



Office of the City Manager

CONSENT CALENDAR  
July 14, 2020

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Timothy Burroughs, Director, Planning and Development Department  
 Subject: City consent to declaration of easements between 2009 Addison and 2015 Addison

RECOMMENDATION

Adopt first reading of an Ordinance authorizing the City Manager to give City consent to an amended declaration of easements for safety and access between 2015 Addison Street, which is owned by the Berkeley Repertory Theater, and 2009 Addison Street, owned by the Joint Powers Financing Authority, leased by the City of Berkeley, and subleased to the Berkeley Repertory Theater.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The Berkeley Repertory Theater (BRT) has applied for permits to construct a seven-story mixed-use building to provide housing for artists and theater professionals on a parcel which it owns at 2009 Addison. The site is adjacent to BRT's Roda Theater at 2015 Addison. The Roda sits on land which is owned by the Joint Powers Financing Authority, leased to the City of Berkeley, and in turn subleased to BRT for the operation of the Roda.

On April 14, 2020, the members of the City Council, sitting as the Joint Powers Finance Authority (JPA), approved an amended declaration of easements between the two adjacent parcels, to allow for continued safe access to and emergency egress from the Roda Theater across the parcel at 2015 Addison. This amended easement declaration was required due to construction plans for 2015 Addison having impacts upon the previous safety easements.

Because the City of Berkeley is also party to the property arrangement, by virtue of being the lessee from the JPA and sublessor to the BRT for the land at 2009 Addison on which the Roda Theater sits, the City must also assent to the new easement terms prior to the recording of the easement with Alameda County. The proposed Ordinance which accompanies this report would confer that assent, which after approval would be

executed via an amended declaration of easements, a draft of which is included as Attachment 2 to this report.

The development underway at 2009 Addison Street will support the Strategic Plan Priority of creating affordable housing and housing support services for our most vulnerable community members.

### BACKGROUND

The Berkeley Repertory Theater has been an important local cultural institution since 1968, through its award-winning productions on two theater stages as well as its education and cultural enrichment activities for youth and emerging new artists. The Roda Theater was built in 2001 with financing from the JPA. In order to secure financing through Lease Revenue Bonds, the City of Berkeley was made the direct lessor of the land at 2009 Addison, in turn subleasing the land to the BRT. City lease payments are assigned by the JPA to a trustee for payment of the bonds, and upon expiration of the lease the intent is for the City to convey the facility to the BRT in perpetuity.

### ENVIRONMENTAL SUSTAINABILITY

Amending the easement agreement will allow BRT to replace the previous building at 2015 Addison with a new structure built to CALGreen code standards, with a LEED (Leadership in Energy and Environmental Design) certified Gold rating. Adding housing for artists and theater professionals which is immediately adjacent to the BRT facilities will significantly reduce automotive travel and resulting greenhouse gas emissions.

### RATIONALE FOR RECOMMENDATION

Facilitating the production of on-site housing for artists associated with the BRT serves numerous City goals while supporting the expansion of an important civic institution. Conferring final approval on the amended declaration of easements will help ensure the safety of persons using both the Roda Theater and the new facility at 2015 Addison Street.

### ALTERNATIVE ACTIONS CONSIDERED

None.

### CONTACT PERSON

Jim Bondi, Associate Management Analyst, Planning and Development Department,  
(510) 981-7428

### Attachments:

- 1: Ordinance  
Exhibit A: Description of easements
- 2: Draft Amended declaration of easements

ORDINANCE NO. -N.S.

AUTHORIZING THE CITY MANAGER TO PROVIDE CITY CONSENT TO AN AMENDED DECLARATION OF EASEMENTS FOR SAFETY AND ACCESS BETWEEN 2015 ADDISON STREET, WHICH IS OWNED BY THE BERKELEY REPERTORY THEATER, AND 2009 ADDISON STREET, WHICH IS LEASED BY THE CITY OF BERKELEY AND SUBLEASED TO THE BERKELEY REPERTORY THEATER.

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

Section 1. Conveyance of property authorized.

The City Manager is hereby authorized to provide City consent to the amended declaration of easements for safety and access between 2015 Addison Street, owned by the Berkeley Repertory Theater, and 2009 Addison Street, owned by the Joint Powers Financing Authority, leased by the City of Berkeley, and subleased to the Berkeley Repertory Theater, substantially in the form attached hereto as Exhibit A, for the real property described therein.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 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.

Exhibits

A: Description of Easements

Berkeley Repertory Theater  
1995-067694  
APN 057-2025-023-00

## EXHIBIT A1

### Access and Utility Easement

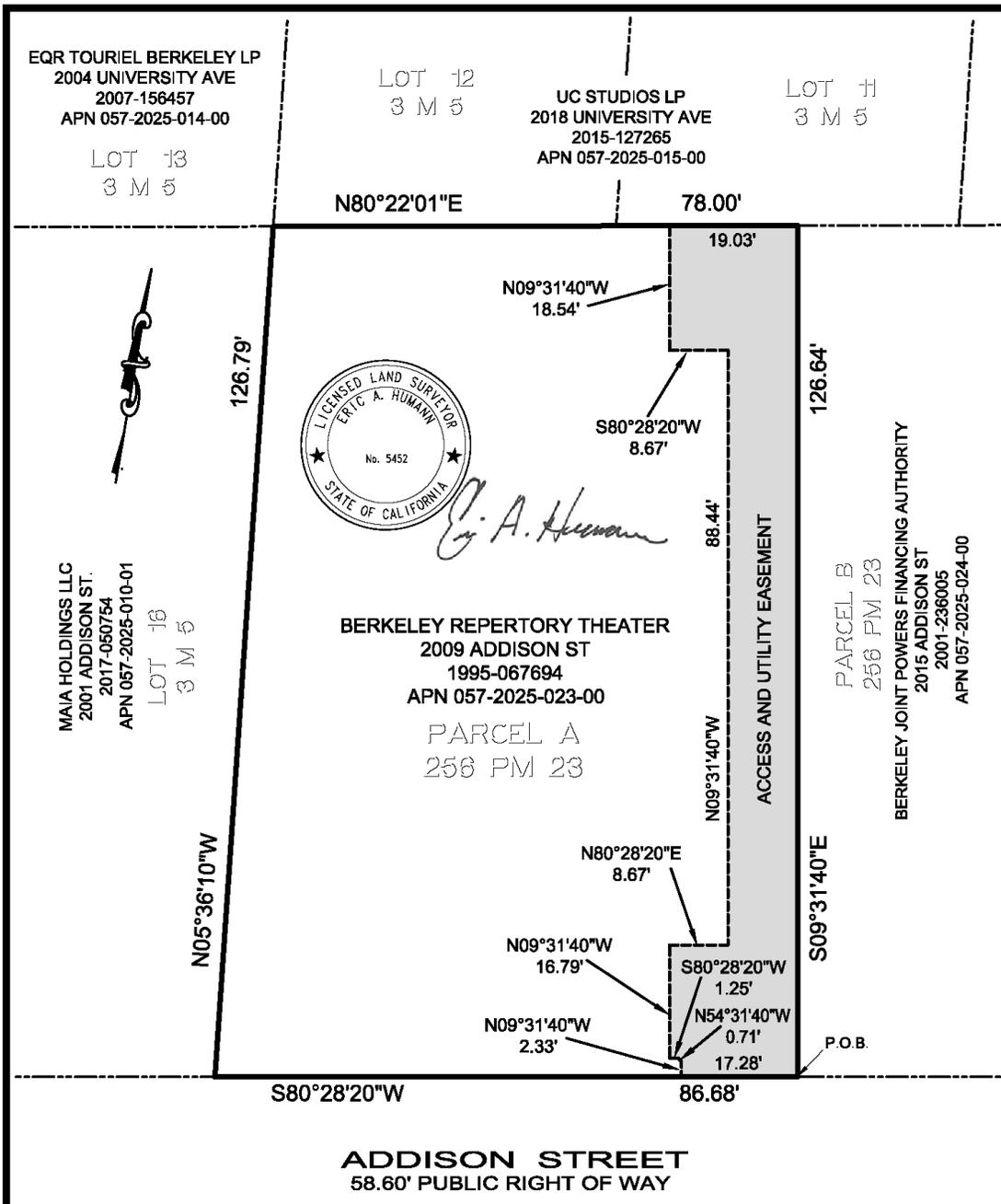
Real property situated in City of Berkeley, County of Alameda, State of California described as follows:

A portion of Parcel A, Parcel Map 7429, filed March 23, 2001 in Book 256 of Parcel Maps, at pages 23 and 24, described as follows:

**Beginning** at the southeasterly corner of the aforementioned Parcel A, said point also being on the northern right-of-way line of Addison Street (58.60 feet wide), thence along said line South 80°28'20" West 17.28 feet; thence leaving last line North 09°31'40" West 2.33 feet; thence North 54°31'40" West 0.71 feet; thence South 80°28'20" West 1.25 feet; thence North 09°31'40" West 16.79 feet; thence North 80°28'20" East 8.67 feet; thence North 09°31'40" West 88.44 feet; thence South 80°28'20" West 8.67 feet; thence North 09°31'40" West 18.54 feet to a point on the northern line of said Parcel A; thence along the exterior lines of said Parcel A North 80°22'01" East 19.03 feet and South 09°31'40" East 126.64 feet to the **Point of Beginning**.

Containing a total area of 1,638 square feet more or less.

**Attached hereto is a plat entitled "Exhibit A2" and by this reference made a part hereof.**




**HUMANN COMPANY INC.**  
 ENGINEERING - SURVEYING  
 1021 BROWN AVE. LAFAYETTE, CA 94549  
 PH (925)283-5000 FAX (925)283-3578

**EXHIBIT A2**  
 ACCESS & UTILITY EASEMENT  
 2009 ADDISON STREET  
 BERKELEY CALIFORNIA

SCALE	1" = 20'
DATE	02/25/2020
BY	H.N.
JOB NO.	16155

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Farella Braun + Martel LLP  
235 Montgomery Street  
San Francisco, CA 94104  
Attn: Richard Shapiro

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APN: 057-2025-023-00, 057-2025-024-00

**FIRST AMENDMENT TO DECLARATION OF EASEMENTS**

THIS FIRST AMENDMENT TO DECLARATION OF EASEMENTS (this “**Amendment**”) is made as of \_\_\_\_\_, 2020, by and among BERKELEY REPERTORY THEATRE, a California nonprofit corporation (“**BRT**”), the BERKELEY JOINT POWERS FINANCING AUTHORITY, a joint powers authority duly organized and existing under the laws of the State of California (“**JPA**”), and the CITY OF BERKELEY, a charter city and municipal corporation duly organized and existing under and by virtue of the Constitution and the laws of the State of California (“**City**”).

**RECITALS**

A. BRT entered into that certain Declaration of Easements dated August 20, 1999, which was recorded May 30, 2001 as document number 2001181538 in the Official Record of Alameda County (the “**Declaration**”), which created certain easements benefitting the real property described in the Declaration as “Parcel B,” being Parcel B, Parcel Map 7429, filed March 23, 2001, in Book 256 of Maps, Pages 23 and 24, Alameda County Records, and burdening the real property described in the Declaration as “Parcel A,” being Parcel A, Parcel Map 7429, filed March 23, 2001, in Book 256 of Maps, Pages 23 and 24, Alameda County Records.

B. Parcel A is owned by BRT and Parcel B is now owned by JPA.

C. JPA has leased Parcel B to City pursuant to that certain Amended and Restated Lease Agreement (Theater), dated as of October 1, 2012, recorded in the Alameda County Official Records as Instrument No. 2012432926 (the “**JPA Lease**”). City has subleased Parcel B to BRT pursuant to that certain Sublease Agreement, dated as of October 1, 1999, recorded on July 3, 2001 as Instrument No. 2001236008 in the Alameda County Official Records (the “**City Sublease**”).

D. BRT, JPA and City now desire to amend the Declaration to provide for: (a) JPA to abandon certain easements described in the Declaration, (b) BRT to grant certain new easements burdening Parcel A and benefitting Parcel B, (c) the consent of JPA to the construction on Parcel A of certain improvements over the easements granted in the Declaration as hereby amended, and (d) for City, as party to the JPA Lease and the City Sublease and BRT, as party to the City Sublease, to consent to the provisions of this Amendment and agree that the

JPA Lease and City Sublease are amended to reflect the easements abandoned and granted in this Amendment, subject to the terms and conditions set forth herein.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE I**

**AMENDMENTS TO DECLARATION AND CONSENT**

1. Capitalized Terms. All capitalized terms not defined herein shall have the same meaning as in the Declaration, except as otherwise provided herein, or unless the context clearly otherwise requires.
2. Abandonment of Easements. JPA hereby abandons and quitclaims its rights pursuant to the “New Easement for Access and Egress” as set forth in paragraph 2.b. of the Declaration, and pursuant to the “Transformer Pad Easement” as set forth in paragraph 2.d. of the Declaration.
3. Grant of New Easement for Pedestrian Access and Utilities. BRT hereby grants and establishes for JPA and its successors and assigns, a non-exclusive easement appurtenant to Parcel B over and across that portion of Parcel A depicted and identified as “**Access and Utility Easement**” and described in **Exhibit A**, attached hereto, for the purposes of pedestrian egress from improvements on Parcel B and for the purposes of installing, maintaining, and replacing utility facilities and appurtenances, including, but not limited to, those for electric, gas, water, sanitary sewer, storm drain, cable television, and communications. The location of all such facilities shall be subject to the approval of BRT, which shall not unreasonably be withheld.
4. Grant of Storm Drain Easement. BRT hereby grants and establishes for JPA, and its successors and assigns, an easement, appurtenant to Parcel B over and across that portion of Parcel A depicted and described in **Exhibit B**, attached hereto, for the purpose of installing, maintaining, and replacing a storm drain from improvements on Parcel B.
5. Grant of New Easement for Loading and Staging. BRT hereby grants and establishes for JPA and its successors and assigns, a non-exclusive easement appurtenant to Parcel B over and across that portion of Parcel A depicted and identified as the “**Joint Use Area**” and described in **Exhibit C**, attached hereto, for the purposes of vehicular and pedestrian ingress, egress and access to and from Addison Street, including truck loading and unloading and temporary staging of materials and equipment for use in the improvements on Parcel B.
6. Consent to Encroachments. JPA, as owner of Parcel B, hereby consents to the construction of gates, doors and other access control facilities to control public access to the easements granted in the Declaration, as hereby amended, to JPA as owner of Parcel B. JPA also consents to the encroachment over the easements granted in the Declaration, as amended by this Amendment, of improvements constructed on Parcel A generally as depicted in the drawings

submitted with City of Berkeley Building Permit # B2019-02956. JPA also consents to minor encroachments resulting from non-material changes in dimensions in the improvements constructed on Parcel A as compared with the dimensions set forth in the drawings submitted for the Building Permit and those encroachments resulting from settlement and minor alterations. Nothing in this paragraph shall permit BRT or its successors and assigns to materially impair the use of the easements granted by this Declaration for vehicular and pedestrian ingress, egress and access to Parcel B.

7. Amendment of JPA Lease and City Sublease. City, as party to the JPA Lease and the City Sublease and BRT, as party to the City Sublease, to consent to the provisions of this Amendment and agree that the JPA Lease and City Sublease are amended to reflect the easements abandoned and granted in this Amendment.

8. No Easement Rights in the General Public. Nothing herein shall be deemed to create any easement in favor of the general public.

9. No Other Changes. Except as specifically set forth in this Amendment, the Declaration shall remain in full force and effect, without modification. All references in the Declaration to “this Declaration” or similar references shall mean the Declaration as amended hereby.

10. Counterparts. This Amendment may be executed in any number of counterparts and when so executed, all of such counterparts shall constitute a single instrument binding upon all parties notwithstanding the fact that all parties are not signatory to the original or to the same counterpart.

*[Signature page follows.]*

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date first set forth above.

**BRT:**

THE BERKELEY REPERTORY THEATRE,  
a California nonprofit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**JPA:**

BERKELEY JOINT POWERS FINANCING AUTHORITY,  
a public entity existing under the laws of the State of California

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY OF BERKELEY,  
a charter city and municipal corporation duly organized and existing under and by virtue of the  
Constitution and the laws of the State of California

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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 )  
 ) ss  
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.

\_\_\_\_\_  
Signature of Notary Public

[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 )  
 ) ss  
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.

\_\_\_\_\_  
Signature of Notary Public

[SEAL]

CONSENT AND SUBORDINATION

SIGNATURE PUBLIC FUNDING CORP., as successor to California Enterprise Development Authority, as beneficiary under that certain Deed of Trust, Security Agreement, Assignment of Rents and Leases and Fixture Filing, recorded March 22, 2019 in the Alameda County Official Records as Instrument No. 2019052022, and as successor to California Enterprise Development Authority, as beneficiary under that certain Leasehold Deed of Trust, Security Agreement, Assignment of Rents and Leases and Fixture Filing, recorded March 22, 2019 in the Alameda County Official Records as Instrument No. 2019052023, hereby consents to the foregoing Amendment and subordinates the lien of the Deed of Trust to the easements granted in the Amendment.

SIGNATURE PUBLIC FUNDING CORP.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SIGNATURE BANK, a New York corporation, as successor to California Enterprise Development Authority, as beneficiary under that certain Deed of Trust, Security Agreement, Assignment of Rents and Leases and Fixture Filing, recorded March 22, 2019 in the Alameda County Official Records as Instrument # 2019052024, and as successor to California Enterprise Development Authority, as beneficiary under that certain Leasehold Deed of Trust, Security Agreement, Assignment of Rents and Leases and Fixture Filing, recorded March 22, 2019 in the Alameda County Official Records as Instrument No. 2019052025, hereby consents to the foregoing Amendment and subordinates the lien of the Deed of Trust to the easement granted in the Amendment.

SIGNATURE BANK

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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 )  
 ) ss  
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.

\_\_\_\_\_  
Signature of Notary Public

[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 )  
 ) ss  
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.

\_\_\_\_\_  
Signature of Notary Public

[SEAL]

**EXHIBIT A  
ACCESS AND UTILITY EASEMENT**

(See attached)

Berkeley Repertory Theater  
1995-067694  
APN 057-2025-023-00

## EXHIBIT A1

### Access and Utility Easement

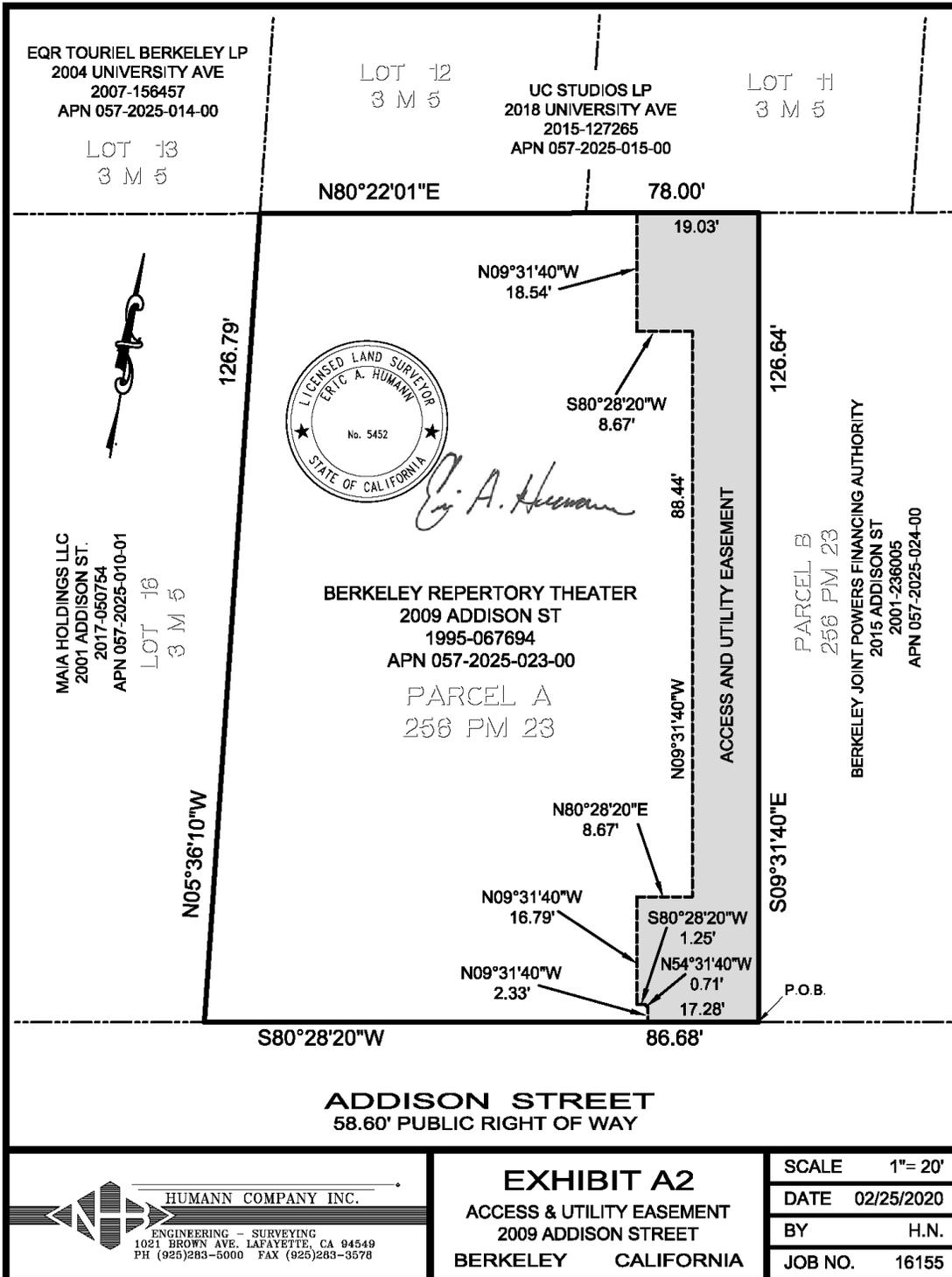
Real property situated in City of Berkeley, County of Alameda, State of California described as follows:

A portion of Parcel A, Parcel Map 7429, filed March 23, 2001 in Book 256 of Parcel Maps, at pages 23 and 24, described as follows:

**Beginning** at the southeasterly corner of the aforementioned Parcel A, said point also being on the northern right-of-way line of Addison Street (58.60 feet wide), thence along said line South 80°28'20" West 17.28 feet; thence leaving last line North 09°31'40" West 2.33 feet; thence North 54°31'40" West 0.71 feet; thence South 80°28'20" West 1.25 feet; thence North 09°31'40" West 16.79 feet; thence North 80°28'20" East 8.67 feet; thence North 09°31'40" West 88.44 feet; thence South 80°28'20" West 8.67 feet; thence North 09°31'40" West 18.54 feet to a point on the northern line of said Parcel A; thence along the exterior lines of said Parcel A North 80°22'01" East 19.03 feet and South 09°31'40" East 126.64 feet to the **Point of Beginning**.

Containing a total area of 1,638 square feet more or less.

**Attached hereto is a plat entitled "Exhibit A2" and by this reference made a part hereof.**



**HUMANN COMPANY INC.**  
 ENGINEERING - SURVEYING  
 1021 BROWN AVE. LAFAYETTE, CA 94549  
 PH (925)283-5000 FAX (925)283-3578

**EXHIBIT A2**  
 ACCESS & UTILITY EASEMENT  
 2009 ADDISON STREET  
 BERKELEY CALIFORNIA

SCALE	1"= 20'
DATE	02/25/2020
BY	H.N.
JOB NO.	16155

**EXHIBIT B  
STORM DRAIN EASEMENT**

(See attached)

Berkeley Repertory Theater  
1995-067694  
APN 057-2025-023-00

**EXHIBIT B1**

**Storm Drain Easement**

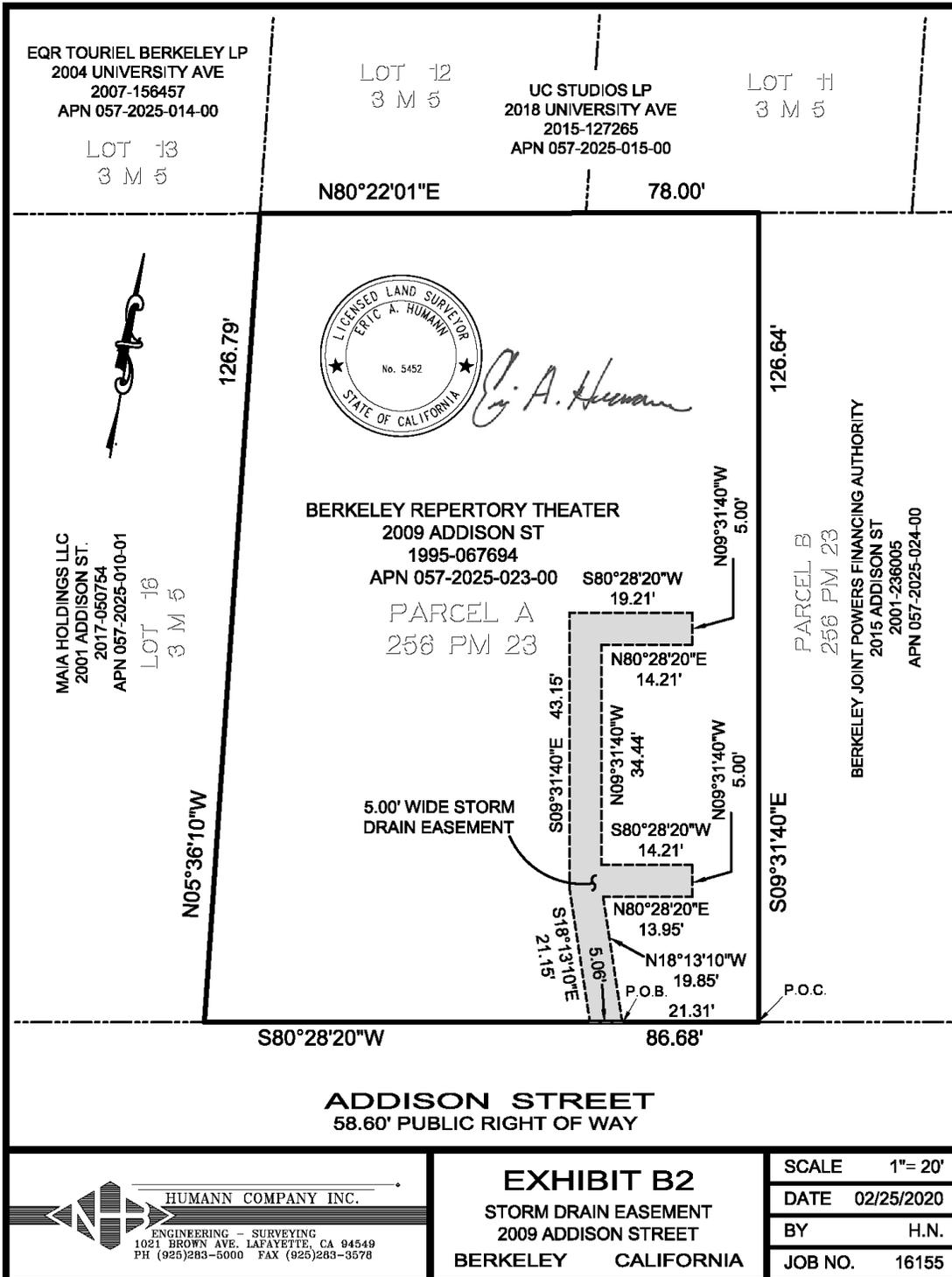
Real property situated in City of Berkeley, County of Alameda, State of California described as follows:

A strip of land 5.00 feet wide being a portion of Parcel A, Parcel Map 7429, filed March 23, 2001 in Book 256 of Parcel Maps, at pages 23 and 24, described as follows:

**Commencing** at the southeasterly corner of the aforementioned Parcel A, said point also being on the northern right-of-way line of Addison Street (58.60 feet wide), thence along said line South 80°28'20" West 21.31 feet to the **Point of Beginning** of the herein described strip of land; thence leaving last line North 18°13'10" West 19.85 feet; thence North 80°28'20" East 13.95 feet; thence North 09°31'40" West 5.00 feet; thence South 80°28'20" West 14.21 feet; thence North 09°31'40" West 34.44 feet; thence North 80°28'20" East 14.21 feet; thence North 09°31'40" West 5.00 feet; thence South 80°28'20" West 19.21 feet; thence South 09°31'40" East 43.15 feet; thence South 18°13'10" East 21.15 feet; thence North 80°28'20" East 5.06 feet to the **Point of Beginning**.

Containing a total area of 463 square feet more or less.

**Attached hereto is a plat entitled "Exhibit B2" and by this reference made a part hereof.**



**HUMANN COMPANY INC.**

ENGINEERING - SURVEYING  
1021 BROWN AVE. LAFAYETTE, CA 94549  
PH (925)283-5000 FAX (925)283-3578

**EXHIBIT B2**

**STORM DRAIN EASEMENT**  
**2009 ADDISON STREET**  
**BERKELEY CALIFORNIA**

SCALE	1" = 20'
DATE	02/25/2020
BY	H.N.
JOB NO.	16155

### EXHIBIT C JOINT USE AREA

