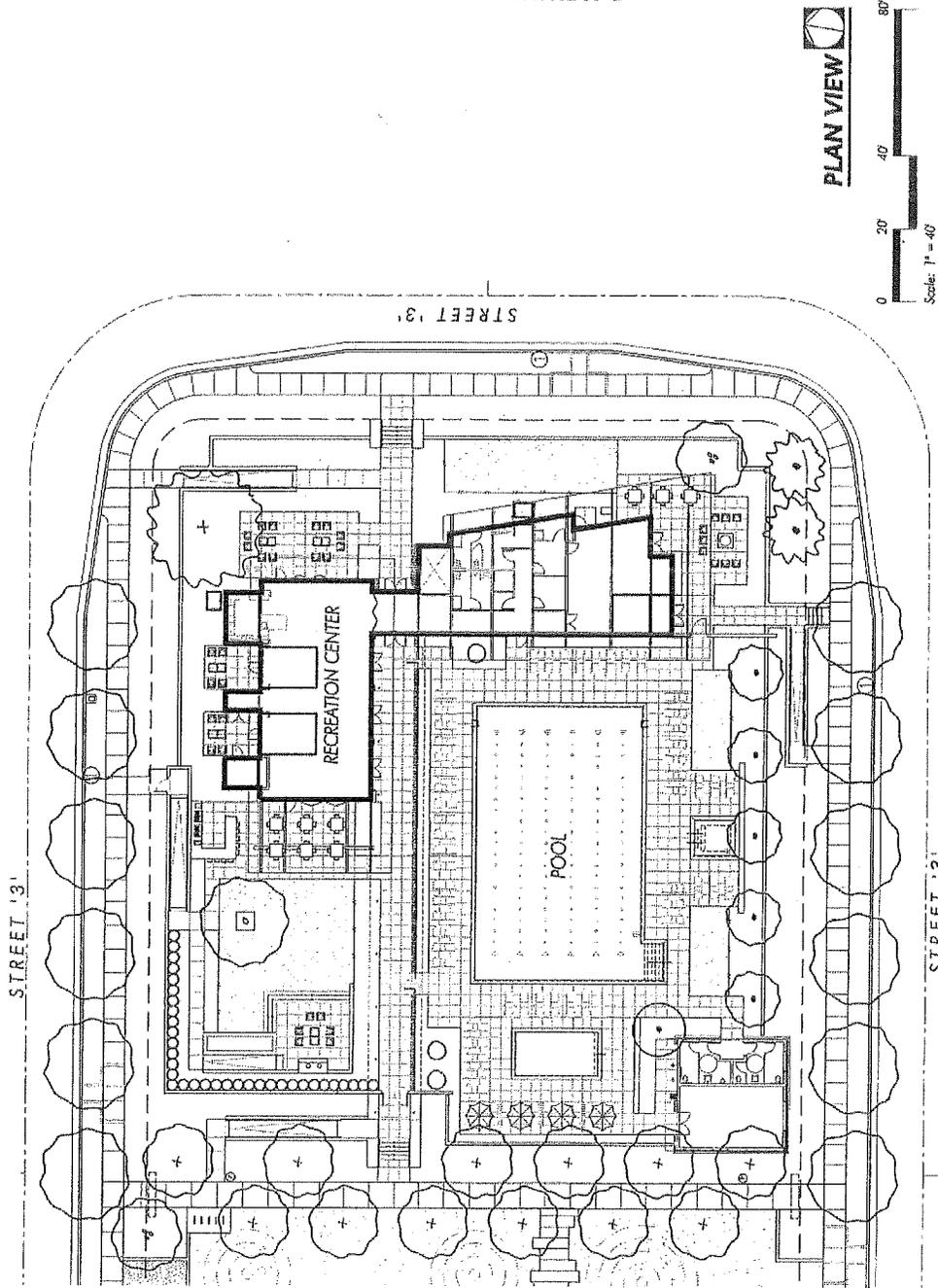


EXHIBIT D: DESCRIPTION OF PRIVATE RECREATION IMPROVEMENTS FOR
REC CENTER / POOL (SITE PLAN)

McKINLEY VILLAGE
SANTA ANITA CALIFORNIA
THE HOME COMPANY
TWO

EXHIBIT D-1

**McKinley Village
Recreation Center Cost Estimate
November 10, 2014**

Item	Estimate
Recreation Center Building	
4,200 +/- Rec Center Bldg w/ Kitchen & Meeting/Community Rooms	1,065,000
Kitchen Appliances & Finishes	35,000
Rec Center Furnishings	100,000
	<u>1,200,000</u>
Pool Facilities	
Pool	250,000
Deck	65,000
Enclosure / Gates	65,000
Equipment Building	20,000
	<u>400,000</u>
Pool Scene	
Landscaping & Trellis	150,000
Walkways & Retaining Walls	125,000
Site Furnishings	100,000
Outdoor Lighting, Signage & Misc.	25,000
	<u>400,000</u>
TOTAL	<u>\$2,000,000</u>

EXHIBIT E

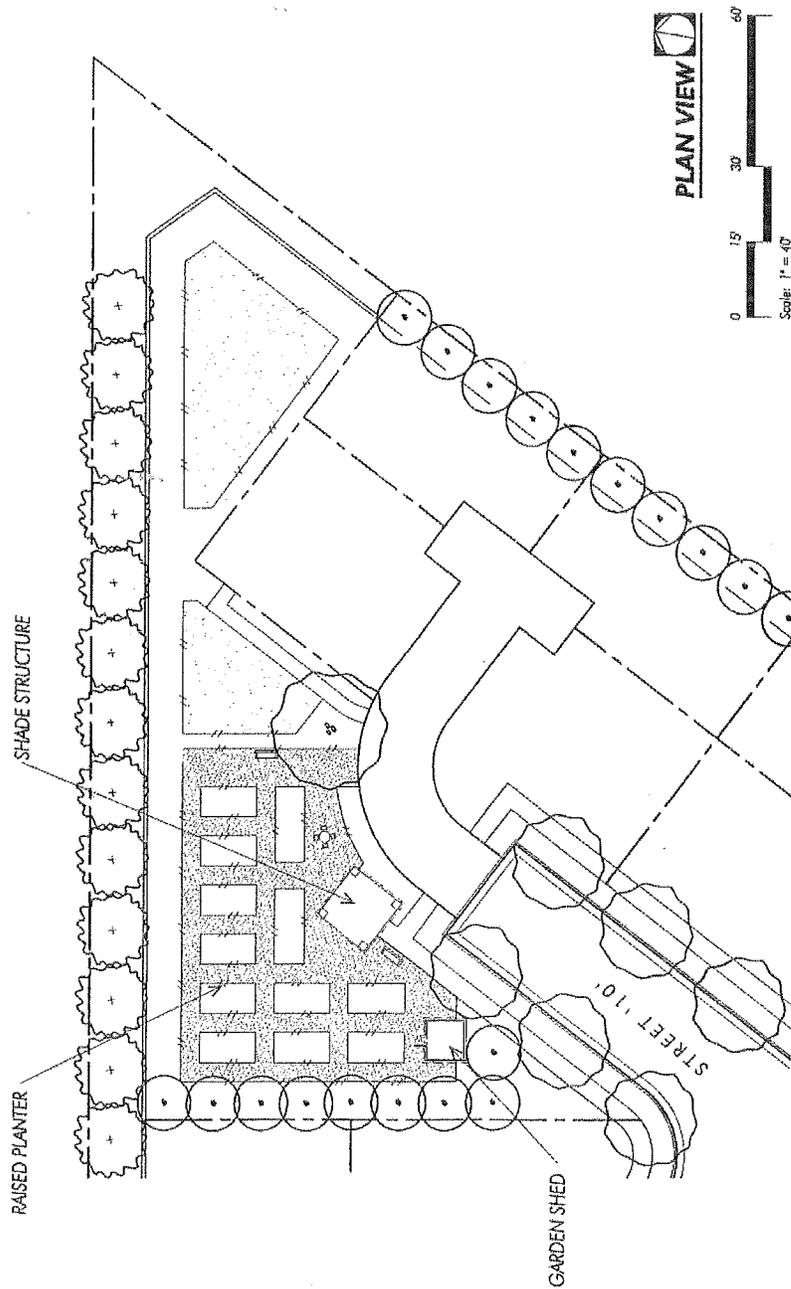


EXHIBIT E: DESCRIPTION OF PRIVATE RECREATION IMPROVEMENTS FOR
COMMUNITY GARDEN (SITE PLAN)

McKINLEY VILLAGE

SACRAMENTO, CALIFORNIA



EXHIBIT E-1

McKinley Village
Community Garden Cost Estimate
November 10, 2014

Item	Estimate
<u>Site Features</u>	\$75,000
Entry Portal/Gazebo	
Garden Shed	
Benches	
Table & Chairs	
Trash Receptacle	
12 Raised Planter (18"H x 8"W x 15'L)	
<u>Hardscape</u>	\$25,000
DG Paving	
Concrete Paving at Seating	
<u>Landscape</u>	\$25,000
Trees	
Shrubs	
Turf (sod)	
Bark Mulch - Ground Covers	
Irrigation	
Fine Grading & Soil Prep.	
TOTAL	\$125,000