

File No. 100456

Committee Item No. 3

Board Item No. \_\_\_\_\_

# COMMITTEE/BOARD OF SUPERVISORS

## AGENDA PACKET CONTENTS LIST

Sub - Committee: Budget and Finance

Date: May 26, 2010

Board of Supervisors Meeting

Date: \_\_\_\_\_

### Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Budget Analyst Report                        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Analyst Report                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form (for hearings)             |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Public Correspondence                        |

### OTHER

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Completed by: Andrea S. Ausberry

Date Friday, May 21, 2010

Completed by: \_\_\_\_\_

Date \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.



1 [Agreement to Purchase Easements in Connection with the New Irvington Tunnel Project in  
2 Alameda County]

3  
4 **Resolution approving and authorizing an Agreement for Purchase and Sale of Real**  
5 **Estate to acquire for \$57,500 a permanent well easement and a temporary**  
6 **construction easement in Alameda County for the public purpose of constructing the**  
7 **San Francisco Public Utilities Commission New Irvington Tunnel Project; adopting**  
8 **findings under the California Environmental Quality Act ("CEQA"); adopting findings**  
9 **that the purchase is consistent with the City's General Plan and Eight Priority**  
10 **Policies of City Planning Code Section 101.1; and authorizing the Director of**  
11 **Property to execute documents, make certain modifications and take certain actions**  
12 **in furtherance of this resolution.**

13  
14 WHEREAS, The San Francisco Public Utilities Commission (SFPUC) plans to  
15 construct Project CUW35901, the New Irvington Tunnel Project (the "Project"), under the  
16 Water System Improvement Program (WSIP) for improvements to the regional water  
17 supply system, a public use, and in connection therewith will acquire interests in certain  
18 real property described herein; and

19 WHEREAS, the objectives of the Project are to improve delivery reliability and  
20 provide operational flexibility during maintenance activities or unplanned outages, as well  
21 as to replenish local reservoirs after such events; and

22 WHEREAS, The Project is an improvement facility project approved by the SFPUC as  
23 part of the Water System Improvement Program ("WSIP"); and

1 WHEREAS, A Final Program Environmental Impact Report ("PEIR") was prepared for  
2 the WSIP and certified by the Planning Commission on October 30, 2008 by Motion No.  
3 17734; and

4 WHEREAS, Thereafter the SFPUC approved the WSIP and adopted findings and a  
5 Mitigation Monitoring and Reporting Program as required by the California Environmental  
6 Quality Act ("CEQA") on October 30, 2008 by Resolution No. 08-0200; and

7 WHEREAS, an environmental impact report ("EIR") as required by CEQA was  
8 prepared for the Project in Planning Department File No. 2005.0162E; and

9 WHEREAS, The Final EIR ("FEIR") for the Project was certified by the San  
10 Francisco Planning Commission on November 9, 2009 by Motion No. 17972; and

11 WHEREAS, The FEIR prepared for the Project is tiered from the PEIR, as  
12 authorized by and in accordance with CEQA and the CEQA Guidelines; and

13 WHEREAS, On November 9, 2009, the San Francisco Public Utilities Commission  
14 (SFPUC), by Resolution No. 09-0190, a copy of which is included in Board of Supervisors  
15 File No. 100456 and which is incorporated herein by this reference: (1) approved the  
16 Project; (2) adopted findings (CEQA Findings), including the statement of overriding  
17 considerations, and a Mitigation Monitoring and Reporting Program ("MMRP") required by  
18 CEQA; and (3) authorized the General Manager to seek the Board of Supervisors' approval  
19 of and, if approved, to execute certain necessary agreements and deeds, which the  
20 SFPUC staff will pursue and submit to the Board of Supervisors at a later date; and

21 WHEREAS, The Project files, including the FEIR, PEIR and SFPUC Resolution No.  
22 09-0190 have been made available for review by the Board and the public, and those files  
23 are considered part of the record before this Board; and

24 WHEREAS, The Board of Supervisors has reviewed and considered the information  
25 and findings contained in the FEIR, PEIR and SFPUC Resolution No. 09-0190, and all

1 written and oral information provided by the Planning Department, the public, relevant  
2 public agencies, SFPUC and other experts and the administrative files for the Project; and

3 WHEREAS, This Board, by Resolution No. 505-09 adopted on December 15, 2009,  
4 a copy of which is on file with the Clerk of the Board of Supervisors in File No. 091326 and  
5 which is incorporated herein by this reference and considered part of the record before this  
6 Board, adopted findings under CEQA related to the Project, including the statement of  
7 overriding considerations and the MMRP; and,

8 WHEREAS, A copy of the Agreement for Purchase and Sale of Real Estate (the  
9 "Agreement") between the City, as Grantee, and David C.Y. Lo, as Grantor, is on file with  
10 the Clerk of the Board of Supervisors under File No. 100456; and,

11 WHEREAS, An independent MAI appraisal was prepared in May 2009 to determine  
12 the value of the permanent well easement consisting of 391 square feet and the temporary  
13 construction easement consisting of 1.92 acres with a duration of 51 months, which value  
14 was \$50,800; and,

15 WHEREAS, The Grantor refused the \$50,800 offer but agreed to a negotiated  
16 settlement figure of \$57,500 which the Director of Property and General Manager of the  
17 PUC have determined to be reasonable, prudent and in the best interest of the public; and,

18 WHEREAS, The Director of Planning, by letter dated December 18, 2009, found that  
19 the purchase of all the necessary property rights for the Project, is consistent with the City's  
20 General Plan and with the Eight Priority Policies of City Planning Code Section 101.1,  
21 which letter is on file with the Clerk of the Board of Supervisors under File No. 100456,  
22 and which letter is incorporated herein by this reference; now, therefore, be it

23 RESOLVED, The Board has reviewed and considered the FEIR and record as a whole,  
24 finds that the FEIR is adequate for its use as the decision making body for the action taken  
25

1 herein and hereby incorporates by reference the CEQA findings contained in Resolution No.  
2 505-09; and be it

3 FURTHER RESOLVED, The Board finds that the Project mitigation measures adopted  
4 by the SFPUC will be implemented as reflected in and in accordance with the MMRP; and be  
5 it

6 FURTHER RESOLVED, The Board finds that since the FEIR was finalized, there  
7 have been no substantial project changes and no substantial changes in the Project  
8 circumstances that would require major revisions to the FEIR due to the involvement of  
9 new significant environmental effects or an increase in the severity of previously identified  
10 significant impacts, and there is no new information of substantial importance that would  
11 change the conclusions set forth in the FEIR; and, be it

12 FURTHER RESOLVED, That the Board of Supervisors of the City and County of  
13 San Francisco hereby finds that the Agreement is consistent with the General Plan and  
14 with the Eight Priority Policies of city planning Code Section 101.1 for the same reasons as  
15 set forth in the letter of the Director of Planning dated December 18, 2009, and hereby  
16 incorporates such findings by references as though fully set forth in this resolution; and, be  
17 it

18 FURTHER RESOLVED, That in accordance with the recommendations of the  
19 Public Utilities Commission and the Director of Property, the Board of Supervisors hereby  
20 approves the Agreement and the transaction contemplated thereby in substantially the form  
21 of such Agreement presented to this Board; and, be it


22 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of  
23 Property to enter into any additions, amendments or other modifications to the Agreement  
24 (including, without limitation, the attached exhibits) that the Director of Property determines  
25 are in the best interest of the City, that do not increase the cost for the Agreement or

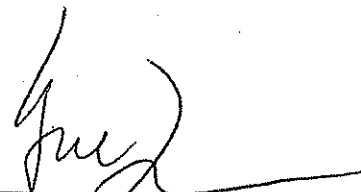
1 otherwise materially increase the obligations or liabilities of the City, and are necessary or  
2 advisable to complete the transaction contemplated in the Agreement and effectuate the  
3 purpose and intent of this resolution, such determination to be conclusively evidenced by  
4 the execution and delivery by the Director of Property of the Agreement and any  
5 amendments thereto; and, be it

6       FURTHER RESOLVED, That the Director of Property is hereby authorized and  
7 urged, in the name and on behalf of the City and County, to execute the Agreement for the  
8 acquisition of a permanent well easement and a temporary construction easement from the  
9 Grantor in accordance with the terms and conditions of the Agreement, and to take any and  
10 all steps (including, but not limited to, the execution and delivery of any and all certificates,  
11 agreements, notices, consents, escrow instructions, closing documents and other  
12 instruments or documents) as the Director of Property deems necessary or appropriate  
13 pursuant to the Agreement, or to otherwise effectuate the purpose and intent of this  
14 resolution, such determination to be conclusively evidenced by the execution and delivery  
15 by the Director of Property of any such documents.

16  
17  
18 RECOMMENDED:

\$57,500 Available

19  
20   
21 \_\_\_\_\_  
22 Amy L. Brown  
23 Director of Property

24   
25 \_\_\_\_\_  
26 Controller

Appropriation: Index Code 735913



Amy L. Brown  
Director of Real Estate



May 6, 2010

*File 100456*

PUC  
Lo Acquisition  
New Irvington Tunnel Project  
Alameda Co.

Through Edwin M. Lee  
City Administrator

Honorable Board of Supervisors  
City & County of San Francisco  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

Dear Board Members:

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2010 MAY - 6 AM 10: 27  
BY: *lv*

Enclosed for your consideration is a Resolution approving an Agreement for Purchase and Sale of Real Estate (the "Agreement"). The Agreement is for the purchase of a permanent well easement and temporary construction easement over property owned by David C.Y. Lo in the City of Fremont necessary for PUC's New Irvington Tunnel project. Although the City's May '09 appraisal was \$50,800, a negotiated settlement has been reached with the property owner in the amount of \$57,500. This settlement figure includes reimbursement for the property owner's appraisal in the amount of \$2500 per California Code of Civil Procedure Section 1263.05. Both the General Manager of the PUC and I recommend this settlement figure as reasonable, prudent and in the public interest.

In addition to the Resolution, enclosed for Board file are:

1. Agreement for Purchase and Sale of Real Estate.
2. Public Utilities Commission Resolution No. 09-0190 approving the acquisition of these property rights and all other property interests for the project.
3. City Planning's letter dated December 18, 2009 stating that the proposed acquisition of all the necessary property interests for the project are in conformity with the general plan and consistent with the Eight Priority Policies of Planning Code Section 101.1. The Planning Commission certified an environmental impact report for the New Irvington Tunnel project on November 5, 2009, Motion No. 17972.



4. Form SFEC – 126: Notification of Contract Approval

Should you have any questions or need additional information, do not hesitate to call Larry Ritter of our office at 554-9874.

Very truly yours,



Amy L. Brown  
Director of Real Estate

cc: Edwin M. Lee, City Administrator

w/ Resolution:  
Carolyn Stein, Deputy City Attorney

PUC:  
Brian Morelli  
Gary Dowd  
Nathan Purkiss  
Millie Tolleson

LR:sb



AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

by and between

David C.Y. Lo

as Seller

and

CITY AND COUNTY OF SAN FRANCISCO,

as Buyer

For the purchase and sale of

a permanent well easement and a temporary construction easement  
over, in and upon real property in Fremont, California

April 1, 2010

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LIST OF EXHIBITS

- EXHIBIT A – Easement Deed for a permanent Well Easement with attached legal description of easement area.
- EXHIBIT B – Depiction of Well Easement Area
- EXHIBIT C – Easement Deed for a Temporary Construction Easement with attached legal description of easement area
- EXHIBIT D – Depiction of Temporary Construction Easement
- EXHIBIT E – Preliminary Title Report

## AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

(Easements Over, On and In  
Portion of APN 513-0065-008-05)

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE (this "Agreement") dated for reference purposes only as of April 1, 2010, is by and between DAVID C. Y. LO, who acquired title as a single man ("Seller"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("Buyer" or "City").

IN CONSIDERATION of the respective agreements set forth below, Seller and City agree as follows:

### 1. PURCHASE AND SALE

#### 1.1 Purchase and Sale of Easement

Seller agrees to sell and convey to City, and City agrees to purchase from Seller, subject to the terms, covenants and conditions set forth below, a permanent well easement and a temporary construction easement in connection with City's New Irvington Tunnel Project (the "Easements") over, across, in and upon portions of Seller's real property in the City of Fremont, Alameda County ("County"), California, located at 42300 Vargas Road, Fremont, California 94539, and commonly known as Assessor's Parcel 513-0065-008-05 (Seller's Property). Such portions of Seller's Property are referred to herein collectively as the "Easement Area."

#### 1.2 Easement Area; Nature of Easement

The Easement Area consists of those portions of Seller's Property described in the easement deeds attached as Exhibits A and C (the "Deeds") and approximately depicted on attached Exhibits B and D. The nature, scope and conditions of the Easements are set forth in the Deeds.

### 2. PURCHASE PRICE

#### 2.1 Purchase Price

The total purchase price for the Easements is Fifty Seven Thousand, Five Hundred and Fifty/100 Dollars (\$57,500) (the "Purchase Price").

#### 2.2 Payment

On the Closing Date (as defined in Section 5.3 [Closing Date]), City shall pay the Purchase Price, adjusted pursuant to the provisions of Article 6 [Expenses], and reduced by any credits due City hereunder.

#### 2.3 Funds

All payments made by any party hereto shall be in legal tender of the United States of America, paid by Controller's warrant or in cash or by wire transfer of immediately available funds. Unless the parties elect to close the transaction without an escrow, payments shall be made to Escrow Holder, as the escrow agent.

### 3. CONVEYANCE OF EASEMENT

#### 3.1 Easement Deed

At the Closing Seller shall convey to City marketable and insurable title to the Easement, by duly executed and acknowledged Deeds in the forms attached hereto as Exhibits A and C, free and clear of all exceptions, liens and encumbrances except solely for the Accepted Conditions of Title (as defined in Section 3.2 [State of Title]).

#### 3.2 State of Title

"Accepted Conditions of Title" shall mean only (i) the lien of real property taxes, not yet due or payable; and (ii) exceptions numbered 3, 4, 6 through 10, and 12 through 16 in the preliminary title report dated February 19, 2010, bearing Title No. 07-59013656-B-MH attached hereto as Exhibit E. As a condition precedent to City's obligation to purchase the Easement, quitclaim deeds, a spousal waiver, lender's consents or subordinations, tenants' consents or similar releases sufficient to clear or subordinate any possessory rights over the Easement Area may be required, at City's election, in form approved by City. Seller agrees to secure any such waiver, quitclaim deeds, consents, subordinations or releases.

### 4. CONDITIONS TO CLOSING

#### 4.1 City's Conditions to Closing

The following are conditions precedent to City's obligation to purchase the Easement (collectively, "**Conditions Precedent**"):

(a) The physical condition of the Easement Area shall be substantially the same on the Closing Date as on the date of City's execution of this Agreement, reasonable wear and tear and loss by casualty excepted (subject to the provisions of Article 8 [Risk of Loss]), and as of the Closing Date there shall be no litigation or administrative agency or other governmental proceeding, pending or threatened, which after the Closing could materially adversely affect the value of the Easement or the ability of City to use the Easement Area for its intended use, and no proceedings shall be pending or threatened that could or would cause the change, re-designation or other modification of the zoning classification of, or of any building or environmental code requirements applicable to, any of the Easement Area.

(b) Seller shall have delivered signed originals of any documents required under Section 3.2, and, unless the parties elect to consummate the transaction without an escrow, Escrow Holder shall be committed at the Closing to issue to City a CLTA owner's policy of title insurance (the "**Title Policy**") in the amount of the Purchase Price, insuring title to the Easement vested in City free of all exceptions, liens and encumbrances except only the Accepted Conditions of Title, defined in Section 3.2 [State of Title]. The Title Policy shall contain such special endorsements as City may reasonably request.

(c) The transactions contemplated herein shall have been approved by all applicable City departments and agencies, including, without limitation, the Public Utilities Commission, in their respective sole discretion, within sixty (60) days after Seller executes and delivers this Agreement to City.

(d) If required by City's Charter, the City's Mayor and the Board of Supervisors, in the sole discretion of each, shall have enacted a resolution approving, adopting and authorizing this Agreement and the transactions, within ninety (90) days after Seller executes and delivers this Agreement to City.

(e) Seller shall have delivered the items described in Section 5.4 below [Seller's Delivery of Documents] on or before the Closing.

The Conditions Precedent contained in the foregoing subsections (a) through (e) are solely for the benefit of City. If any Condition Precedent is not satisfied, City shall have the right in its sole discretion either to waive in writing the Condition Precedent in question and proceed with the purchase (provided that the Conditions Precedent described in items (c) and (d) above may not be waived except insofar as City elects to extend the deadline for satisfying such item) or, in the alternative, terminate this Agreement. The waiver of any Condition Precedent shall not relieve Seller of any liability or obligation with respect to any representation, warranty, covenant or agreement of Seller. In addition, the Closing Date may be extended, at City's option, for a reasonable period of time specified by City, to allow such Conditions Precedent to be satisfied, subject to City's further right to terminate this Agreement upon the expiration of the period of any such extension if any such Conditions Precedent remain unsatisfied.

If the sale of the Easement is not consummated because of a default under this Agreement on the part of Seller or if a Condition Precedent cannot be fulfilled because Seller frustrated such fulfillment by some affirmative act or negligent omission, City may, at its sole election, either (1) terminate this Agreement by delivery of notice of termination to Seller, whereupon Seller shall pay to City any title, escrow, legal and inspection fees incurred by City, and neither party shall have any further rights or obligations hereunder, or (2) continue this Agreement pending City's action for specific performance and/or damages hereunder, including, without limitation, City's costs and expenses incurred hereunder.

#### **4.2 Cooperation with City**

Seller shall cooperate with City and do all acts as may be reasonably requested by City with regard to the fulfillment of any Conditions Precedent including, without limitation, execution of any documents, applications or permits, but Seller's representations and warranties to City shall not be affected or released by City's waiver or fulfillment of any Condition.

### **5. CLOSING AND POSSESSION**

#### **5.1 "Closing" Defined**

The consummation of the purchase and sale contemplated hereby (the "Closing") shall occur as provided in this Article 5.

#### **5.2 Escrow; Closing Without an Escrow**

(a) Unless the parties agree to consummate the purchase and sale without an escrow as provided in subparagraph (b) below: (i) On or before the Effective Date (as defined in Section 11.17 [General Provisions]), the parties shall open escrow by depositing an executed counterpart of this Agreement with Chicago Title Company at its offices at 455 Market Street, 21<sup>st</sup> Floor, San Francisco, California 94105 ("Escrow Holder"); (ii) this Agreement shall serve as instructions to Escrow Holder as the escrow holder for consummation of the purchase and sale contemplated hereby; (iii) Seller hereby authorizes City to prepare and submit supplemental escrow instructions in accordance with this Agreement on behalf of both parties, as needed; and (iv) the Closing shall be held and delivery of all items to be made at the Closing under this Agreement shall be made at Escrow Holder's offices.

(b) Notwithstanding the foregoing, the parties may elect by mutual agreement to consummate the purchase and sale without an escrow, in which event the Closing shall occur as described in Section 5.7(b).



### 5.3 Closing Date

The Closing shall occur ninety (90) days after the Effective Date (as defined in Section 11.17) or on such earlier date as City and Seller may mutually agree (the "**Closing Date**"), subject to the provisions of Article 4 [Conditions Precedent]. The Closing Date may not be extended without the prior written approval of both Seller and City, except as otherwise expressly provided in this Agreement. If the Closing does not occur on or before the Closing Date and the parties have deposited documents or funds in escrow, Escrow Holder shall, unless it is notified by both parties to the contrary within five (5) business days after the Closing Date, return such items to the depositor thereof.

### 5.4 Seller's Delivery of Documents

(a) At or before the Closing, Seller shall deliver or cause to be delivered to City the following:

- (i) the duly executed and acknowledged Deeds;
- (ii) such resolutions, authorizations, or other documents as City may reasonably require to demonstrate the authority of Seller to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individuals executing any documents or other instruments on behalf of Seller to act for and bind Seller;
- (iii) any documents needed in order to eliminate title exceptions other than Accepted Conditions of Title; and
- (iv) a closing statement in form and content satisfactory to City and Seller (which may be in the form of a letter or memorandum from City, countersigned by Seller, if the parties elect to consummate the transaction without an escrow).

(b) Seller shall deliver such items to Seller through escrow, unless the parties elect to close the transaction without an escrow in which event Seller shall deliver the items directly to City for a Closing in accordance with Section 5.7(b).

### 5.5 City's Delivery of Documents and Funds

(a) At or before the Closing, City shall deliver to Seller the following:

- (i) Two (2) certificates of acceptance, executed by City's Director of Property, to be attached to each Deed before recording;
  - (ii) a closing statement in form and content satisfactory to City and Seller (which may be in the form of a letter or memorandum from City to Seller if the parties elect to consummate the transaction without an escrow);
  - (iii) funds sufficient to pay City's share of expenses under Article 6;
- and
- (iv) the Purchase Price, as provided in Article 2 hereof.

(b) City shall deliver such documents and funds through escrow; however, if the parties elect to consummate the transaction without an escrow, City shall deliver the funds and documents as provided in Section 5.7(b).

## 5.6 Other Documents; Cooperation

Seller and City agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the parties.

## 5.7 Closing

(a) **Closing through Escrow.** Subject to Section 5.7(b), at Closing, provided all the conditions to the parties' obligations have been satisfied or waived as provided and permitted by this Agreement, Escrow Holder shall perform the following acts in the following order:

(i) Perform such acts as are necessary in order to deliver title to City subject only to the Accepted Conditions of Title, including recording any deed of reconveyance, subordination agreement or other documentation as specified in supplemental escrow instructions submitted by City before Closing.

(ii) Record the Deeds in the Office of the County's Recorder and obtain endorsed copies thereof for each party;

(iii) Deliver to Seller, or as Seller may instruct, the Purchase Price, less any amount necessary to satisfy any liens, bond demands, delinquent taxes, and Seller's share of expenses and prorations under Article 6;

(iv) Issue the Title Policy to City, if requested to do so by City; and

(v) Deliver to the appropriate party any other documents, instruments, and sums required by this Agreement.

(b) **Closing without Escrow.** If the parties elect to consummate the purchase and sale without an escrow, City shall effect the Closing on the Closing Date as follows:

(i) City shall: (I) deliver to Seller, or as Seller may instruct, the Purchase Price (less any amount necessary to satisfy any liens, bond demands, delinquent taxes, and Seller's share of expenses and prorations, if applicable, under Article 6), and (II) cause the certificate of acceptance in each Deed to be executed, when:

(A) City has received Seller's documents in accordance with Section 5.4, and

(B) City is in a position to record the Deeds conveying the Easements to City subject only to the Accepted Conditions of Title, obtain the Title Policy (if City elects to do so), and deliver to the appropriate party any other documents, instruments, and sums required by this Agreement.

(ii) City shall provide Seller with a recordation conformed copy of the recorded Deeds.

## 5.8 Possession and Use

The right of possession and use of the Easement Area by City and/or its designees, including the right to remove and dispose of improvements and install and connect utilities, shall commence on the date City's contractor first enters the Easement Area to commence staging for the Project (the "**Possession Date**"), which may occur before the Closing Date. The Purchase

Price includes but is not limited to full payment for such possession and use, including interest and damages if any from such date, notwithstanding any other provision of this Agreement. City shall provide Seller with at least thirty (30) days' advance written notice of the Possession Date.

## 6. EXPENSES; PRORATIONS

### 6.1 City's Expenses

City shall pay all escrow fees, the recording fees for the Deeds and title insurance charges, if any.

### 6.2 Seller's Expenses

Seller shall pay all costs incurred in connection with the prepayment or satisfaction of any loan, bond or other indebtedness secured in whole or part by the Easement Area including, without limitation, any prepayment or delinquency fees, penalties or charges. Seller shall also pay any delinquent taxes that may have become a lien against Seller's Property, at the Closing.

### 6.3 Other Expenses

Any other costs and charges of the escrow not otherwise provided for in this Article or elsewhere in this Agreement shall be allocated in accordance with the closing customs for the County, as determined by Escrow Holder.

## 7. REPRESENTATIONS AND WARRANTIES

Seller represents and warrants to and covenants with City as follows:

(a) **Ownership of Property.** Seller is the sole fee owner of Seller's Property, and will own it at the time of the Closing, free and clear of all liens, leases, occupancy agreements, claims, encumbrances, easements and rights of way of any nature (whether disclosed in the public record or not), except only the Accepted Conditions of Title.

(b) **Signing Authority.** Seller and the signatories represent and warrant that the signatories to this Agreement are authorized to enter into this Agreement to convey real property and that no other authorizations are required to implement this Agreement on behalf of Seller.

(c) **No Leases.** There are now, and will be at the Closing, no oral or written leases, occupancy agreements, licenses or easements affecting the Easement Area or that would affect City's access to or use of the Easement Area.

(d) **No Property Defects or Legal Violations.** To the best of Seller's knowledge, there are now, and at the time of the Closing will be, no material physical defects of the Easement Area, and no violations of any laws, rules or regulations applicable to the Easement Area.

(e) **No Impediments to Use.** Seller knows of no facts nor has Seller failed to disclose any fact that would prevent City from using the Easement after Closing in the normal manner in which it is intended.

(f) **No Lawsuits.** There are no lawsuits or proceedings pending or, to the best of Seller's knowledge, threatened against or affecting Seller, the Property or its use that would affect Seller's ability to consummate the sale contemplated by this Agreement or City's use and enjoyment of the Easement after the Closing.

(g) **No Known Hazardous Materials.** To the best of Seller's knowledge, there has been no release and there is no threatened release of any Hazardous Material in, on, under or about Seller's Property. As used herein, "**Hazardous Material**" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. "**Release**" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any of the improvements, or in, on, under or about the Easement Area.

## **8. RISK OF LOSS**

If any of the Easement Area is damaged or destroyed before the Closing Date, then the rights and obligations of Seller and City hereunder shall be as follows: City shall have the right, at its election, to terminate this Agreement in its entirety or terminate it only as to that portion of the Easement Area damaged or destroyed. City shall have thirty (30) days after Seller notifies City that an event described in this Article 8 has occurred to make such election by delivery to Seller of an election notice. City's failure to deliver such notice within such thirty (30)-day period shall be deemed City's election to terminate this Agreement in its entirety. If this Agreement is terminated in its entirety or in part pursuant to this Article 8, then City and Seller shall each be released from all obligations hereunder pertaining to that portion of the Easement Area affected by such termination. If City elects not to terminate this Agreement in its entirety, Seller shall give City a credit against the Purchase Price at the Closing in an amount proportionate to the percentage reduction, if any, of the square footage of the Easement Area, and this Agreement shall remain in full force and effect.

## **9. MAINTENANCE; CONSENT TO NEW CONTRACTS**

### **9.1 Maintenance of the Easement Area**

Between the date of Seller's execution of this Agreement and the Closing, Seller shall maintain Seller's Property in its current condition and shall make, at Seller's expense, all repairs necessary to maintain Seller's Property such condition. Seller shall make no changes to the Easement Area without City's prior written consent, which shall not be unreasonably withheld or delayed.

### **9.2 Contracts Affecting the Easement Area**

Except as otherwise provided herein or by express written permission granted by City, Seller shall not, after the date of execution of this Agreement, alienate, lien, encumber or otherwise transfer Seller's Property or any portion thereof or allow the same to occur, or enter into any lease or contract with respect to Seller's Property or any portion thereof that would survive the Possession Date and impair City's access to or use of the Easement Area.

## **10. DISMISSAL OF EMINENT DOMAIN ACTION**

Seller hereby agrees and consents to the dismissal of any pending action in eminent domain by City as to Seller's Property or any portion thereof and Seller also waives all claims to court costs and any money that may now be on deposit in the Superior Court in such action.

## 11. GENERAL PROVISIONS

### 11.1 Notices

Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be given by (i) hand delivery, against receipt, (ii) reliable next-business-day courier service that provides confirmation of delivery, or (iii) United States registered or certified mail, postage prepaid, return receipt required, and addressed as follows (or to such other address as either party may from time to time specify in writing to the other upon five (5) days prior written notice in the manner provided above):

City:

To: San Francisco Public Utilities Commission  
1145 Market Street, 7th Floor  
San Francisco, California 94103  
Attention: Brian Morelli  
Facsimile No.: (415) 487-5201

with copy to:

Carolyn J. Stein  
Deputy City Attorney  
Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Facsimile No.: (415) 554-4755

Seller:

To: David C.Y. Lo  
42210 Vargas Road  
Fremont, CA 94539  
Facsimile No.: (510) 656-2568

A properly addressed notice transmitted by one of the foregoing methods shall be deemed received upon the confirmed date of delivery, attempted delivery, or rejected delivery, whichever occurs first. Facsimile numbers are provided above for convenience of communication; however, neither party may give official or binding notice by facsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

### 11.2 Brokers and Finders

Neither party has had any contact or dealings regarding the Easement, or any communication in connection with the subject matter of this Agreement, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the purchase and sale contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his or her claim shall be responsible for such commission or fee and shall indemnify and hold harmless the other party from all claims, costs, and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the indemnified party in defending against the same. The provisions of this Section shall survive the Closing.

### **11.3 Successors and Assigns**

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns, subject to Section 9.2 [Contracts Affecting the Easement Area].

### **11.4 Amendments; Waivers**

Except as otherwise provided herein, (i) this Agreement may be amended or modified only by a written instrument executed by City and Seller, (ii) no waiver of any provision of this Agreement will be binding unless executed in writing by the party making the waiver, (iii) no waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision, whether or not similar, and (iv) no waiver will constitute a continuing waiver unless the written waiver so specifies.

### **11.5 Continuation and Survival of Representations and Warranties**

All representations and warranties by the respective parties contained herein or made in writing pursuant to this Agreement are intended to be, and shall remain, true and correct as of the Closing, shall be deemed to be material, and, together with all conditions, covenants and indemnities made by the respective parties contained herein or made in writing pursuant to this Agreement (except as otherwise expressly limited or expanded by the terms of this Agreement), shall survive the execution and delivery of this Agreement and the Closing, or, to the extent the context requires, beyond any termination of this Agreement. All statements contained in any certificate or other instrument delivered at any time by or on behalf of Seller in conjunction with the transaction contemplated hereby shall constitute representations and warranties hereunder.

### **11.6 Governing Law**

This Agreement shall be governed by California law and City's Charter. There shall be no obligation for the payment of money by City under this Agreement unless City's Controller first certifies, pursuant to Section 3.105 of City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure.

### **11.7 Merger of Prior Agreements; No Inducement**

The parties intend that this Agreement (including all of the attached exhibits and schedules and any documents specifically described herein, which are hereby incorporated into this Agreement by reference) shall be the final, complete and exclusive expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including, without limitation, term sheets and prior drafts or changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement. The making, execution and delivery of this Agreement by the parties has been induced by no representations, statements warranties or agreements other than those expressed herein.

### **11.8 Parties and Their Agents; Approvals**

The term "Seller" as used herein shall include the plural as well as the singular. If there is more than one (1) Seller, then the obligations under this Agreement imposed on Seller shall be joint and several. As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such party. All

approvals, consents or other determinations permitted or required by City hereunder shall be made by or through the General Manager of City's Public Utilities Commission or the City's Director of Property, unless otherwise provided herein, subject to applicable law.

### **11.9 Interpretation of Agreement**

The article, section and other headings of this Agreement and the table of contents are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained herein. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented or had the opportunity to be represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

### **11.10 Attorneys' Fees**

The prevailing party in any action or proceeding to enforce or interpret, or otherwise arising out of or relating to, this Agreement or any provision thereof (including but not limited to any arbitration, trial, administrative hearing, bankruptcy or appeal) will be entitled to recover from the other party all of its costs and expenses, including but not limited to reasonable attorneys' fees and experts' fees. For purposes of this Agreement, reasonable attorneys' fees of the 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.

### **11.11 Severability**

If any term or provision of this Agreement, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and shall be enforceable to the extent permitted by law.

### **11.12 Sunshine Ordinance**

Seller understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder public records subject to public disclosure. Seller hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

### **11.13 Conflicts of Interest**

Through its execution of this Agreement, Seller acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts that would constitute a violation of those provisions, and agrees that if Seller becomes

aware of any such fact during the term of this Agreement, Seller shall immediately notify the City.

#### **11.14 Notification of Limitations on Contributions**

Through its execution of this Agreement, Seller acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves.

#### **11.15 Non-Liability of City Officials, Employees and Agents**

Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee, agent or consultant of City shall be personally liable to Seller, its successors and assigns, in the event of any default or breach by City or for any amount that may become due to Seller, its successors and assigns, or for any obligation of City under this Agreement.

#### **11.16 Counterparts**

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

#### **11.17 Effective Date**

As used herein, the term "**Effective Date**" shall mean the date on which both parties shall have executed this Agreement provided the Agreement and the transactions contemplated by the Agreement shall have been authorized (a) in a manner required by law governing Seller, and (b) by a duly adopted resolution of the City's Public Utilities Commission, and (c) if required by City's Charter, by a duly adopted resolution of the City's Board of Supervisors and Mayor.

#### **11.18 Release of Claims**

Seller, for itself, its agents, heirs, assigns, successors in interest, and any related or affiliated entities, hereby fully releases and discharges City, its agents, employees, officers, directors, divisions, attorneys, accountants, insurers, successors, and other representatives, and any and all related or affiliated private or public agencies or entities, from any and all causes of action, actions, judgments, liens, indebtedness, obligations, losses, claims, damages, expenses, liabilities and demands, including without limitation any claim arising out of or pertaining, directly or indirectly, to the acquisition or use of the property interest described in this Agreement and/or the construction of any improvements thereon, including without limitation, inverse condemnation, nuisance, severance damages, relocation benefits, reestablishment benefits, the cost or value of any equipment or fixtures, attorneys' fees and costs, loss of goodwill, construction-related dust, noise, traffic and other related construction activity, and lost rentals or business associated with construction of any improvements, and any other types of related losses or damages.

Seller acknowledges that it may hereafter discover facts or law different from, or in addition to that which it now believes to be true with respect to his/her release of claims as set forth in this Agreement, and understands that by executing this Agreement it is waiving any rights of claims for any other or future benefits or damages to which it might be entitled which



are not specifically exempted herein. In giving this release, Seller expressly waives the protection of Civil Code Section 1542, which statute provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

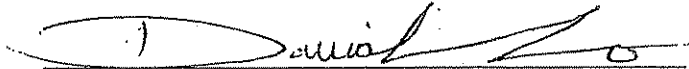
If this Agreement is terminated this Section 11.18 shall have no force or effect.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, SELLER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL APPROPRIATE LEGISLATION OF CITY'S PUBLIC UTILITIES COMMISSION (AND, IF REQUIRED BY CITY'S CHARTER, APPROPRIATE LEGISLATION OF CITY'S BOARD OF SUPERVISORS) SHALL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH LEGISLATION.

*[Signatures on next page]*

The parties have duly executed this Agreement as of the respective dates written below.

SELLER:



David C. Y. Lo

Date: 4 - 9 - 2010

Tax ID: \_\_\_\_\_

CITY:

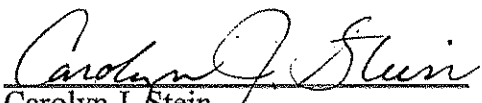
CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
AMY L. BROWN  
Director of Property

Date: \_\_\_\_\_

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By:   
\_\_\_\_\_  
Carolyn J. Stein  
Deputy City Attorney

ESCROW HOLDER'S ACKNOWLEDGMENT

Escrow Holder agrees to act as escrow holder in accordance with the terms of this Agreement. Escrow Holder's failure to execute below shall not invalidate the Agreement between City and Seller.

ESCROW HOLDER:

CHICAGO TITLE COMPANY

By: \_\_\_\_\_  
          [signature]  
Name: \_\_\_\_\_  
          [print name]  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

## SPOUSAL WAIVER

I acknowledge that I am the spouse of David C.Y. Lo, who executed the attached purchase and sale agreement, and further acknowledge that the real property described in the attached agreement is David C.Y. Lo's separate property. I waive any requirement that I join in the execution of any other document required for the transaction set forth in the attached agreement, and agree to execute an easement deed without warranty of title, if requested, or if necessary, so that the buyer can obtain title insurance. This obligation shall survive the delivery and recordation of the easement deed.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[signature of spouse]

\_\_\_\_\_  
[print name]

**EXHIBIT A  
TO  
AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE**

**EASEMENT DEED  
(Well Easement)**

*[See following page]*

**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

City and County of San Francisco  
Public Utilities Commission  
1145 Market Street, 7<sup>th</sup> Floor  
San Francisco, California 94103  
Attn: Right of Way Manager

The undersigned Grantee declares this instrument to be exempt from Recording Fees (Gov't Code §27383) and Documentary Transfer Tax (Revenue and Taxation Code §11922)

Space above this line for Recorder's Use

**EASEMENT DEED  
(Well Easement)**

(Portion of Assessor's Parcel No. 513-0065-008-05)  
(SFPUC Parcel IV08-02A)

For good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, David C. Y. Lo, who acquired title as a single man ("**Grantor**") grants to the City and County of San Francisco, a municipal corporation ("**Grantee**") and to its successors and assigns a nonexclusive, perpetual easement in gross (the "**Easement**") in, on, under, over and across that certain real property described in **Exhibit A**, attached hereto and made a part hereof (the "**Easement Area**"), for the construction, operation, use, reconstruction, replacement, repair and maintenance of a water well approximately one hundred twenty feet in depth, with well casing, pumps, pump house, water pipes and related braces, connections, fastenings and other appliances, appurtenances and fixtures, including electrical cables for use in connection therewith (collectively, "**Grantee's Facilities**"), to draw water from Grantee's subsurface tunnel up through the well, and transmit the water via a twelve-inch diameter subsurface pipe from the well to Grantee's water distribution line located adjacent to the Easement Area along Vargas Road. The Easement shall include (a) the right to install and maintain security fencing and/or sound walls within the Easement Area; (b) the right to park vehicles and store tools, equipment, supplies and excavated soils on the Easement Area on a temporary basis during construction and maintenance of Grantee's Facilities; (c) the right to manage vegetation that may impinge on the Easement Area; (d) the right of ingress to and egress from the Easement Area; and (e) the right to make such other improvements and take such other actions as may be reasonably necessary for the full enjoyment and accomplishment of the purposes of the Easement. Grantee's rights under this Deed may be exercised by Grantee's agents, contractors, subcontractors, suppliers, consultants, employees, licensees, invitees, or representatives, or by other authorized persons acting for or on behalf of Grantee.

Grantor shall not place or permit to be placed any structures, trees or obstructions within the Easement Area, nor do or allow to be done anything that may interfere with the full enjoyment by Grantee of the Easement Area.

The rights and obligations contained herein shall run with the land, burden the Easement Area described in attached **Exhibit A**, and bind and inure to the benefit of the successors and assigns of Grantor and Grantee.

Executed as of \_\_\_\_\_, 2010.

**GRANTOR:**

\_\_\_\_\_  
David C.Y. Lo

**APPROVED AS TO FORM:**

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_

Carolyn J. Stein  
Deputy City Attorney

**Certificate of Acceptance**

This is to certify that the interest in real property conveyed by this deed dated \_\_\_\_\_ from the first party to the City and County of San Francisco, is hereby accepted pursuant to Board of Supervisors' Resolution No. 18110 Series of 1939, approved August 7, 1957, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

AMY L. BROWN  
Director of Property



State of California            )  
  ) ss  
County of San Francisco        )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, 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 \_\_\_\_\_ (Seal)

**EXHIBIT A  
TO EASEMENT DEED  
LEGAL DESCRIPTION**

*[See following page]*



IV08-02A: 20' Wide Well Easement

All that real property situate in the City of Fremont, County of Alameda, State of California, more particularly described as follows:

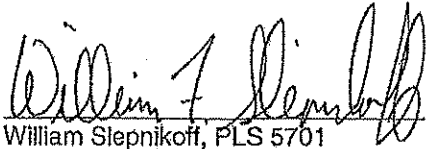
Being a portion of Parcel '1' as said parcel is shown on that certain Parcel Map entitled "Parcel Map No 3763" recorded on September 26, 1984 in Book 146 of Maps at pages 67 and 68, Alameda County Records, being a strip of land 20 feet wide more particularly described as follows:

**BEGINNING** at the hereinabove described **Point A**, being a point on the easterly right-of-way line of Vargas road as described in Parcel 1 of the Grant Deed to the State of California, recorded on September 22, 1961 in Reel 414 of Official Records at Image 973, Alameda County Records, also being a point on a curve concave westerly, from which point a radial line, from the curve to the radius point, bears North 71°51'44" West; thence northerly along said right-of-way line, along said curve having a radius of 2529.99 feet, through a central angle of 0°27'12", and an arc length of 20.02 feet; thence leaving said right-of-way line South 74°28'11" East, 19.17 feet; thence South 15°31'49" West, 20.00 feet; thence North 74°28'11" West, 20.00 feet to the **POINT OF BEGINNING**, containing an area of 391 square feet more or less.

All bearings and distances shown on this Exhibit are based upon the North American Datum of 1983 (NAD 83), California Coordinate System, Zone III, Epoch 1991.35. All distances shown hereon are grid distances. To convert to ground distance, multiply expressed distances by 1.0000877. Areas shown are calculated using grid distances. To convert to ground area, multiply the expressed area by 1.0001754.

A plat showing the above-described parcels is attached herein and made a part hereof as Exhibit "B".

This description was prepared by me or under my direction in conformance with the Professional Land Surveyors' Act.

  
William Slepniok, PLS 5701  
License Expires 09/30/2011



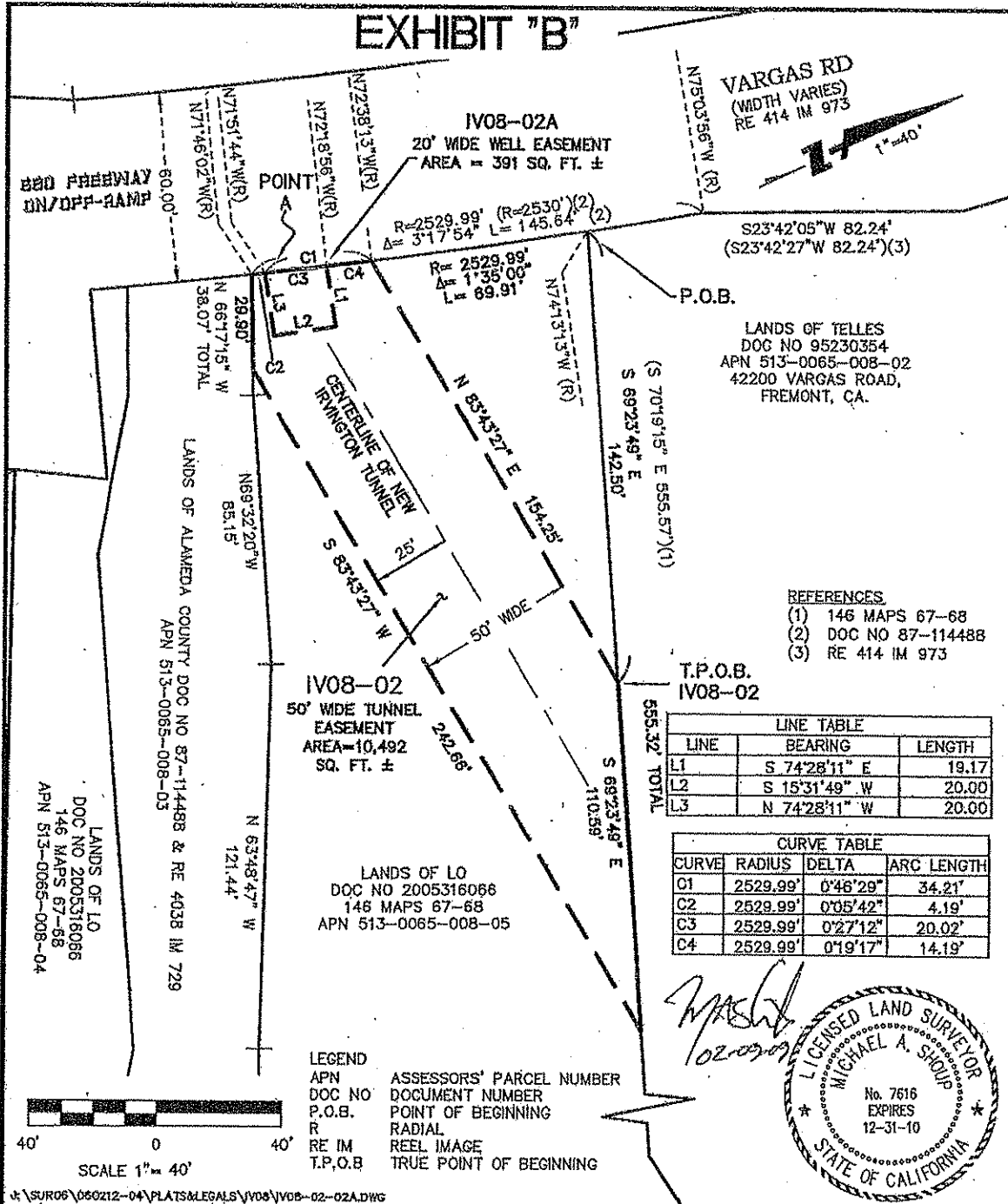
END OF DESCRIPTION

**EXHIBIT B  
TO  
AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE**

**DEPICTION OF EASEMENT AREA  
(Well Easement)**

*[See following page]*

# EXHIBIT "B"



U:\SVR06\060212-04\PLATS&LEGALS\VV08\VV08-02-02A.DWG



255 SHORELINE DR  
SUITE 200  
REDWOOD CITY, CA 94065  
650-482-6300  
650-482-6399 (FAX)

Subject **HETCH HETCHY CORRIDOR**  
**PROPERTY I.D. IV08-02, 02A**  
Job No. 20060212-04  
By RCS Date 02-09-09 Chkd. \_\_\_\_\_  
SHEET 1 OF 1

**EXHIBIT C  
TO  
AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE**

**EASEMENT DEED  
(Temporary Construction Easement)**

*[See following page]*

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

City and County of San Francisco  
Public Utilities Commission  
1145 Market Street, 7th Floor  
San Francisco, California 94103  
Attn: Right of Way Manager

The undersigned hereby declares this instrument to be exempt from Recording Fees (Govt. Code § 27383) and Documentary Transfer Tax (Rev. & Tax. Code §11922).

(Space above this line reserved for Recorder's use only)

**EASEMENT DEED**  
(Temporary Construction Easement)

(Portion of Assessor's Parcel No. 513-0065-008-05)  
(SFPUC Parcel IV08-03)

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, David C. Y. Lo, who acquired title as a single man ("Grantor"), hereby grants to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("Grantee"), a temporary, exclusive easement for construction staging purposes as further described below (the "Easement") over, across, under and upon Grantor's real property in the City of Fremont, Alameda County, California, in the specific location described in attached **Exhibit A** (the "Easement Area").

1. **Nature of Easement.** The Easement includes (a) the right to store, use and stage construction trailers, equipment, vehicles, machinery, tools, materials, supplies, and excavated soils in connection with the construction of Grantee's New Irvington Tunnel Project (the "Project"); (b) the right to improve, repair and maintain the Easement Area, including grading, installation of paving and/or crushed rock, installation of fencing and/or sound walls, and management of vegetation impinging on the Easement Area; and (c) such other rights as are reasonably necessary for the full enjoyment and accomplishment of the purposes of the Easement. Grantee's rights under this Deed may be exercised by Grantee's agents, contractors, subcontractors, suppliers, consultants, employees, licensees, invitees, or representatives, or by other authorized persons acting for or on behalf of Grantee.

2. **Term of Easement.** The term of the Easement shall commence on the date (the "Commencement Date") on which Grantee's contractor first enters the Easement Area to commence staging in connection with construction of the Project after Grantee's issuance of a Notice to Proceed to the contractor. Grantee currently estimates that the Commencement Date will be April 30, 2010, but that is a good faith estimate only. Grantee shall provide, or cause its contractor to provide, at least thirty (30) days' advance written notice to Grantor of the Commencement Date. At the request of either party, Grantor and Grantee shall confirm in writing the Commencement Date. The Easement shall expire on the last day of the fifty-first (51<sup>st</sup>) full calendar month after the Commencement Date; however, Grantee shall have the option

to extend the term on a month-to-month basis. A 30-day written notice will be given to Grantor if Grantee elects to exercise its option for any such extension. Upon expiration of the extended term, Grantee shall pay Grantor an additional sum for any such extensions at the same rate paid for the initial term (prorated on a monthly basis).

**3. Restoration.** Upon the earlier of expiration of the term of the Easement or Grantee's completion of the Project, Grantee shall restore, as nearly as reasonably possible, the surface of the Easement Area to its condition immediately prior to the commencement of the work related to the Project.

**4. Notices.** Any notice, consent or approval required or permitted to be given under this Easement Deed shall be in writing and shall be given by (i) hand delivery, against receipt, (ii) reliable next-business-day courier service that provides confirmation of delivery, or (iii) United States registered or certified mail, postage prepaid, return receipt required, and addressed as follows (or to such other address as either party may from time to time specify in writing to the other upon five (5) days prior written notice in the manner provided above):

**Grantee:**

To: San Francisco Public Utilities Commission  
1145 Market Street, 6th Floor  
San Francisco, California 94103  
Attention: David Tsztoo, Project Manager  
Facsimile No.: (415) 934-3947

With a copy to: Carolyn Stein  
Deputy City Attorney  
Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Facsimile No.: (415) 554-4755

**Grantor:**

To: David C.Y. Lo  
42210 Vargas Road,  
Fremont, CA: 94539  
Facsimile No.: (510) 656-2568

A properly addressed notice transmitted by one of the foregoing methods shall be deemed received upon confirmed delivery, attempted delivery or rejected delivery. Facsimile numbers are provided above for convenience of communication only; neither party may give official or binding notice by facsimile.

**5. Run with the Land.** The provisions of this Easement Deed shall run with the land, burden the Easement Area, and bind and inure to the benefit of the respective successors and assigns of Grantee and Grantor. In the event Grantor sells, conveys or assigns any property



interest encumbered by the Agreement, Grantor shall notify the successor or assignee of the rights and obligations of both parties as stated herein.

6. **Exhibits.** The Exhibit referenced in this Deed is attached to and made a part of this Deed.

*[Remainder of page intentionally left blank.]*

7. **Counterparts.** This Deed may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one instrument.

Executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**GRANTOR:**

\_\_\_\_\_  
David C.Y. Lo

Date: \_\_\_\_\_

Tax ID: \_\_\_\_\_

**ACCEPTED:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_

Amy L. Brown  
Director of Property

PUC Resolution: \_\_\_\_\_

Dated: \_\_\_\_\_

**APPROVED AS TO FORM:**

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_

Carolyn J. Stein  
Deputy City Attorney

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by this deed dated \_\_\_\_\_, from the Grantor to the City and County of San Francisco, is hereby accepted pursuant to Board of Supervisors' Resolution No. 18110 Series of 1939, approved August 7, 1957, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
AMY L. BROWN  
Director of Property

State of California )  
 ) ss  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, 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 \_\_\_\_\_ (Seal)

**EXHIBIT A**

Description of Easement Area



ENGINEERS  
SURVEYORS  
PLANNERS

November 16, 2009

EXHIBIT "A"  
LEGAL DESCRIPTION  
Property I.D. No. IV08  
SFPUC NEW IRVINGTON TUNNEL

IV08-03: Temporary Construction Easement

All that real property situate in the City of Fremont, County of Alameda, State of California, more particularly described as follows:

Being a portion of Parcel '1' as said parcel is shown on that certain Parcel Map entitled "Parcel Map No 3763" recorded on September 26, 1984 in Book 146 of Maps at pages 67 and 68, Alameda County Records, being more particularly described as follows:

**BEGINNING** at the intersection of the northerly line of Parcel '1' as shown on said map, with the easterly right-of-way line of Vargas Road, as described in Parcel 1 of the Grant Deed to the State of California, recorded on September 22, 1961 in Reel 414 of Official Records at Image 973, Alameda County Records, being also a point on a non-tangent curve concave westerly, having a radius of 2529.99 feet, from which point a radial line, from the curve to the radius point, bears North 74°13'13" West;

thence along said northerly line of said Parcel '1' as shown on said map, South 69°23'49" East, 83.83 feet;

thence leaving said northerly line, South 59°24'26"E 125.75 feet;

thence South 64°07'25" East, 75.42 feet;

thence South 76°13'01" East, 122.38 feet;

thence South 81°52'20" East, 65.79 feet to the last said northerly line;

thence along last said northerly line, South 69°23'49" East, 86.79 feet;

thence continuing along the northerly line of said Parcel '1' as shown on said map, North 81°25'26" East, 31.79 feet;

thence leaving last said northerly line, South 00°49'34" 274.02 feet to the southwesterly line of said Parcel '1' as shown on said map;

thence along said southwesterly line, North 64°31'25" West, 25.77 feet to the intersection with the northeasterly line of the parcel described in that certain Quitclaim Deed recorded on April 27, 1987 as Document Number 87-114488;

thence along the northeasterly and northerly line of last said parcel the following seven courses:

thence North 46°36'08" West, 94.09 feet;

Exhibit "A"  
Page 1 of 2



ENGINEERS  
SURVEYORS  
PLANNERS

thence North 46°27'49" West, 104.06 feet;

thence North 55°46'35" West, 138.49 feet;

thence North 65°33'08" West, 89.72 feet;

thence North 63°48'47" West, 121.44 feet;

thence North 69°32'20" West, 85.15 feet;

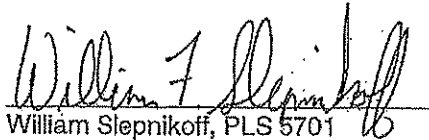
thence North 66°17'15" West, 38.07 feet to said easterly right-of-way line of Vargas Road, being a point on a non-tangent curve concave westerly from which a radial line, from the curve to the radius point, bears North 71°46'02" West;

thence northeasterly along said right-of-way, along said curve having a radius of 2,529.99 feet, through a central angle of 2°27'11", and an arc length of 108.32 feet to the **POINT OF BEGINNING**, containing an area of 83,537 square feet or 1.92 acres, more or less.

All bearings and distances shown on this Exhibit are based upon the North American Datum of 1983 (NAD 83), California Coordinate System, Zone III, Epoch 1991.35. All distances shown hereon are grid distances. To convert to ground distance, multiply expressed distances by 1.0000877. Areas shown are calculated using grid distances. To convert to ground area, multiply the expressed area by 1.0001754.

A plat showing the above-described parcels is attached herein and made a part hereof as Exhibit "B".

This description was prepared by me or under my direction in conformance with the Professional Land Surveyors' Act.



William Slepnikoff, PLS 5701  
License Expires 09/30/2011



END OF DESCRIPTION

J:\Sur06\060212-04\Plats&Legals\IV08\IV08-03 Legal.doc

Exhibit "A"  
Page 2 of 2

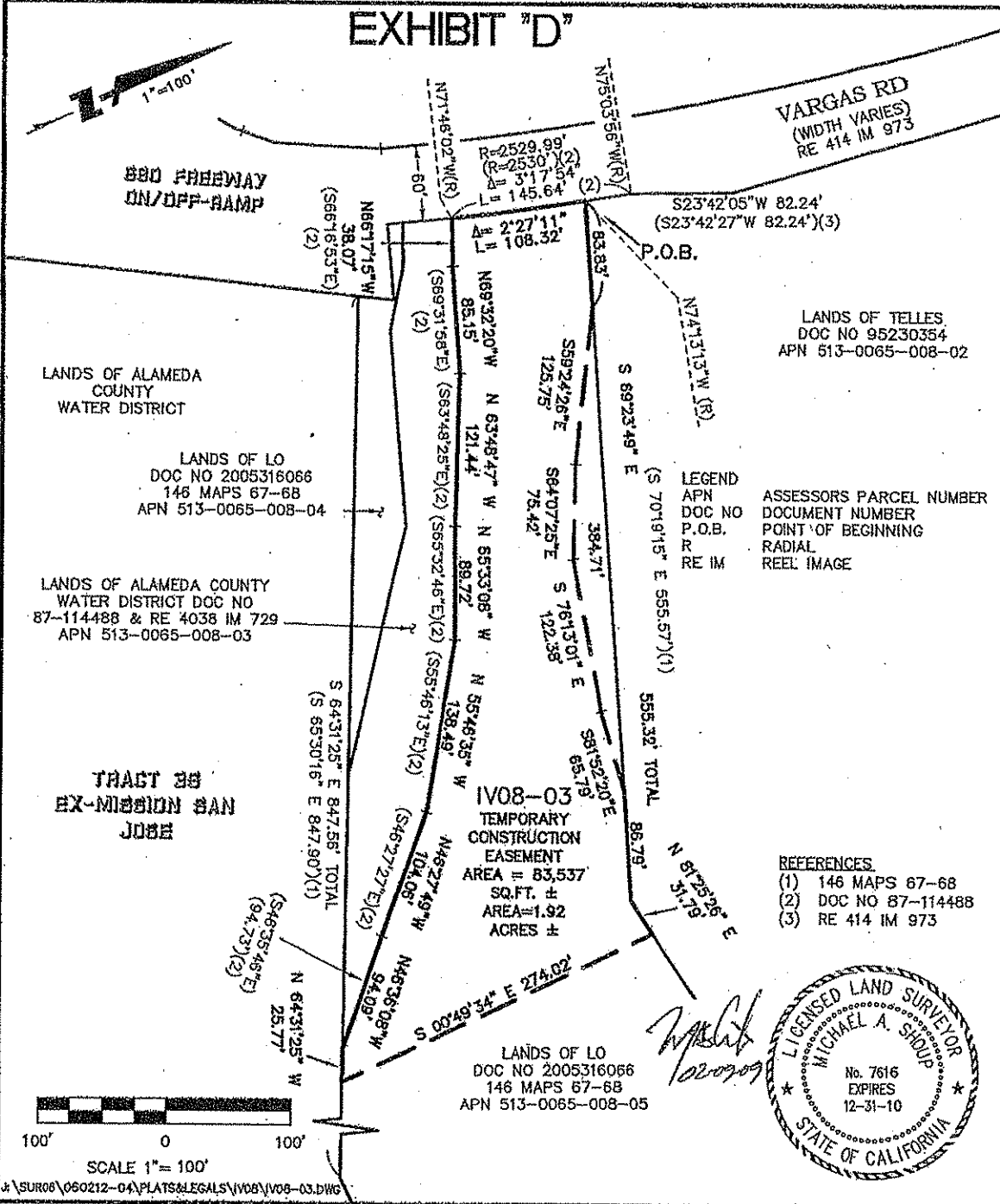
**EXHIBIT D  
TO  
AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE**

**DEPICTION OF EASEMENT AREA  
(Temporary Construction Easement)**

*[See following page]*



# EXHIBIT "D"



VARGAS RD  
(WIDTH VARIES)  
RE 414 IM 973

880 FREEWAY  
ON/OFF-RAMP

LANDS OF ALAMEDA  
COUNTY  
WATER DISTRICT

LANDS OF LO  
DOC NO 2005316066  
146 MAPS 67-68  
APN 513-0065-008-04

LANDS OF ALAMEDA COUNTY  
WATER DISTRICT DOC NO  
87-114488 & RE 4038 IM 729  
APN 513-0065-008-03

TRACT 88  
EX-MISSION SAN  
JOSE

IV08-03  
TEMPORARY  
CONSTRUCTION  
EASEMENT  
AREA = 83,537  
SQ.FT. #  
AREA = 1.92  
ACRES #

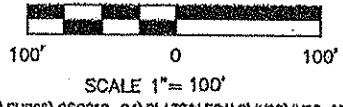
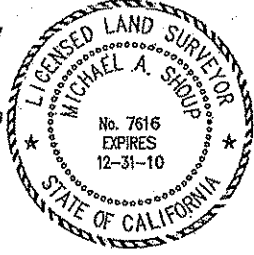
LANDS OF LO  
DOC NO 2005316066  
146 MAPS 67-68  
APN 513-0065-008-05

LANDS OF TELLES  
DOC NO 95230354  
APN 513-0065-008-02

LEGEND  
APN  
DOC NO  
P.O.B.  
R  
RE IM

ASSESSORS PARCEL NUMBER  
DOCUMENT NUMBER  
POINT OF BEGINNING  
RADIAL  
REEL IMAGE

- REFERENCES
- (1) 146 MAPS 67-68
  - (2) DOC NO 87-114488
  - (3) RE 414 IM 973



\\SUR06\060212-04\PLATS&LEGALS\IV08\IV08-03.DWG



255 SHORELINE DR  
SUITE 200  
REDWOOD CITY, CA 94065  
650-482-6300  
650-482-6399 (FAX)

Subject HETCH HETCHY CORRIDOR  
PROPERTY I.D. IV08-03  
Job No. 20060212-04  
By RCS Date 02-09-09 Chkd. \_\_\_\_\_  
SHEET 1 OF 1

**EXHIBIT E  
TO  
AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE  
PRELIMINARY TITLE REPORT**

*[See following page]*



CHICAGO TITLE COMPANY

PRELIMINARY REPORT

*In response to the application for a policy of title insurance referenced herein, Chicago Title Company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a policy or policies of title insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an exception herein or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations or Conditions of said policy forms.*

*The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Attachment One. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Attachment One. Copies of the policy forms should be read. They are available from the office which issued this report.*

*This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.*

*The policy(s) of title insurance to be issued hereunder will be policy(s) of Chicago Title Insurance Company, a Nebraska corporation.*

*Please read the exceptions shown or referred to herein and the exceptions and exclusions set forth in Attachment One of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.*

*It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects and encumbrances affecting title to the land.*

*Morris Evans*  
Countersigned



Chicago Title Company  
BY *Alfred W. [Signature]* President  
ATTEST *[Signature]* Secretary



# Chicago Title Company

**ISSUING OFFICE:** 2150 John Glenn Drive, Suite 400 • Concord, CA 94520

**FOR SETTLEMENT INQUIRIES, CONTACT:** Chicago Title Company - San Francisco Commercial  
455 Market Street, Suite 2100 • San Francisco, CA 94105  
415 788-0871 • FAX 415 896-9424

## PRELIMINARY REPORT

**Amended**

Title Officer: Michael Foster  
Escrow Officer: Sue Trowbridge  
Escrow No.: 07-35600995-ST

Title No.: 07-59013656-B-MF  
Locate No.: CACTI7701-7738-2356-0059013656

TO: Chicago Title Company  
455 Market Street, 21st Floor  
San Francisco, CA 94111

ATTN: Mary Pat Noeker  
YOUR REFERENCE: SFPUC #IV08-03 & IV08-02A

SHORT TERM RATE: No

**PROPERTY ADDRESS:** 42300 Vargas Road, Fremont, California

**EFFECTIVE DATE:** February 19, 2010, 07:30 A.M.

The form of policy or policies of title insurance contemplated by this report is:

ALTA Owner's Policy (10/17/92)

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:  
  
AN EASEMENT (TO BE CREATED)
2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:  
  
**David C. Y. Lo, who acquired title as a single man**
3. THE LAND REFERRED TO IN THIS REPORT IS DESCRIBED AS FOLLOWS:  
  
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

CW/LH 07/20/2007

**LEGAL DESCRIPTION**

**EXHIBIT "A"**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF FREMONT, COUNTY OF ALAMEDA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Parcel 1 of Parcel Map 3763 filed September 26, 1984, Book 146 of Parcel Maps, Pages 67 and 68, Alameda County Records.

Excepting therefrom that portion Deeded to Alameda County Water District with Deed dated April 17, 1987, recorded April 27, 1987, Series No. 87-114488, Alameda County Records.

APN: 513-0065-008-04, 513-0065-008-05

**AT THE DATE HEREOF, ITEMS TO BE CONSIDERED AND EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN SAID POLICY FORM WOULD BE AS FOLLOWS:**

1. **Property taxes**, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2010-2011.

2. **Property taxes**, including any personal property taxes and any assessments collected with taxes, for the fiscal year 2009-2010, Assessor's Parcel Number 513-0065-008-04 .

Code Area Number: 12057  
1st Installment: \$17.30 Paid  
2nd Installment: \$17.30 Open  
Land: \$79.00  
Improvements: \$0.00  
Exemption: None  
Personal Property: \$0.00  
Bill No.: 366217

3. **Property taxes**, including any personal property taxes and any assessments collected with taxes, for the fiscal year 2009-2010, Assessor's Parcel Number 513-0065-008-05 .

Code Area Number: 12057  
1st Installment: \$5,275.99 Paid  
2nd Installment: \$5,275.99 Open  
Land: \$616,058.00  
Improvements: \$318,379.00  
Exemption: \$7,000.00  
Personal Property: \$0.00  
Bill No.: 366218

4. **The lien of supplemental taxes**, if any, assessed pursuant to the provisions of Chapter 3.5 (Commencing with Section 75) of the Revenue and Taxation code of the State of California.

5. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Tuolumne Water Power Company  
Purpose: public utilities  
Recorded: July 15, 1908, Instrument No. 4268, Book 1482, Page 328, of Deeds  
Affects: strip as shown on Parcel Map referenced in legal description.

NOTE: Pacific Gas and Electric Company is the successor in interest

6. An exclusive surface right of way easement for construction, maintenance and use of an aqueduct tunnel or tunnels in and through the herein described property, together with the right to construct, maintain and operate a line of poles with the necessary appurtenances for the transmission of electricity, and a line of poles with the necessary appurtenances for a telephone line, granted to City and County of San Francisco, by instrument dated July 16, 1928, recorded July 18, 1928, Series No. Y/50668, Book 1923 OR, Page 171, Alameda County Records.

The exact location of said easement is not defined of record

7. Any easement, for water pipe lines and certain water rights, together with the right to maintain and service the same, as disclosed in the agreement between Joseph R. Telles and Clarence V. Telles and Estelle Telles, his wife, dated November 1954, recorded November 29, 1954, Book 7492 OR, Page 447, Alameda County Records.

8. Provision in the deed to State of California, recorded September 22, 1961, Reel 414 OR, Image 973, Series No. AS/117264, as follows:

This conveyance is made for the purposes of a freeway and adjacent frontage road, and the grantor hereby releases and relinquishes to the grantee any and all abutter's rights, including access rights, appurtenant to grantor's remaining property, in and to said freeway, provided, however, that such remaining property shall abut upon and have access, as hereinafter provided, to said frontage road, which will be connected to the freeway only at such points as may be established by public authority.

The said right of access to said frontage road is hereby expressly limited to the courses with lengths and arc length described in Parcel 1, in said deed, as "404.80 feet, 82.24 feet and 97.34 feet".

9. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: The State of California  
Purpose: Pipelines for transportation of water  
Recorded: October 11, 1967, Instrument No. AZ/103019, Book 2053, Page 77, of Official Records  
Affects: A strip of land approximately 130 feet wide

Purpose: Road Purposes  
Affects: a 20' strip of land near the southwest corner of the premises

10. Land Conservation Contract and the effect of the terms and provisions contained therein

Executed by: Ludwig Betchart and Waldtraut Betchard  
And Between: The City of Fremont, a Municipal Corporation  
Recorded: March 21, 1974, Reel 3634 OR, Image 881, Alameda County Records

11. An easement on, over and through a Southwestern portion of premises, as described in the Final Order of Condemnation made July 10, 1975 by the Superior Court of Alameda County, Case No. 446054-5, in favor of Alameda County Water District, recorded July 18, 1975, Series No. 75-101486, Reel 4038 OR, Image 729, Alameda County Records.

12. Notice of Violation of land development regulations pursuant to Title VIII, Chapter 1. of the City of Fremont Municipal Code, recorded April 8, 1980, Series No. 80-063267, Alameda County Records.

13. The interest created by the instrument

Entitled : Judgment Quieting Title  
Executed by : Joseph R. Telles, Jr.  
and Between : Mary Teresa Fearson aka Mary Teresa Kolsch  
Recorded : March 17, 1987, Series No. 87-74848, Alameda County Records

Reference is had to said document for full particulars.

14. **Matters** contained in that certain document entitled "Water Service Agreement" dated October 9, 1997, executed by and between Alameda County Water District and County Water District Law recorded October 28, 1997, Instrument No. 97-285868, of Official Records.

Reference is hereby made to said document for full particulars.

15. **A deed of trust** to secure an indebtedness in the amount shown below, and any other obligations secured thereby

Amount: \$930,000.00  
Dated: February 25, 2003  
Trustor: Philip Lo, an unmarried man, as his sole and separate property  
Trustee: California Reconveyance Company  
Beneficiary: Washington Mutual Bank, FA, a federal association  
Loan No.: 0079402822  
Recorded: March 4, 2003, Instrument No. 2003-123078, of Official Records

16. **This Company** will require a **ALTA/ACSM Land Title Survey**. If the owner of subject property is in possession of a current ALTA/ACSM Land Title Survey, this Company will require that said Survey be submitted for review and approval; otherwise, a new survey, satisfactory to this Company, must be prepared by a licensed land surveyor and supplied to the Company prior to the close of escrow. The Company reserves the right to except additional items and/or make additional requirements after review of such survey.

17. **Any rights of the parties in possession** of a portion of, or all of, said land, which rights are not disclosed by the public record.

This Company will require, for review, a full and complete copy of any unrecorded agreement, contract, license and/or lease, together with all supplements, assignments and amendments thereto, before issuing any policy of title insurance without excepting this item from coverage. The Company reserves the right to except additional items and/or make additional requirements after reviewing said documents.

18. **The transaction contemplated** in connection with this Report is subject to the review and approval of the Company's Corporate Underwriting Department. The Company reserves the right to add additional items or make further requirements after such review.



- 19.** The application for title insurance was placed by reference to only a street address or tax identification number.

Based on our records, we believe that the description in this report covers the parcel requested, however, if the legal description is incorrect a new report must be prepared.

If the legal description is incorrect, in order to prevent delays, the seller/buyer/borrower must provide the Company and/or the settlement agent with the correct legal description intended to be the subject of this transaction.

**END OF ITEMS**

- Note 1.** The name(s) of the buyer(s) furnished with this application for Title Insurance is/are:  
San Francisco Public Utilities Commission  
If these names are incorrect, incomplete or misspelled, please notify the Company.
- Note 2.** The Company is not aware of any matters which would cause it to decline to attach the CLTA Endorsement Form 116 indicating that there is located on said land a mixed-use property known as 42300 Vargas Road , Fremont, California to an Extended Coverage Loan Policy.
- Note 3.** There are NO deeds affecting said land, recorded within twenty-four (24) months of the date of this report.
- Note 4.** If a county recorder, title insurance company, escrow company, real estate broker, real estate agent or association provides a copy of a declaration, governing document or deed to any person, California law requires that the document provided shall include a statement regarding any unlawful restrictions. Said statement is to be in at least 14-point bold face type and may be stamped on the first page of any document provided or included as a cover page attached to the requested document. Should a party to this transaction request a copy of any document reported herein that fits this category, the statement is to be included in the manner described.

**Note 5.** Wiring instructions for Chicago Title Company, San Francisco, CA, are as follows:

Receiving Bank: Bank of America  
275 Valencia Blvd, 2nd Floor  
Brea, CA 92823-6340  
ABA Routing No.: 026009593  
Credit Account Name: Chicago Title Company - San Francisco Commercial  
455 Market Street, Suite 2100, San Francisco, CA 94105  
Credit Account No.: 12354-82420  
Escrow No.: 07-35600995-ST

These wiring instructions are for this specific transaction involving the Title Department of the Concord office of Chicago Title Company. These instructions therefore should not be used in other transactions without first verifying the information with our accounting department. It is imperative that the wire text be exactly as indicated. Any extraneous information may cause unnecessary delays in confirming the receipt of funds.

**Note 6.** Any documents being executed in conjunction with this transaction must be signed in the presence of an authorized Company employee, an authorized employee of an agent, an authorized employee of the insured lender, or by using Bancserv or other approved third-party service. If the above requirements cannot be met, please call the company at the number provided in this report.

**END OF NOTES**

## ATTACHMENT ONE

### AMERICAN LAND TITLE ASSOCIATION RESIDENTIAL TITLE INSURANCE POLICY (6-1-87) EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
  - land use
  - improvements on the land
  - land division
  - environmental protection

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at policy date.

This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.

2. The right to take the land by condemning it, unless:
  - a notice of exercising the right appears in the public records on the Policy Date
  - the taking happened prior to the Policy Date and is binding on you if you bought the land without knowledge of the taking

In addition to the Exclusions, you are not insured against loss, costs, attorneys' fees, and the expenses resulting from:

1. Any rights, interests, or claims of parties in possession of the land not shown by the public records.
2. Any easements or liens not shown by the public records. This does not limit the lien coverage in Item 8 of Covered Title Risks.

3. Title Risks:

- that are created, allowed, or agreed to by you
- that are known to you, but not to us, on the Policy Date— unless they appeared in the public records
- that result in no loss to you
- that first affect your title after the Policy Date— this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks

4. Failure to pay value for your title.

5. Lack of a right:

- to any land outside the area specifically described and referred to in Item 3 of Schedule A
  - or
  - in streets, alleys, or waterways that touch your land
- This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

3. Any facts about the land which a correct survey would disclose and which are not shown by the public records. This does not limit the forced removal coverage in Item 12 of Covered Title Risks.
4. Any water rights or claims or title to water in or under the land, whether or not shown by the public records.

**ATTACHMENT ONE  
(CONTINUED)**

**CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY -- 1990  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

**SCHEDULE B, PART I  
EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

**PART I**

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.

**ATTACHMENT ONE  
(CONTINUED)**

**AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (10-17-92)  
WITH A.L.T.A. ENDORSEMENT-FORM 1 COVERAGE  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:  
(a) created, suffered, assumed or agreed to by the insured claimant;  
(b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;  
(c) resulting in no loss or damage to the insured claimant;  
(d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy); or  
(e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:  
(i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or  
(ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or  
(iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:  
(a) to timely record the instrument of transfer; or  
(b) of such recordation to impart notice to a purchaser for value or a judgement or lien creditor.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage.

In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

**ATTACHMENT ONE  
(CONTINUED)**

**2006 AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (06-17-06)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

- (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.

4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage.

In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records;
- (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

**ATTACHMENT ONE  
(CONTINUED)**

**AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (10-17-92)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy, or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgement or lien creditor.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage.

In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

**ATTACHMENT ONE  
(CONTINUED)**

**2006 AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (06-17-06)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;

(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

- (c) resulting in no loss or damage to the Insured Claimant;
- (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
- (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage.

In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.



**ATTACHMENT ONE  
(CONTINUED)**

**CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE (10-22-03)  
ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (10-22-03)  
EXCLUSIONS**

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:
  - a. building
  - b. zoning
  - c. Land use
  - d. improvements on Land
  - e. Land division
  - f. environmental protection

This Exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.  
This Exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.
3. The right to take the Land by condemning it, unless:
  - a. notice of exercising the right appears in the Public Records at the Policy Date; or
  - b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.
4. Risks:
  - a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records;
  - b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;
  - c. that result in no loss to You; or
  - d. that first occur after the Policy Date -- this does not limit the coverage described in Covered Risk 7, 8.d, 22, 23, 24 or 25.
5. Failure to pay value for Your Title.
6. Lack of a right:
  - a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
  - b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 18.

**LIMITATIONS ON COVERED RISKS**

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 14, 15, 16 and 18, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	<u>Your Deductible Amount</u>	<u>Our Maximum Dollar Limit of Liability</u>
Covered Risk 14:	1.00% of Policy Amount or <u>\$ 2,500.00</u> (whichever is less)	\$ <u>10,000.00</u>
Covered Risk 15:	1.00% of Policy Amount or <u>\$ 5,000.00</u> (whichever is less)	\$ <u>25,000.00</u>
Covered Risk 16:	1.00% of Policy Amount or <u>\$ 5,000.00</u> (whichever is less)	\$ <u>25,000.00</u>
Covered Risk 18:	1.00% of Policy Amount or <u>\$ 2,500.00</u> (whichever is less)	\$ <u>5,000.00</u>

**ATTACHMENT ONE  
(CONTINUED)**

**ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (10/13/01)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions or location of any improvements now or hereafter erected on the Land; (iii) a separation in ownership or a change in the dimensions or areas of the Land or any parcel of which the Land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the Public Records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without Knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:  
(a) created, suffered, assumed or agreed to by the Insured Claimant;  
(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;  
(c) resulting in no loss damage to the Insured Claimant;  
(d) attaching or created subsequent to Date of Policy (this paragraph does not limit the coverage provided under Covered Risks 8, 16, 18, 19, 20, 21, 22, 23, 24, 25 and 26); or  
(e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of the Insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the Land is situated.
5. Invalidity or unenforceability of the lien of the Insured Mortgage, or claim thereof, which arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, except as provided in Covered Risk 27, or any consumer credit protection or truth in lending law.
6. Real property taxes or assessments of any governmental authority which become a lien on the Land subsequent to Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 7, 8(e) and 26.
7. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This exclusion does not limit the coverage provided in Covered Risk 8.
8. Lack of priority of the lien of the Insured Mortgage as to each and every advance made after Date of Policy, and all interest charged thereon, over liens, encumbrances and other matters affecting the title, the existence of which are Known to the Insured at:  
(a) The time of the advance; or  
(b) The time a modification is made to the terms of the Insured Mortgage which changes the rate of interest charged, if the rate of interest is greater as a result of the modification than it would have been before the modification. This exclusion does not limit the coverage provided in Covered Risk 8.
9. The failure of the residential structure, or any portion thereof to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at Date of Policy.

Fidelity National Financial, Inc.  
**Privacy Statement**

Fidelity National Financial, Inc. and its subsidiaries ("FNF") respect the privacy and security of your non-public personal information ("Personal Information") and protecting your Personal Information is one of our top priorities. This Privacy Statement explains FNF's privacy practices, including how we use the Personal Information we receive from you and from other specified sources, and to whom it may be disclosed. FNF follows the privacy practices described in this Privacy Statement and, depending on the business performed, FNF companies may share information as described herein.

**Personal Information Collected**

We may collect Personal Information about you from the following sources:

- Information we receive from you on applications or other forms, such as your name, address, social security number, tax identification number, asset information, and income information;
- Information we receive from you through our Internet websites, such as your name, address, email address, Internet Protocol address, the website links you used to get to our websites, and your activity while using or reviewing our websites;
- Information about your transactions with or services performed by us, our affiliates, or others, such as information concerning your policy, premiums, payment history, information about your home or other real property, information from lenders and other third parties involved in such transaction, account balances, and credit card information; and
- Information we receive from consumer or other reporting agencies and publicly recorded documents.

**Disclosure of Personal Information**

We may provide your Personal Information (excluding information we receive from consumer or other credit reporting agencies) to various individuals and companies, as permitted by law, without obtaining your prior authorization. Such laws do not allow consumers to restrict these disclosures. Disclosures may include, without limitation, the following:

- To insurance agents, brokers, representatives, support organizations, or others to provide you with services you have requested, and to enable us to detect or prevent criminal activity, fraud, material misrepresentation, or nondisclosure in connection with an insurance transaction;
- To third-party contractors or service providers for the purpose of determining your eligibility for an insurance benefit or payment and/or providing you with services you have requested;
- To an insurance regulatory authority, or a law enforcement or other governmental authority, in a civil action, in connection with a subpoena or a governmental investigation;
- To companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements and/or
- To lenders, lien holders, judgment creditors, or other parties claiming an encumbrance or an interest in title whose claim or interest must be determined, settled, paid or released prior to a title or escrow closing.

We may also disclose your Personal Information to others when we believe, in good faith, that such disclosure is reasonably necessary to comply with the law or to protect the safety of our customers, employees, or property and/or to comply with a judicial proceeding, court order or legal process.

Disclosure to Affiliated Companies - We are permitted by law to share your name, address and facts about your transaction with other FNF companies, such as insurance companies, agents, and other real estate service providers to provide you with services you have requested, for marketing or product development research, or to market products or services to you. We do not, however, disclose information we collect from consumer or credit reporting agencies with our affiliates or others without your consent, in conformity with applicable law, unless such disclosure is otherwise permitted by law.

Disclosure to Nonaffiliated Third Parties - We do not disclose Personal Information about our customers or former customers to nonaffiliated third parties, except as outlined herein or as otherwise permitted by law.

**Confidentiality and Security of Personal Information**

We restrict access to Personal Information about you to those employees who need to know that information to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard Personal Information.

**Access To Personal Information/  
Requests for Correction, Amendment, or Deletion of Personal Information**

As required by applicable law, we will afford you the right to access your Personal Information, under certain circumstances to find out to whom your Personal Information has been disclosed, and request correction or deletion of your Personal Information. However, FNF's current policy is to maintain customers' Personal Information for no less than your state's required record retention requirements for the purpose of handling future coverage claims.

For your protection, all requests made under this section must be in writing and must include your notarized signature to establish your identity. Where permitted by law, we may charge a reasonable fee to cover the costs incurred in responding to such requests. Please send requests to:

Chief Privacy Officer  
Fidelity National Financial, Inc.  
601 Riverside Avenue  
Jacksonville, FL 32204

**Changes to this Privacy Statement**

This Privacy Statement may be amended from time to time consistent with applicable privacy laws. When we amend this Privacy Statement, we will post a notice of such changes on our website. The effective date of this Privacy Statement, as stated above, indicates the last time this Privacy Statement was revised or materially changed.

## Notice of Available Discounts

Pursuant to Section 2355.3 in Title 10 of the California Code of Regulations Fidelity National Financial, Inc. and its subsidiaries ("FNF") must deliver a notice of each discount available under our current rate filing along with the delivery of escrow instructions, a preliminary report or commitment. Please be aware that the provision of this notice does not constitute a waiver of the consumer's right to be charged the filed rate. As such, your transaction may not qualify for the below discounts.

You are encouraged to discuss the applicability of one or more of the below discounts with a Company representative. These discounts are generally described below; consult the rate manual for a full description of the terms, conditions and requirements for such discount. These discounts only apply to transactions involving services rendered by the FNF Family of Companies. This notice only applies to transactions involving property improved with a one-to-four family residential dwelling.

### **FNF Underwritten Title Company**

CTC – Chicago Title Company

### **FNF Underwriter**

CTIC – Chicago Title Insurance Co.

### **Available Discounts**

#### **CREDIT FOR PRELIMINARY REPORTS AND/OR COMMITMENTS ON SUBSEQUENT POLICIES (CTIC)**

Where no major change in the title has occurred since the issuance of the original report or commitment, the order may be reopened within 35 months and all or a portion of the charge previously paid for the report or commitment may be credited on a subsequent policy charge within the following time period from the date of the report.

#### **FEE REDUCTION SETTLEMENT PROGRAM (CTC and CTIC)**

Eligible customers shall receive a \$20.00 reduction in their title and/or escrow fees charged by the Company for each eligible transaction in accordance with the terms of the Final Judgments entered in The People of the State of California.

#### **DISASTER LOANS (CTIC)**

The charge for a Lender's Policy (Standard or Extended coverage) covering the financing or refinancing by an owner of record, within 24 months of the date of a declaration of a disaster area by the government of the United States or the State of California on any land located in said area, which was partially or totally destroyed in the disaster, will be 50% of the appropriate title insurance rate.

#### **CHURCHES OR CHARITABLE NON-PROFIT ORGANIZATIONS (CTIC)**

On properties used as a church or for charitable purposes within the scope of the normal activities of such entities, provided said charge is normally the church's obligation the charge for an owner's policy shall be 50% to 63% of the appropriate title insurance rate, depending on the type of coverage selected. The charge for a lender's policy shall be 32% to 40% of the appropriate title insurance rate, depending on the type of coverage selected.

#### **EMPLOYEE RATE (CTC and CTIC)**

No charge shall be made to employees (including employees on approved retirement) of the Company or its underwritten, subsidiary or affiliated title companies for policies or escrow services in connection with financing, refinancing, sale or purchase of the employees' bona fide home property. Waiver of such charges is authorized only in connection with those costs which the employee would be obligated to pay, by established custom, as a party to the transaction.

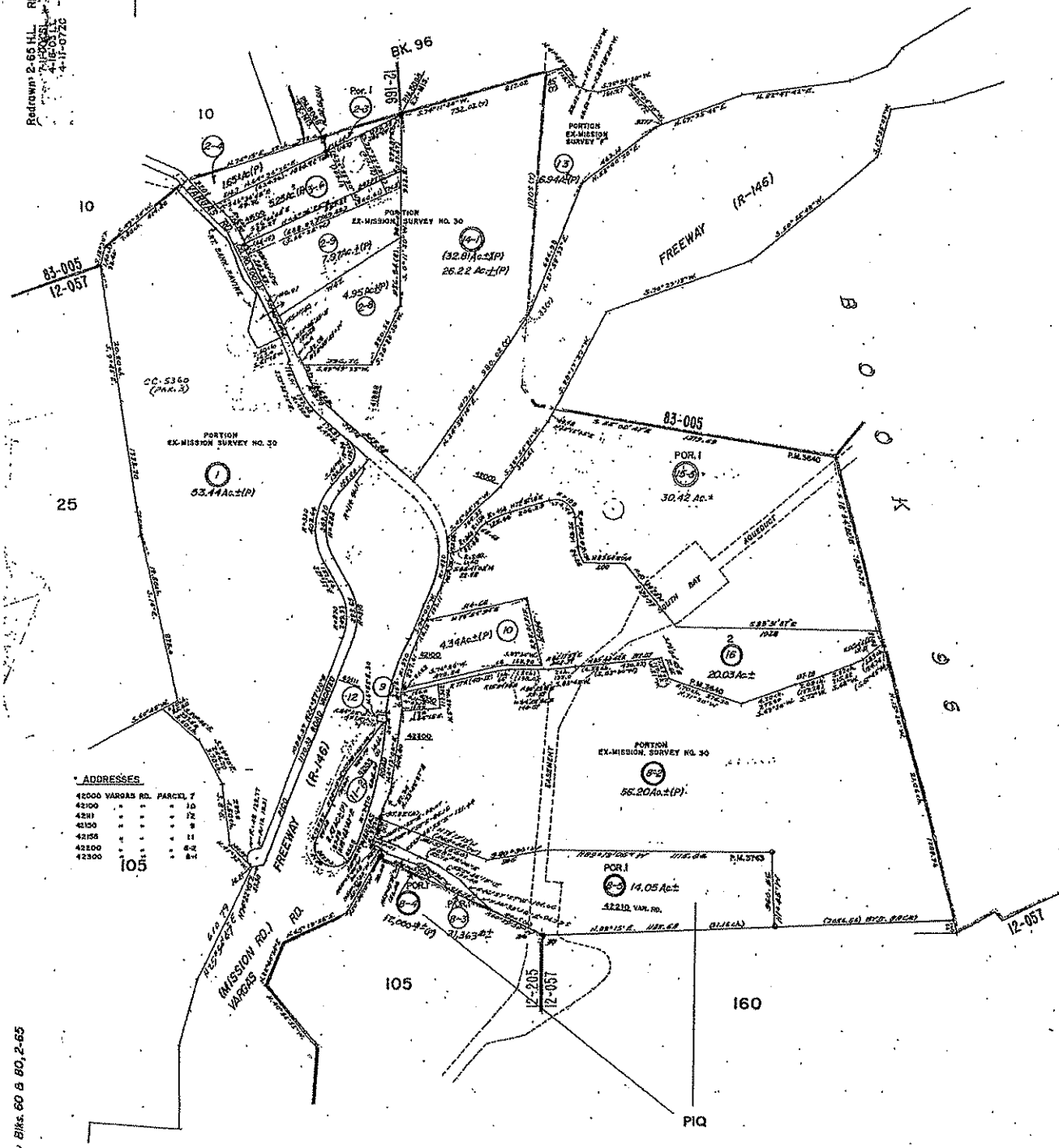
65

Scale: 1"=400'

Map of the Tract known as the Ex-Mission San Jose  
(Case 1-6-15)

P.M. 3763 146/67  
P.M. 3640 146/98  
P.M. 5068 182/73

Redrawn 2-65 H.L. REVISED 2-72 R.M.  
1-1-65 H.L. REVISED 1-1-65 H.L.  
2-29-80 B.V.  
4-7-85 B.V.  
3-1-97 C.S.L.  
3-8-99 W.L.



\* ADDRESSES

42000 VARGAS RD. PARCEL 7	
42100	10
42150	12
42100	8
42156	11
42200	6-2
42300	8-1

Final Blks. 60 & 80, 2-65

**FORM SFEC-126:  
NOTIFICATION OF CONTRACT APPROVAL**  
(S.F. Campaign and Governmental Conduct Code § 1.126)

<b>City Elective Officer Information</b> <i>(Please print clearly.)</i>	
Name of City elective officer(s):  Members, SF Board of Supervisors	City elective office(s) held:  Members, SF Board of Supervisors

<b>Contractor Information</b> <i>(Please print clearly.)</i>	
Name of contractor: <b>David C. Y. Lo, An Individual</b>	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
N/A	
Contractor address: 42210 Vargas Road, Fremont, CA 94539	
Date that contract was approved: <b>Subject to Board approval</b>	Amount of contract: <b>\$57,500</b>
Describe the nature of the contract that was approved: <b>Agreement for Purchase and Sale of Real Estate. City/PUC purchasing a well easement and temporary construction easement over Mr. Lo's property for PUC's New Irvington Tunnel Project.</b>	
Comments:	

This contract was approved by (check applicable):

- the City elective officer(s) identified on this form (Mayor, Gavin Newsom)
- a board on which the City elective officer(s) serves San Francisco Board of Supervisors  
Print Name of Board
- the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

<b>Filer Information</b> <i>(Please print clearly.)</i>	
Name of filer:	Contact telephone number:
Address:	E-mail:

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

