

AMENDMENT TO PERMIT TO ENTER

This Amendment to Permit to Enter (this "Amendment") is made as of February 22, 2018, in San Francisco, California, by and between City and County of San Francisco, a municipal corporation acting by and through its Public Utilities Commission (the "SFPUC") and Reservoir Community Partners, LLC a Delaware limited liability company ("Permittee").

RECITALS

This Amendment is made with reference to the following facts and circumstances:

A. SFPUC and Permittee have previously entered into an existing Permit to Enter and Use Property, dated as of December 15, 2017 (the "Permit"), for the right to undertake due diligence investigations and testing at the Balboa Reservoir, which comprises approximately 17 acres of land adjacent to the City College of San Francisco Ocean Campus (the "Property"), and is under the control of SFPUC.

B. The parties now desire to amend the Permit to add certain Permitted Activities that may be performed by Permittee pursuant to the Permit.

For good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the SFPUC and Permittee agree as follows:

1. **Permitted Activities.** The Permitted Activities described in Exhibit B of the Permit are modified by adding to Exhibit B the activities described in Exhibit B-2 attached.

2. **Geotechnical Borings Map.** The Geotechnical Borings Map attached to the Permit as Exhibit B-1 is modified by adding to Exhibit B-1 the Phase II Geotechnical Borings Map attached as Exhibit B-3.

3. **No Joint Venture.** This Amendment or any activity by the SFPUC hereunder does not create a partnership or joint venture between the SFPUC and Permittee relating to the Permit or otherwise. This Amendment does not constitute authorization or approval by the SFPUC of any activity conducted by Permittee, and the SFPUC shall in no way be responsible for the acts or omissions of Permittee on the Property or otherwise.

4. **Attorneys Fees.** In the event a dispute arises concerning this Amendment, the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Amendment, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

5. **References; Defined Terms.** No reference to this Amendment is necessary in any instrument or document at any time referring to the Permit. Any future reference to the Permit shall be deemed a reference to such document as amended hereby. Any capitalized term used in this Amendment and not defined herein shall have the meaning ascribed to such term in the Permit.

6. **Applicable Law.** This Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

7. **Further Instruments.** The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Amendment.

8. **Effective Date.** This Amendment shall become effective as of the date it is duly executed and exchanged by the parties hereto.

9. **Miscellaneous.** Except as expressly modified herein, the terms, covenants and conditions of the Permit shall remain unmodified and in full force and effect. The Permit as amended by this Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and cancels any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. The execution of this Amendment shall not constitute a waiver of relinquishment of any rights that the SFPUC may have relating to the Permit. Permittee and the SFPUC hereby ratify and confirm all of the provisions of the Permit as amended by this Amendment.


In witness whereof, the parties hereto have executed this Amendment as of the date written above.

PERMITTEE:

**RESERVOIR COMMUNITY PARTNERS, LLC, a
Delaware limited liability company**


By its Members:

BHC BALBOA BUILDERS, LLC,
a California limited liability company

By: 
Name: Brad Wiblin
Title: Vice President

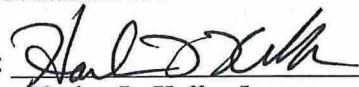
AVB BALBOA LLC,
a Delaware limited liability
company

By: AvalonBay Communities,
Inc., a Maryland corporation,
its sole member

By: 
Name: Nathan Hong
Title: Senior Vice President

SFPUC:

**SAN FRANCISCO PUBLIC UTILITIES
COMMISSION**

By: 
Harlan L. Kelly, Jr.,
General Manager

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney


By: 
Elizabeth A. Dietrich
Deputy City Attorney

EXHIBIT B-2

Description of Additional Permitted Activities

Geotechnical Work

1. Soil Vapor Investigation using 8-10 0.5-inch diameter probes, as depicted on the attached Exhibit B-3
2. Soil Sample Investigation of 6-8 borings, each to a maximum depth of 10 feet, as depicted on the attached Exhibit B-3

EXHIBIT B-3

Additional Geotechnical Borings Map

JUNE 4, 2019

PROJECT NO. 200600000000
SHEET 1 OF 1
Copyright © James A. Wang

PRELIMINARY REPORT

TITLE INFORMATION, PARCEL NUMBERS AND EXCEPTIONS SHOWN HEREON ARE BASED UPON THAT PRELIMINARY TITLE REPORT ISSUED BY FIRST AMERICAN TITLE INSURANCE COMPANY, ORDER NO. 8020-873534

DATED AS OF OCTOBER 06, 2017 AT 7:30 A.M. AMENDED MARCH 15, 2018

THE LOCATION OF UNDISCOVERED UTILITIES, BASED ON SCHEMATIC RECORD UTILITY DRAWINGS OBTAINED FROM THE CITY ENGINEER AND POWER GAS ELECTRIC UTILITIES, WERE LOCATED BY THE FIELD OPERATOR. ON THE SECOND SURVEY, WAS CONDUCTED IN THE STREET PAVEMENT, CROSS BORE, LOT AND ALL UNDISCOVERED UTILITY LOCATIONS WERE RE-VERIFIED.

IF THE CLIENT REQUESTS FIELD LOCATION OF UNDISCOVERED IMPROVEMENTS (WATER, GAS, STORM SEWER, SEWER, ETC.), CLIENT MUST PROVIDE THE LOCATION OF ALL IMPROVEMENTS WHICH WERE LOCATED AT INTERVALS RECORDED BY THE SURVEYOR OR MAKE ARRANGEMENTS TO HAVE A U.S. MAP, SANITATION AND GROUND OF THE SUBSTATION TIE TO FIELD LOCATE.



[illegible]

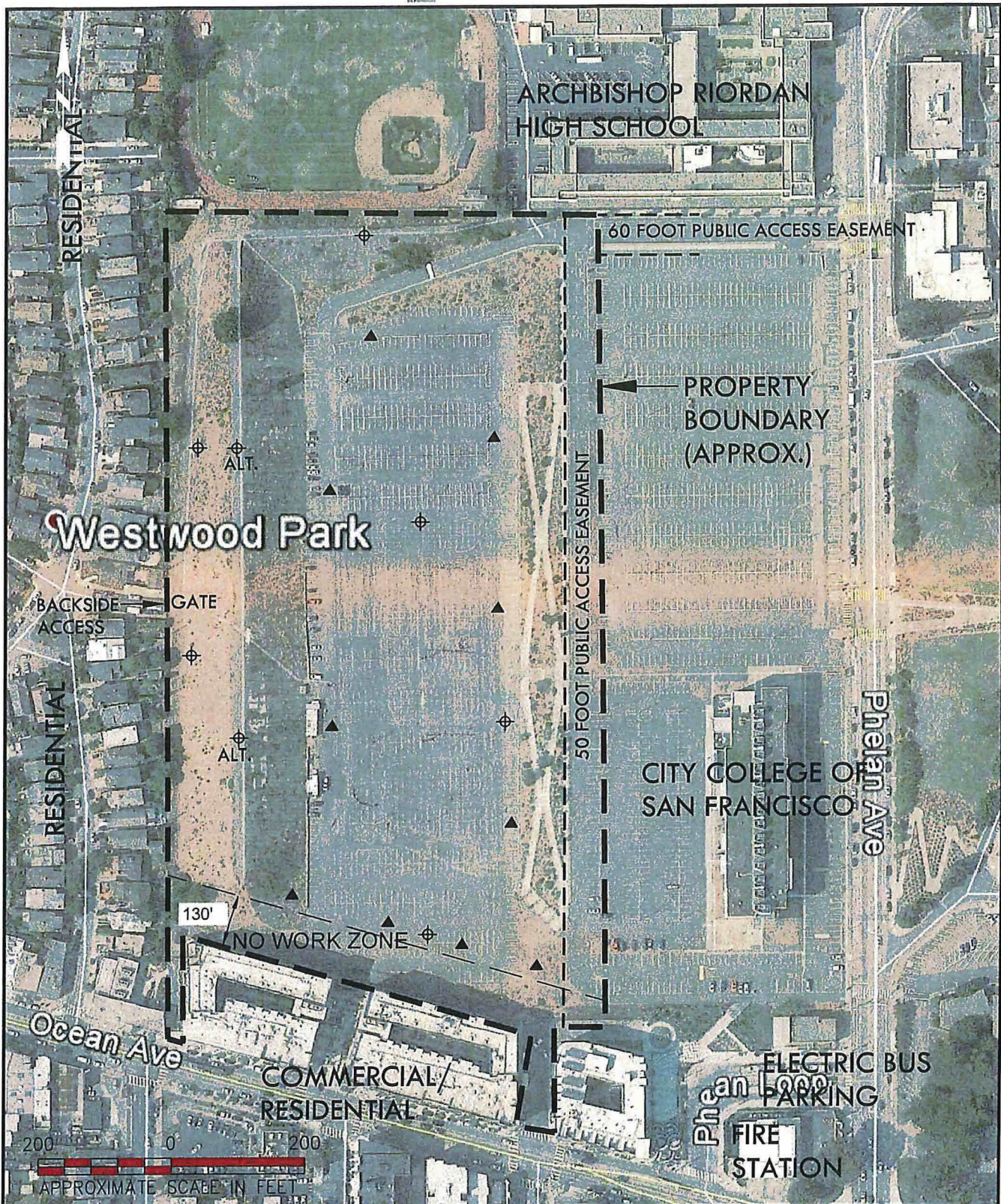
1. **PI** (Polarization Index) is a ratio of the insulation resistance at 1 minute to the insulation resistance at 30 seconds. It is used to assess the condition of electrical insulation.

2. **PV** (Partial Voltage) is a test method used to determine the dielectric strength of electrical insulation. It involves applying a voltage to the insulation and measuring the resulting current.

PRELIMINARY
FOR STUDY PURPOSES ONLY
DATE: 04/04/2016

[illegible]

-  Proposed Soil Boring Location
-  Proposed Soil Vapor Sample Location



SCS ENGINEERS

ENVIRONMENTAL CONSULTANTS

7041 KOLL CENTER PARKWAY SUITE 135
PLEASANTON, CALIFORNIA
PH. (925) 426-0080 FAX. (925) 426-0707

| | | |
|---------------------------|-----------------|-----------------------|
| PROJ. NO.: 01217344.00 | DWN. BY: TMS | ACAD. FILE: F2.dwg |
| DATE: 1/25/18 | CHK. BY: JR | APP. BY: JR |

SHEET TITLE:

SITE PLAN

PROJECT TITLE:

11 PHELAN AVENUE
SAN FRANCISCO, CALIFORNIA

SCALE:

AS SHOWN

FIGURE NO.:

2