

CITY OF LONG BEACH

DEVELOPER AGREEMENT

THIS AGREEMENT, by and between the City of Long Beach, a municipal corporation, hereinafter referred to as "City", and Leroy Ostrem, hereinafter referred to as "Developer":

WITNESSETH: That whereas the City of Long Beach, a municipal corporation, provides water/sanitary/storm or roadway service within this area, and the above-named Developer is preparing to subdivide and develop property to be served by city street and utilities; and,

WHEREAS the City of Long Beach owns the westerly extend of 19th Street Northwest, to mean High tide, Tax Lot 101109 134 in fee; and,

WHEREAS the developer desire to purchase said property, modify the street right-of-way alignment in order to avoid wetlands and otherwise enhance the aesthetics and feasibility of the project; and,

WHREERAS, the City of Long Beach desires to retain public access in the vicinity of Tax Lot 101109 134; and,

WHEREAS, the developer agrees to convey a right-of-way for easement for street and utility purposes over the modified extension of 19th Street Northwest to conform to all development requirements for city streets and utilities.

NOW THEREFORE IT HERENBY AGREED AS FOLLOWS:

1. The City of Long Beach hereby agrees to sell, convey and transfer Tax Lot 101109 134, which is described in Exhibit A, to the developer for \$56,000 and upon the conditions, promises and representations made herein.
2. The developer agrees to pay \$56,000 to the City of Long Beach and agrees to convey, transfer the realigned westerly extension of 19th St. NW in such dimensions and condition as required by city development standards for city streets.
3. Developer agrees to construct the water/sanitary/storm and roadway system, or additions thereto, to be connected to the City's infrastructure, and to maintain such additions until such time as the City accepts the improvements, with the agreements conditioned as set forth below. The improvements, extension, or additions thereto, shall be located within that area commonly referred to as 19th St. NW, which property is described in Exhibit "B" attached hereto and referred to hereinafter as "Premises".

4. As a condition precedent to City obligations under this agreement, the Developer shall construct the proposed water/sanitary/storm/gas/or roadway system, or additions thereto, within said premises in conformance with the minimum standards as set forth in the City's currently adopted Development Standards as adopted together with any amendments thereto hereinafter made, and further to conform with the City's comprehensive planning documents, which agreement shall include furnishing and installing City owned utility mains. No comprehensive planning documents identify the general location of new facilities, but the exact location will be prescribed by the City of Long Beach.
5. The developer agrees that the construction of any infrastructure items, or additions thereto, shall not commence until the following conditions have been fulfilled:
 - a. Full payment is received for the sale of Tax Lot 101109 134.
 - b. The developer shall furnish the City with four (4) sets of detailed plans for the proposed improvements, or additions thereto, at Developer's own expense, prepared by a qualified engineer currently licensed in the State of Washington.
 - c. The above plans shall require the review and approval by the City and its Engineer, and the cost of such review shall be at the Developer's own expense.
 - d. Minimum requirements for all plans, or additions thereto, submitted to the City for review are:
 - (1) Four (4) sets of all plans and documents shall be submitted, wherein two (2) sets will be retained by the City, and two (2) sets will be returned to the applicant.
 - (2) A preliminary plat proposal of the area in which said improvement, or additions thereto, are to be constructed. Nothing in this agreement relieves the developer from the obligation to comply with City land use regulations and requirements.
 - (3) A map showing the location of the proposed plat in relation to the surrounding area.
 - (4) A contour map of the plat with contour intervals of five feet or less extending fifty (50') feet beyond the plat/property lines.
 - (5) A map showing the location and depth of all proposed utilities and any connections and/or interconnections to existing facilities or future extensions and connections.
 - (6) A 1" = 50' plan and profile view of the proposed improvements showing streets, lot lines, dimensions, and location of bench marks (City datum) and monuments for the proposed plat, together with an indication of the development of the adjacent property, as may be applicable.

- (7) A profile 1" = 50' horizontal and 1" = 5' vertical of the finished road grades with any proposed utility system improvements and other pertinent underground utilities located, with elevations noted thereon. The elevation datum shall be the same as used by the City. It shall be the responsibility of the Developer to confirm such datum with the City.
 - (8) Full-sized detail sheets shall be included as part of the construction drawings, as required to clearly indicate the details for all of the infrastructure improvements not otherwise provided for in this text, or additions thereto, to be constructed, consistent with City standards.
 - (9) Specifications sufficient to fully describe the work, consistent with the City's currently adopted Development Standards.
 - (10) Nothing in this agreement relieves the developer for obtaining the necessary permits from all subject regulatory agencies.
- e. Construction requirements in addition to the City standards and details for developer extensions, as adopted, are as follows:
- (1) All streets and/or roadways shall be graded to within six inches of final grade before installation of utility improvements, unless otherwise approved by the City Engineer.
 - (2) All lots shall be fully staked to assist all parties involved in the proper location of utility services.
 - (3) All contractors and subcontractors shall have a current Washington State Contractors License on file with the City.
 - (4) The Developer's proposed improvements, or additions thereto, shall not be connected to any City system until authorized by the City, and such connection shall be performed only under the supervision and approval of the City.
- f. For the purpose of applying RCW 4.24.115 to this Contract, the Developer and the City agree that the term "damages" applies only to the finding in a judicial proceeding and is exclusive of third party claims for damages preliminary thereto.

The Developer agrees to indemnify and hold harmless the City and/or its agents from all claims for damages by third parties, including costs and reasonable attorney's fees in the defense of claims for damages, arising from performance of the Developer's express or implied obligations under this Agreement. The Developer waives any right of contribution against the City.

It is agreed and mutually negotiated that in any and all claims against the City or any of its agents or employees by any employee of the Developer, any contractor or subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Developer or any contractor or subcontractor under Workman's Compensation Acts, disability benefits acts or other employees' benefit acts. The City and the Developer agree that all third part claims for damages against the City for which the Developer's insurance carrier does not accept defense of the City may be tendered by the City to the Developer who shall, if so tendered by the City, accept and undertake to defend or settle with the Claimant. The City retains the right to approve claim investigation and counsel assigned to said claim and all investigation and legal work product regarding said claim shall be performed under a fiduciary relationship to the City. In the event that the City agrees or a court finds that the claim arises from the sole negligence of the City, this indemnification shall be void and the City shall be responsible for all damages payable to the third party claimant. In the event that the City and the Developer agree or a court finds that the claim arises from or includes negligence of both the Developer and the City, the Developer shall be responsible for all damages payable by the Developer to the third party claimant under the court findings, and, in addition thereto, the Developer shall hereunder indemnify the City for all damages paid or payable to the City under the court findings in an amount not to exceed the percentage of total fault attributable to the Developer. For example, where the Developer is 25% negligent, the Developer shall not be required to indemnify the City for any amount in excess of 25% of the claimant's total damages.

- g. In the event the Developer in his operation damages or disrupts existing improvements, the repairs shall be made at the Developer's expense. In the event they are so damaged or the service disrupted and the Developer fails or is unable to immediately restore the service, then the Owners of the improvements may cause the repairs to be made by others and all costs for the same shall be at the Developer's own expense.

Where the construction crosses or is adjacent to existing utilities, the Developer shall exercise extreme care to protect such utilities from damage.

If any damage is done to an existing utility, the Developer shall notify the utility company involved, who will dispatch a crew to repair the damage at the Developer's expense. All costs for the same shall be at the Developer's own expense.

The Developer is cautioned that all existing drainage systems, whether open ditch, buried pipe, or drainage structures, are not on record. It shall be the responsibility of the Developer to repair or replace all such systems found during construction, which are damaged by the Developer's construction in a manner, which is satisfactory to the City.

Where the Developer is allowed to use private property adjacent to the work, the property so used shall be returned to its original or superior condition. The Developer shall make all arrangements in advance with such property owners, to insure that no conflicts will ensue after the property is restored as described above. The Developer will be required to furnish the City with a written release from said private property owners, if the City deems it to be necessary to obtain such document.

6. The construction of the Developer's proposed improvements, or additions thereto, on the Premises shall be supervised by the City in such a manner and at such times as the City deems reasonably necessary to assure that construction of the system will conform with the above-mentioned plans and specifications and minimum City Standards. The Developer herewith agrees to allow such inspections and agrees to cooperate providing reasonable advance notice of his construction schedule during the various construction phases as requested by the City. The Developer further agrees to reimburse the City for all engineering fees and expenses incurred by the City for such supervision.
7. The Developer's proposed improvements, or additions thereto, on Premises shall not be accepted for service and use until the same have been fully inspected and approved, and the following requirements have been performed:
 - a. Submit to the City in Auto-CADD format (2000i), electronic files supplied on a three and one half (3-1/2) inch disc accompanied by the original "fixed line" mylars, with all changes from the original design clearly marked to reflect the as-built conditions. Unless otherwise waived by the City, the Developer's engineer shall certify the accuracy of the record drawings and shall affix his seal and signature.
 - b. Payment of all permit fees, impact fees, assessment charges, engineering review fees, inspection fees, and any other applicable City charges required for Premises.
 - c. Prepare and furnish the required easements in accordance with City's standard form and this agreement, and furnish same to the City for approval by the City Attorney, prior to Developer recording same with County. Provide copy of recorded document.
 - d. Furnish the City with an affidavit warranting there are no liens against the improvements constructed or furnished by the Developers. This affidavit shall be in a form approved by the City Attorney.
 - e. Furnish the City with a Bill of Sale conveying the water/sanitary/storm or roadway system to the City, which shall include a one-year guarantee that the conveyed systems or improvements or additions thereto shall be free of defects in labor and materials. Said conveyance shall be in a form approved by the City.
 - f. Payment of all applicable bills, invoices, fees, etc., have been paid in full.

8. In the event any warranty repairs are required, the City agrees, whenever feasible, to provide the Developer with reasonable notice before directly undertaking such repairs. The City reserves the right, however, to effect emergency repairs as deemed necessary by the City. The City shall be reimbursed by the Developer for all costs thereof within sixty (60) days.
9. Upon performing all requirements, including those as set forth in Paragraph 5 above, the City shall accept the water/sanitary/storm or roadway improvements, and agree therewith to operate and maintain said system.
10. The \$56,000 the Developer is to pay and the transfer of the land shall not be due until the City has given preliminary plat approval and all permits are in place, and all plans approved by the City, upon which being accomplished, the Developer shall then pay the City \$56,000 and transfer the land, and the City shall give final plat approval.
11. If any other parties within ten (10) years hook-up to utilities paid for and installed by the Developer and/or the road, that on a reimbursement basis under City formula, the City would collect a pro-rata cost thereof from the party hooking on and pay the same to the Developer.

SUBMITTED this 6th day of Aug., 2003

BY DEVELOPER: Leroy E. Ostrem
Printed Name

[Handwritten Signature]
Signature

8-6-03
Date

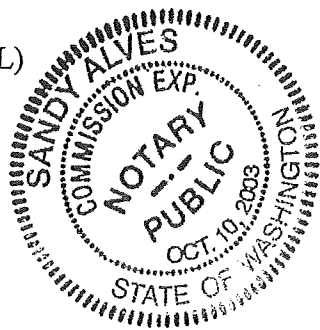
State of Washington)
) ss.
County of Pacific)

On this 6th day of Aug, 2003, before, me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Leroy E Ostrem, to me known to be the person who executed the foregoing instrument, and acknowledged the said instrument to be his free and voluntary act and deed, for the uses and purposes therein mentioned, and acknowledged that he/she had the legal authority to execute said agreement on behalf of the "Developer".

WITNESS my hand and official seal affixed the day and year first above written.

[Handwritten Signature]
Notary Public in and for the State
of Washington, residing at Log Beach, WA

(INDIVIDUAL)



SIGNED this 6th day of August, 2003

BY THE CITY OF LONG BEACH:

Nabeel Shawa
Printed Name

[Signature]
Signature

City Administrator
Title

8-6-03
Date

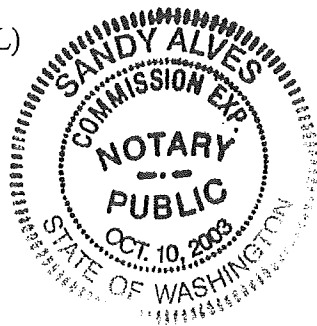
State of Washington)
) ss.
County of Pacific)

On this 6th day of Aug, 2003, before, me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Nabeel Shawa, to me known to be the person who executed the foregoing instrument, and acknowledged the said instrument to be his free and voluntary act and deed, for the uses and purposes therein mentioned, and acknowledged that he/she had the legal authority to execute said agreement on behalf of the "Developer".

WITNESS my hand and official seal affixed the day and year first above written.

(INDIVIDUAL)

[Signature]
Notary Public in and for the State
of Washington, residing at Long Beach, WA



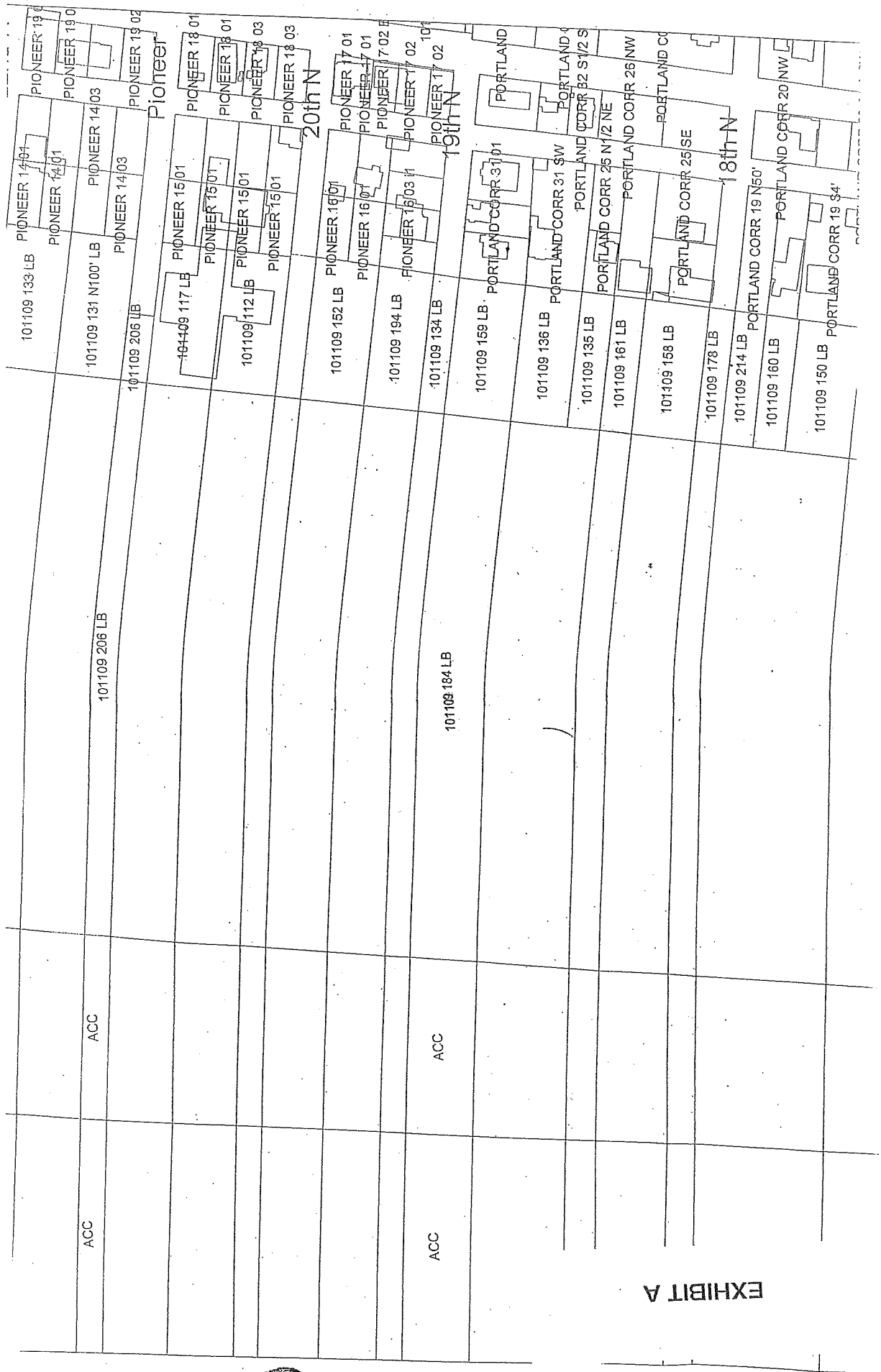


EXHIBIT A

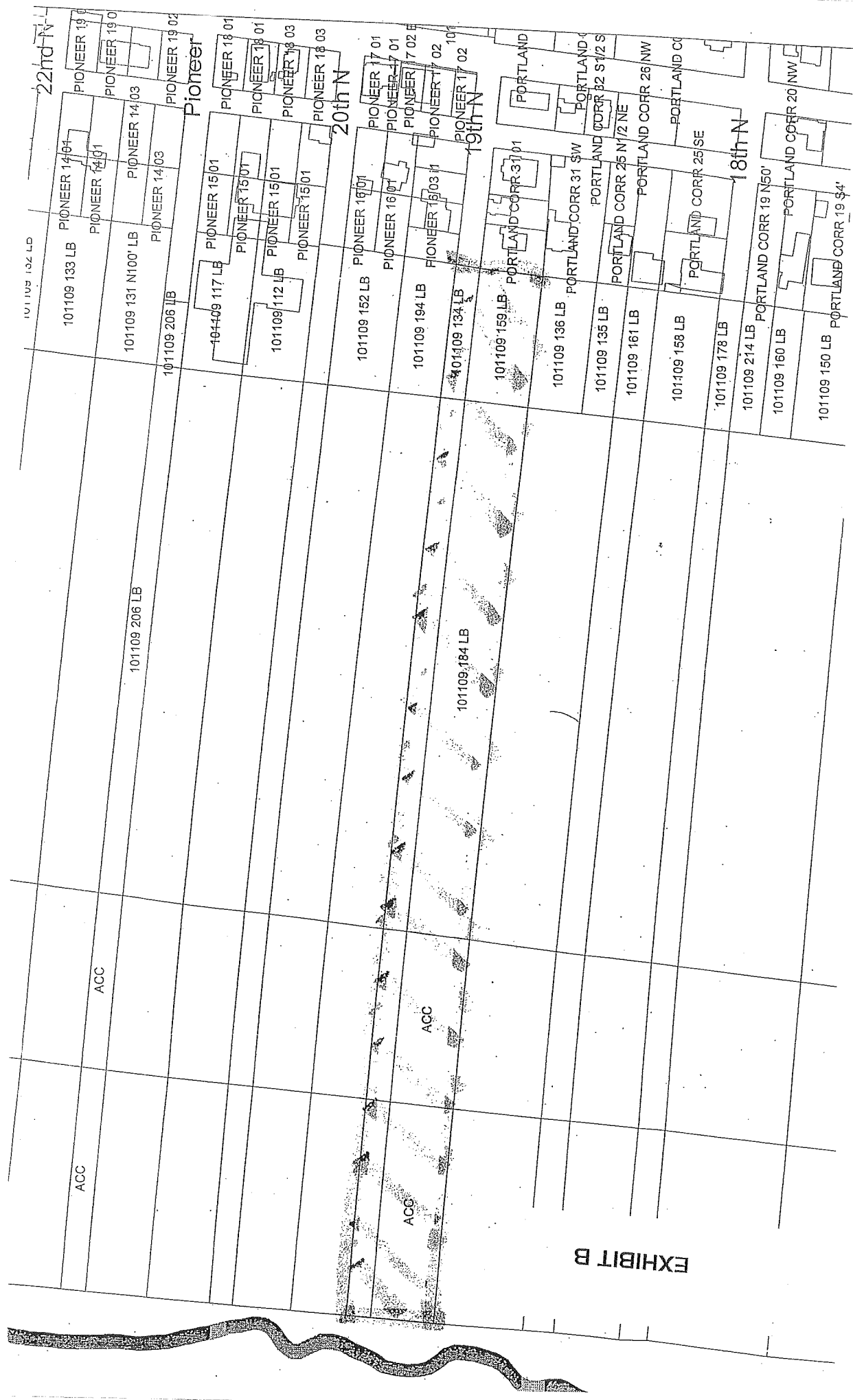


EXHIBIT B