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OFFICIAL RECORDS OF ALAMEDA COUNTY
STEVE MANNING
RECORDING FEE: 141.00

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First American Title
Recording Requested By:

Fremont State Street Center, LLC
777 California Avenue
Palo Alto, CA 94304
Attn: General Counsel



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When Recorded, Mail To:

Mark Detterman
Alameda County Department of Environmental Health
1131 Harbor Bay Parkway
Alameda, California 94502

**COVENANT AND ENVIRONMENTAL RESTRICTION
ON PROPERTY**

Locale at State Street, Fremont, California

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 2nd day of MARCH, 2018 by Fremont State Street Center, LLC ("Covenantor") who is the fee owner of record of that certain property consisting of Lots 3 of Tract 8279 ("Lot 3") and Lot 4 of Tract 8279 ("Lot 4") and portions of the public and private streets in the development situated in the City of Fremont, County of Alameda, State of California, which are more particularly described in Exhibit A attached hereto and incorporated herein by this reference (hereinafter referred to as the "Burdened Property"), for the benefit of the Alameda County Department of Environmental Health (the "County"), with reference to the following facts:

A. Contamination of the Burdened Property. Soil vapor at the Burdened Property was contaminated by the leakage and subsequent migration of tetrachloroethylene (PCE) vapor from the adjacent State Street sewer onto the subject property. This leakage and migration resulted in contamination of soil vapor with volatile organic chemicals (VOCs) including PCE, which constitute hazardous materials as that term is defined in Health & Safety Code Section 25260.

B. Mitigation of the Hazardous Material. Corrective actions consisting of vapor mitigation measures have been implemented to mitigate the risk of exposure to Occupants to VOCs from soil vapor on the Burdened Property. Vapor mitigation measures at the Burdened Property include vapor mitigation systems installed beneath selected buildings and utility trench dams and plugs installed in utility corridors at key locations on the Property as documented in Exhibit B. The vapor mitigation systems consist of subslab vapor membranes and/or passive subslab venting systems beneath the membrane within the footprint of selected Buildings on the Property. The vapor mitigation systems and the utility plugs and dams are designed to mitigate the potential for soil vapor beneath the burdened property to contribute unacceptable human health risk to indoor air.

The operations and maintenance of the vapor mitigation systems, and the utility trench dams and plugs, is pursuant the *Vapor Mitigation System, Trench Dams and Trench Plugs, Operations and Maintenance Plan, Locale at State Street, Fremont, California* (OMP), prepared by PES Environmental, Inc., dated February 28, 2018 which is incorporated by reference, including future amendments hereto. The OPM may be found on the State Water Resources Control Board Geotracker website https://geotracker.waterboards.ca.gov/regulators/screens/menu.asp?global_id=T10000011189

The Covenantor shall hire a "Qualified Environmental Professional" to inspect the integrity of the vapor mitigation measures at the burdened property as specified in the OMP, and submit a report annually to the County (Record ID: RO0003287) and the State Water Board's Geotracker website (Geotracker Global ID: T10000011189) for the life of the Improvements at the Burdened Property. Covenantor accepts ongoing annual County fees for oversight and review of annual reports by the County, as provided by Health and Safety Code §101480 and maintenance of a deposit/refund account as authorized in Alameda County Ordinance Code § 6.92.040L.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil vapor on the Burdened Property. Without the vapor mitigation measures, which have been installed on the Burdened Property, exposure to these contaminants could take place via inhalation of vapors. The risk of public exposure to the contaminants has been substantially lessened by the controls described herein.

D. Adjacent Land Uses and Population Potentially Affected. The Burdened Property is used for residential and commercial land uses and is adjacent to commercial land uses.

E. Disclosure. Full and voluntary disclosure to the County of the presence of hazardous materials on the Burdened Property has been made and extensive sampling of the Burdened Property has been conducted.

F. Use Restrictions. Covenantor desires and intends that in order to benefit the County, and to protect the present and future public health and safety, the Burdened Property shall be used in such a manner as to avoid potential harm to persons or property that may result from hazardous materials that may have been deposited on portions of the Burdened Property.

ARTICLE I GENERAL PROVISIONS

I.1 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "Restrictions") upon and subject to which the Burdened Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on the land of hazardous materials. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Burdened

Property, including any future subdivision of the Burdened Property into additional lots or condominium units, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the County and all Owners and Occupants. Each and all of the Restrictions are imposed upon the entire Burdened Property, including any future subdivision of the Burdened Property into additional lots or condominium units, unless expressly stated as applicable to a specific portion of the Burdened Property. Each and all of the Restrictions run with the land pursuant to section 1471 of the Civil Code. Each and all of the Restrictions are enforceable by the County.

1.2 Concurrence of Owners and Lessees Presumed. All purchasers, lessees, or possessors of any portion of the Burdened Property shall be deemed by their purchase, leasing, or possession of such Burdened Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of the County and the Owners and Occupants of the Burdened Property and that the interest of the Owners and Occupants of the Burdened Property shall be subject to the Restrictions contained herein.

1.3 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in or attached to each and all deeds and leases of any portion of the Burdened Property. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this Covenant and Agreement has been attached to or incorporated into any given deed or lease.

1.4 Purpose. It is the purpose of this instrument to convey to the County real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

ARTICLE II DEFINITIONS

2.1 County. "County" shall mean the Alameda County Department of Environmental Health and shall include its successor agencies, if any.

2.2 Improvements. "Improvements" shall mean all buildings, utilities, roads, driveways, paved parking areas, courtyards, landscaped areas, and playgrounds constructed or placed upon any portion of the Burdened Property.

2.3 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to use and/or occupy all or any portion of the Burdened Property.

2.4 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and/or its successors in interest, who hold title to all or any portion of the Burdened Property.

2.5 Qualified Environmental Professional. "Qualified Environmental Professional" shall mean a person qualified to practice in California in the branch of civil engineering as a Registered Civil Engineer, or a subordinate working under the oversight of a Registered Civil Engineer.

ARTICLE III
DEVELOPMENT, USE AND CONVEYANCE OF THE BURDENED PROPERTY

3.1 Restrictions on Development and Use. Covenantor promises to restrict the use of the Burdened Property as follows:

a. No Owners or Occupants of the Burdened Property or any portion thereof shall install new utilities on the Property, unless approval is first sought, and then expressly permitted in writing by the County. Any disturbance of the utility trench dams or plugs by grading, excavation, trenching, or backfilling, shall be managed by the Covenantor or his agent in accordance with the OMP, and all applicable provisions of local, state, and federal law;

b. No Owners or Occupants of the Burdened Property or any portion thereof shall cut, core, or otherwise penetrate the concrete slab of any buildings on the Burdened property where vapor mitigation systems are installed, unless approval is first sought, and then expressly permitted in writing by the County. Emergency repairs must be reported to the County. Any repair of the vapor mitigation systems shall be managed by the Covenantor or his agent in accordance with the OMP, and all applicable provisions of local, state, and federal law;

c. All uses and development of the Burdened Property shall be consistent with any applicable site documents, including the OMP. All uses and development of the Property shall preserve the integrity of the vapor mitigation systems installed under specified buildings, and utility trench plugs and dams, unless otherwise expressly permitted in writing by the County.

d. The Owner shall notify the County of each of the following: (1) The type, cause, location and date of any disturbance to the vapor mitigation systems, trench plugs, and trench dams installed on the Burdened Property pursuant to the requirements of the County, which could affect the ability of such vapor mitigation systems, trench plugs, and trench dams, to perform their respective functions and (2) the type and date of repair of such disturbance. Notification to the County shall be made by registered mail within ten (10) working days of both the discovery of such disturbance and the completion of repairs and shall be included in the annual report;

e. The Covenantor agrees that the County, and/or any persons acting pursuant to County cleanup orders, or responsible for implementing operations and maintenance activities, with respect to the vapor mitigation systems, and utility trench plugs and dams, shall have reasonable access to the Burdened Property including but not limited to the vapor mitigation systems, and utility trench plugs and dams for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the Water Code.

f. No Owner or Occupant of the Burdened Property shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Burdened Property. All

use and development of the Burdened Property shall preserve the integrity of the vapor mitigation systems, and utility trench plugs and dams.

3.2 Enforcement. Failure of an Owner or Occupant to comply with any of the restrictions, as set forth in paragraph 3.1, shall be grounds for the County, by reason of this Covenant, to have the authority to require that the Owner immediately repair any damage to the vapor mitigation system, trench plugs, and trench dams installed on the Burdened Property pursuant to the requirements of the County. Violation of the Covenant shall be grounds for the County to file civil actions against the Owner or Occupant as provided by law.

3.3 Notice in Agreements. After the date of recordation hereof, all subsequent Owners and Occupants shall be given written notice of this Covenant. Any such instrument of notice shall contain the following statement:

The land described herein contains hazardous materials in soil vapor and is subject to a deed restriction dated as of _____, 20__, and recorded on _____, 20__, in the Official Records of _____ County, California, as Document No. _____, which Covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists.

ARTICLE IV VARIANCE AND TERMINATION

4.1 Variance. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or any portion thereof may apply to the County for a written variance from the provisions of this Covenant.

4.2 Termination. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or a portion thereof may apply to the County for a termination of the Restrictions as they apply to all or any portion of the Burdened Property.

4.3 Term. Unless terminated in accordance with paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V MISCELLANEOUS

5.1 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Burdened Property or any portion thereof to the general public.

5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other

communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or official of a government agency being served, or (2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

If To: "Covenantor"
Fremont State Street Center, LLC
777 California Avenue
Palo Alto, CA 94304
Attn: General Counsel

If To: "County"
Alameda County Department of Environmental Health
Attention: Director
1131 Harbor Bay Parkway
Alameda, California 94502

5.3 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.4 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.5 Recordation. This instrument shall be executed by the Covenantor and by the Director of the Department of Environmental Health. This instrument shall be recorded by the Covenantor in the County of Alameda within ten (10) days of the date of execution.

5.6 References. All references to Code sections include successor provisions.


5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to effect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.


{Covenant Continues on Following Page}

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

Covenantor: Fremont State Street Center, LLC,
a Delaware limited liability company

By: SummerHill Homes LLC,
a California limited liability company,
its manager

By: 
Name: Lance Freed AKA Lance G freed
Its: VP of Land Acquisition

By: 
Name: Joshua Taylor AKA Joshua C. Taylor
Its: Assistant Secretary

Agency: Alameda County Department of Environmental Health

By: 
Ronald Browder

Title: Director

Date: 08-02-2018

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

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 March 2, 2018 before me, AMANDA S SINCLAIR, NOTARY PUBLIC
(insert name and title of the officer)

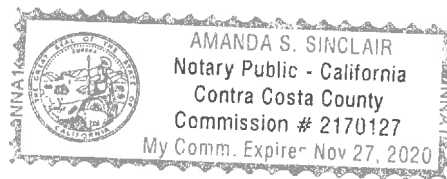
personally appeared Ronald Browder
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) 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

Amanda Sinclair (Seal)



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 Contra Costa

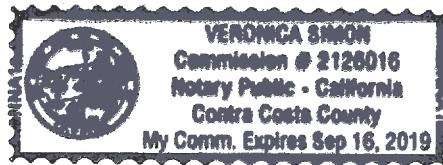
On Feb 28, 2018, before me Veronica Simon, Notary Public, personally appeared

Lance S. Freed and Joshua C. Taylor, 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.

Veronica Simon
Notary Public in and for said
County and State



Veronica Simon
Comm # 2126016
My Comm Exp Sep 16, 2019

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.

See Attached
Notary Public in and for said
County and State

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Lots 3 and 4 shown on the Map for Tract 8279 (FOR CONDOMINIUM PURPOSES) recorded on July 12, 2016 in book 341 of maps at pages 39-43 in the Official Records of Alameda County.

REAL PROPERTY in the City of Fremont, County of Alameda, State of California, described as follows:

LEGAL DESCRIPTION
MEMORIAL STREET, DECLARATION STREET AND NATION AVENUE
(341 M 39)

REAL PROPERTY SITUATE IN THE CITY OF FREMONT, COUNTY OF ALAMEDA, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

BEING MEMORIAL STREET, DECLARATION STREET AND NATION AVENUE, AS SAID STREETS AND AVENUE ARE SHOWN ON THE FINAL MAP OF TRACT 8279 FILED ON JULY 12, 2016 IN BOOK 341 OF MAPS AT PAGE 39, ALAMEDA COUNTY RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE WESTERLY CORNER OF SAID MEMORIAL STREET; THENCE ALONG THE EXTERIOR LINES OF SAID MEMORIAL STREET, DECLARATION STREET AND NATION AVENUE THE FOLLOWING THIRTEEN (13) COURSES:

- 1) NORTHEASTERLY ALONG A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST, WHICH A RADIAL BEARS NORTH 65°04'49" WEST TO THE RADIUS POINT, HAVING A RADIUS OF 1055.50 FEET, A CENTRAL ANGLE OF 02°48'39" AND AN ARC LENGTH OF 51.78 FEET,
- 2) ALONG A REVERSE CURVE HAVING A RADIUS OF 944.50 FEET, A CENTRAL ANGLE OF 00°33'08" AND AN ARC LENGTH OF 9.10 FEET,
- 3) SOUTH 56°55'30" EAST 382.92 FEET,
- 4) ALONG A TANGENT CURVE CONCAVE TO THE NORTH, HAVING A RADIUS OF 16.00 FEET, A CENTRAL ANGLE OF 91°05'10" AND AN ARC LENGTH OF 25.44 FEET,
- 5) NORTH 31°59'20" EAST 211.28 FEET,
- 6) NORTH 56°55'30" WEST 411.80 FEET,
- 7) NORTH 31°55'57" EAST 60.01 FEET,
- 8) SOUTH 56°55'30" EAST 411.85 FEET,
- 9) NORTH 31°59'20" EAST 230.72 FEET,
- 10) SOUTH 56°55'58" EAST 54.01 FEET,
- 11) SOUTH 31°59'20" WEST 496.80 FEET,

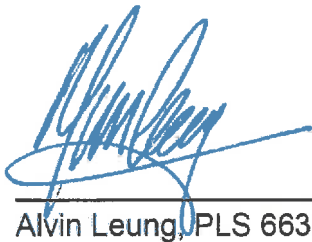
12)ALONG A TANGENT CURVE CONCAVE TO THE NORTH, HAVING A RADIUS OF 80.00 FEET, A CENTRAL ANGLE OF 91°05'10" AND AN ARC LENGTH OF 127.18 FEET AND

13)NORTH 56°55'30" WEST 362.56 FEET TO THE **POINT OF BEGINNING**.

Containing an area of 78,225 square feet, more or less.

END OF DESCRIPTION

This description was prepared by or under the direction of:



Alvin Leung, PLS 6630

February 26, 2018

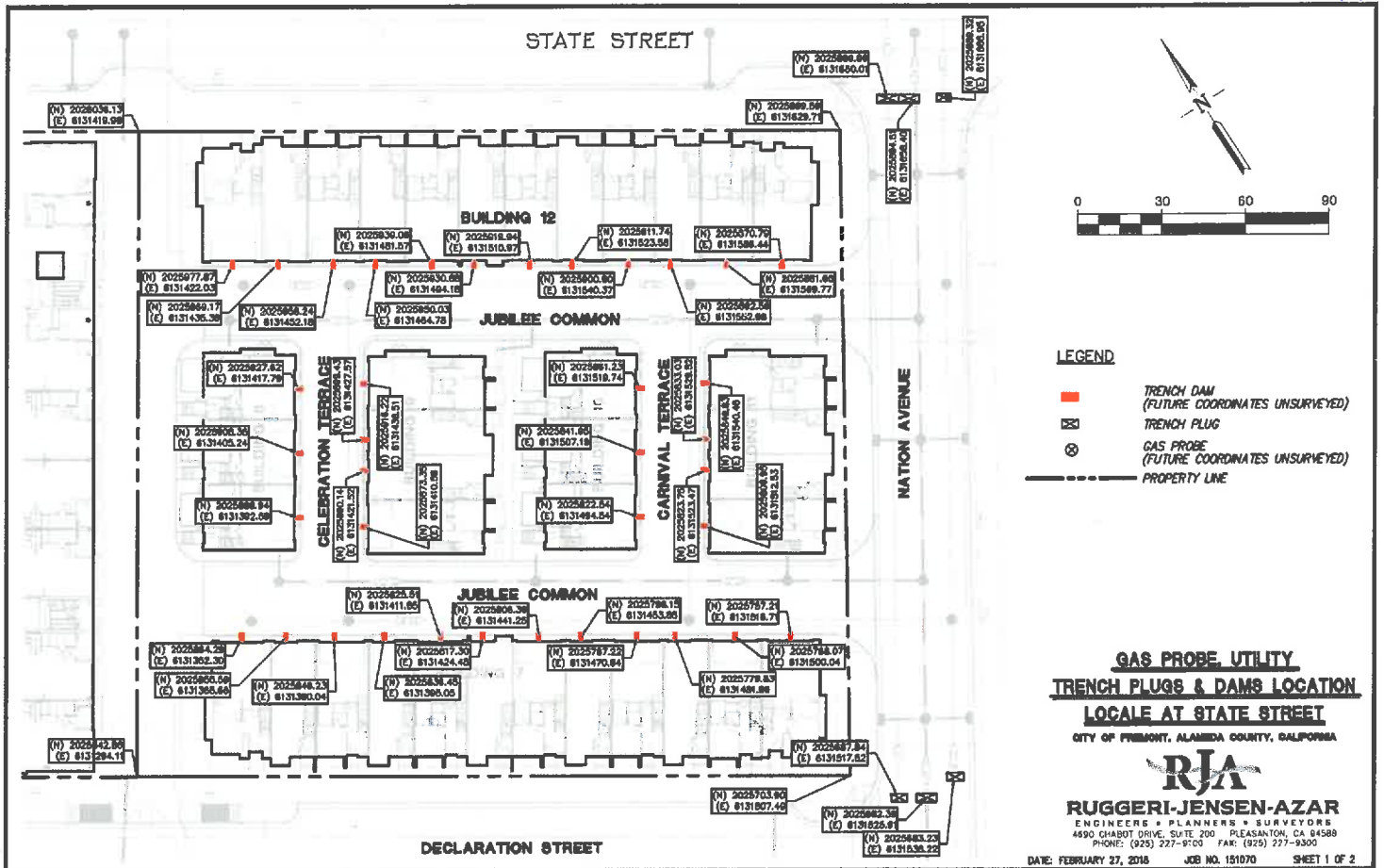
Date



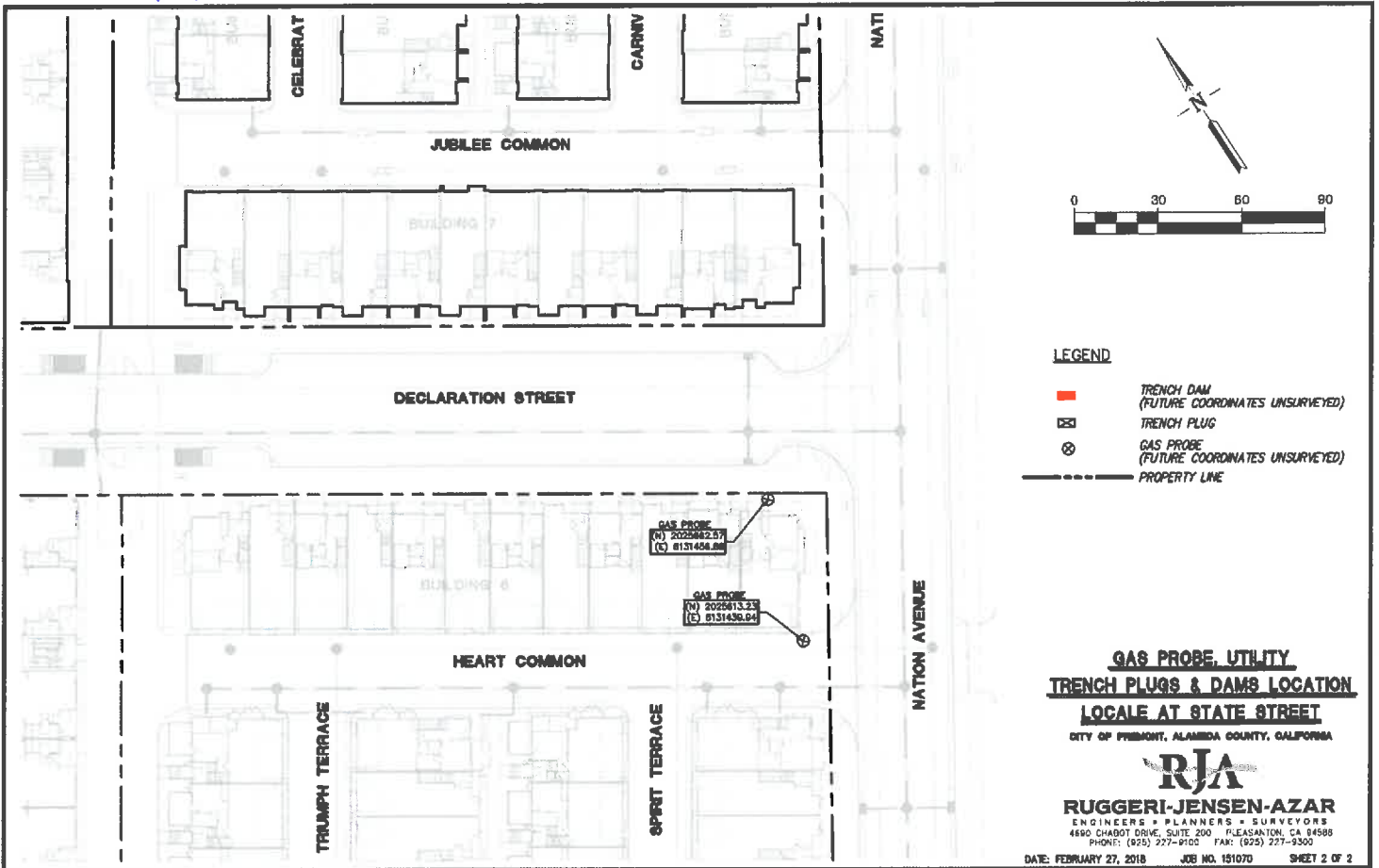
EXHIBIT B

VAPOR MITIGATION SYSTEMS AND UTILITY TRENCH PLUGS AND DAMS LOCATIONS

Clarity Copy can be found at: First American Hq 2000 Crow Canyon Pl. Ste 140 San Ramon, CA 94583



Clarify copy can be found at 2090 Crown Canyon Pl Ste 190 San Ramon CA 94583
 First American Ltk



**GAS PROBE, UTILITY
 TRENCH PLUGS & DAMS LOCATION
 LOCALE AT STATE STREET
 CITY OF FREMONT, ALAMEDA COUNTY, CALIFORNIA**

RJA
RUGGERI-JENSEN-AZAR
 ENGINEERS • PLANNERS • SURVEYORS
 4690 CHADOT DRIVE, SUITE 200 PLEASANTON, CA 94588
 PHONE: (925) 227-9100 FAX: (925) 227-9300
 DATE: FEBRUARY 27, 2016 JOB NO. 151070 SHEET 2 OF 2