

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City and County of San Francisco
Director of Property
25 Van Ness Avenue, Suite 400
San Francisco CA 94102

SPACE ABOVE THIS LINE FOR RECORDER'S USE

EASEMENT AGREEMENT
(Public Access Easement)

This Easement Agreement ("**Agreement**") is made by and between Vaughn R Walker Revocable Trust dated November 19, 2008, Vaughn R. Walker, Trustee ("**Grantor**"), and the City and County of San Francisco, a municipal corporation ("**City**"), acting by and through its Director of Property (the "**Director of Property**"), with reference to the following facts:

A. Grantor is the owner of real property situated in the City and County of San Francisco, State of California, previously a portion of Twin Peaks Boulevard, Saint Germain Avenue, and Raccoon Drive, which the City transferred to Grantor pursuant to City Ordinance Number _____ ("**Burdened Property**"). The Burdened Property is more particularly described in the Street Vacation Description attached as **Exhibit A** and depicted on the plat to accompany the street vacation description attached as **Exhibit B**.

B. City desires an easement for pedestrian access over those portions of the Burdened Property described in **Exhibit C** attached to this Agreement and depicted as "Public Access Easement" on the plat to accompany legal description of public access easement attached as **Exhibit D** to this Agreement ("**Easement Area**").

C. Grantor made an irrevocable offer of dedication of an easement to the City for public access as a condition of the City's vacation of the Burdened Property and transfer of the Burdened Property to Grantor, subject to the terms set forth in this Agreement. The City accepted such offer of dedication as a condition of the vacation of the Burdened Property, subject to the terms set forth in this Agreement.

D. This Agreement is entered into by Grantor and City in order to provide the terms and conditions of the Public Access Easement (defined below), and, among other matters, prohibits the construction of any permanent structures within the Easement Area that are not consistent with the Public Access Easement.

NOW, THEREFORE, for valuable consideration, the receipt of which each of the parties hereto does hereby acknowledge, the parties hereto do hereby agree as follows:

1. Grant of Public Access Easement. Subject to the provisions of this Agreement, Grantor hereby grants to City for the benefit of the public a nonexclusive, irrevocable easement for pedestrian use and access ("**Public Access Easement**") over the Easement Area. The Easement Area shall be free of any obstructions except for those consistent with the nonexclusive public pedestrian use of the Easement Area. The Easement Area and any improvements thereon shall be built in accordance with San Francisco Public Works Code section 706.

2. Limitation on Use. City acknowledges that the Public Access Easement is nonexclusive. Grantor, its successors, assigns, grantees, and licensees, shall have the right to use the Easement Area in a manner that is consistent with the Public Access Easement, and that does not unreasonably interfere with the Public Access Easement. Grantor, and any successor owner of the Burdened Property, shall maintain the Easement Area in a manner that provides an unobstructed path of travel that is free from any temporary or permanent physical obstructions except for (1) obstructions consistent with pedestrian public access, such as stairs, seating areas, and street furniture as reasonably approved by the Director of Property, (2) temporary obstructions required to install, repair, replace or maintain permitted improvements in the Easement Area, and (3) temporary obstructions that are reasonably necessary for installation, repair, replacement or maintenance of improvements to the Burdened Property not in the Easement Area (provided that the improvements to the Easement Area shall be promptly restored). Upon City's request, Grantor shall remove any unpermitted structure in the Easement Area.

3. Term of Easement. The term of the Public Access Easement described in Section 1 of this Agreement shall be perpetual. City, may, however, terminate this easement at any time as to all or any portion of the Easement Area by written notice to the Grantor. Upon any such termination, the parties agree to execute a termination of this Agreement and record such termination in the Official Records of the City and County of San Francisco.

4. Condition of Burdened Property and Easement Area.

(a) As-Is. Grantor makes no representations or warranties whatsoever, under this Agreement, with respect to the current physical condition of the Burdened Property and Grantor shall have no responsibility under this Agreement with respect thereto (except as otherwise specifically set forth herein), and the use of the Public Access Easement granted herein shall be of the Easement Area in its "as-is" physical condition, except as otherwise specifically provided herein. City hereby waives any and all claims against Grantor arising from, out of, or in connection with the suitability of the existing physical condition of the Easement Area for the uses permitted under Section 2 above.

(b) Maintenance. Grantor agrees to maintain the Easement Area, including the improvements thereon, in a good and safe condition generally in accordance with the City's requirements for sidewalk maintenance and public access. Grantor shall perform such repair and maintenance at Grantor's expense and to the reasonable satisfaction of City.

(c) Initial Improvements. Grantor, at Grantor's cost, shall construct sidewalks, stairs and seating areas in the Easement Area, in compliance with all laws, consistent with the attached Exhibit E, "Site Plan A102", and to the satisfaction of the Director of Property.

5. No Liability; Indemnity.

(a) No Liability. City, by acceptance of the Public Access Easement, shall not in any event whatsoever be liable for any injury or damage to any person happening on or about the Easement Area or the Burdened Property, for any injury or damage to the Burdened Property, or to any property of any tenant or occupant, or to any property of any other person, entity or association on or about the Burdened Property, except for such injury or damage as caused exclusively by the willful misconduct or gross negligence of the City.

(b) Indemnification. Grantor, and each successor and assign to Grantor holding an interest in the Burdened Property, shall defend, hold harmless and indemnify the City and its respective commissioners, officers, departments, agencies and other subdivisions, agents and employees, of and from all claims, losses, damages, injuries, actions, causes of action and liabilities of every kind, nature and description directly or indirectly arising from the Public Access Easement or the use or condition of the Easement Area; provided, however that this Section 5(b) shall not be deemed or construed to, and shall not, impose an obligation to indemnify and save harmless City or any of its commissioners, officers, departments, agencies and other subdivisions, agents or employees from any claim, loss, damage, liability or expense, of any nature whatsoever, caused exclusively by the willful misconduct or gross negligence of the person or entity seeking such indemnity.

6. Enforcement. City, but not the general public, shall have all rights and remedies at law and in equity in order to enforce the Public Access Easement and the terms of this Agreement (including remedies for violation of any applicable building permit). All rights and remedies available to City under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other available right or remedy. In the event of any breach of this Agreement, the City shall be entitled to recover all attorneys' fees and costs reasonably incurred in connection with City's enforcement activities and actions.

7. Litigation Expenses.

(a) General. If either party hereto brings an action or proceeding (including any cross-complaint, counterclaim, or third-party claim) against the other party by reason of a default, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including, but not limited to, reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing Party" within the meaning of this Section 7 shall include without limitation a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action.

(b) Appeal. Attorneys' fees under this Section shall include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action.

(c) Fee Award for City Attorneys. For purposes of this Agreement, reasonable fees of attorneys of the City Attorney's Office of City shall be based on the fees regularly

charged by private attorneys with an equivalent number of hours of professional experience in the subject matter area of the law for which City's services were rendered who practice in the City and County of San Francisco, State of California, in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

8. Time. Time is of the essence of this Agreement and each and every part hereof.

9. Amendment. This Agreement may be amended or otherwise modified only in writing signed and acknowledged by Grantor and City, or the respective successors and assigns of each.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be entitled to be the original and all of which shall constitute one and the same agreement.

12. References; Titles. Wherever in this Agreement the context requires, reference to the singular shall be deemed to include the plural. Titles of sections and paragraphs are for convenience only and neither limit nor amplify the provisions of this Agreement.

13. Notice. Any notice given under this Agreement shall be in writing and given by delivering the notice in person, by commercial overnight courier that guarantees next day delivery and provides a receipt, or by sending it by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the mailing addresses listed below or any other address notice of which is given.

Grantor: Vaughn R Walker Revocable Trust
Vaughn R. Walker
301 Twin Peaks Boulevard
San Francisco, CA 94114

City: Director of Department of Public Works
Department of Public Works
City and County of San Francisco
Room 348, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102

with copies to: City Attorney, City of San Francisco
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attention: John Malamut, Esq.

and to: Director of Property
Real Estate Department
25 Van Ness Avenue, Suite 400

Any mailing address number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

14. Exclusive Benefit of Parties. The provisions of this Agreement are for the exclusive benefit of Grantor and City and their successors and assigns, subject to the provisions hereof, and not for the benefit of nor give rise to any claim or cause of action by any other person; and this Agreement shall not be deemed to have conferred any rights upon any person except Grantor and City. Nothing herein shall be deemed a dedication of any portion of the Burdened Property to or for the benefit of the general public.

15. Severability. If any provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement (or the application of such provisions to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each provision of this Agreement, unless specifically conditioned upon such invalid or unenforceable provision, shall be valid and enforceable to the fullest extent permitted by law.

16. Entire Agreement. This Agreement, together with any attachments hereto or inclusions by reference, constitute the entire agreement between the parties on the subject matter hereof, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties hereto with respect to the easement which is the subject matter of this Agreement.

17. Compliance With Laws. Grantor, at Grantor's expense, shall comply with all laws, statutes, ordinances, rules and regulations of federal, state and local authorities (including, without limitation, City itself) having jurisdiction over the Easement Area, now in force or hereafter adopted, with respect to the use by the public of the Easement Area under the authority of the Public Access Easement herein granted.

18. Default. The failure to perform any covenant or obligation of a party hereunder and to cure such non-performance within thirty (30) days of written notice by the party to whom performance is owed shall constitute a default hereunder, provided that if more than thirty (30) days are reasonably required for such cure, no event of default shall occur if the defaulting party commences such cure within such period and diligently prosecutes such cure to completion. Upon such default, the non-defaulting party shall be entitled to all remedies and means to cure or correct such default, both legal and equitable, allowed by operation of law except termination of the easement herein granted.

19. Burden on Land. The Public Access Easement created by this Agreement shall be a burden on the Burdened Property, which burden shall run with the land and shall be binding on any future owners and encumbrances of the Burdened Property or any part thereof and their successors and assigns.

20. Survival. All representations, warranties, and waivers given or made hereunder shall survive termination of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on _____, 2014.

CITY:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: _____
John Updike
Director of Property

APPROVED AS TO FORM:

DENNIS HERRERA,
City Attorney

By: _____
John Malamut
Deputy City Attorney

GRANTOR:

Vaughn R Walker Revocable Trust dated November 19, 2008, Vaughn R. Walker, Trustee

By: _____
Vaughn R. Walker, Trustee

CALIFORNIA ALL-PURPOSE
CERTIFICATE OF ACKNOWLEDGEMENT

State of California
County of _____

On _____ before me,

(here insert name and title of the officer)
personally appeared

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

(Notary Seal)

CALIFORNIA ALL-PURPOSE
CERTIFICATE OF ACKNOWLEDGEMENT

State of California
County of _____

On _____ before me,

(here insert name and title of the officer)
personally appeared

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

(Notary Seal)

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, a charter city and county, is hereby accepted by order of its Board of Supervisors' Ordinance No. _____, adopted on _____, 20____, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

CITY AND COUNTY OF SAN FRANCISCO

By: _____
JOHN UPDIKE
Director of Property

EXHIBIT A

Legal Description of Burdened Property

EXHIBIT A

EXHIBIT B

Plat Map of Burdened Property

EXHIBIT B

EXHIBIT C

Legal Description of Easement Area

EXHIBIT C

EXHIBIT D

Plat Map of Easement Area

EXHIBIT D

EXHIBIT E

Site Plan A102

EXHIBIT D



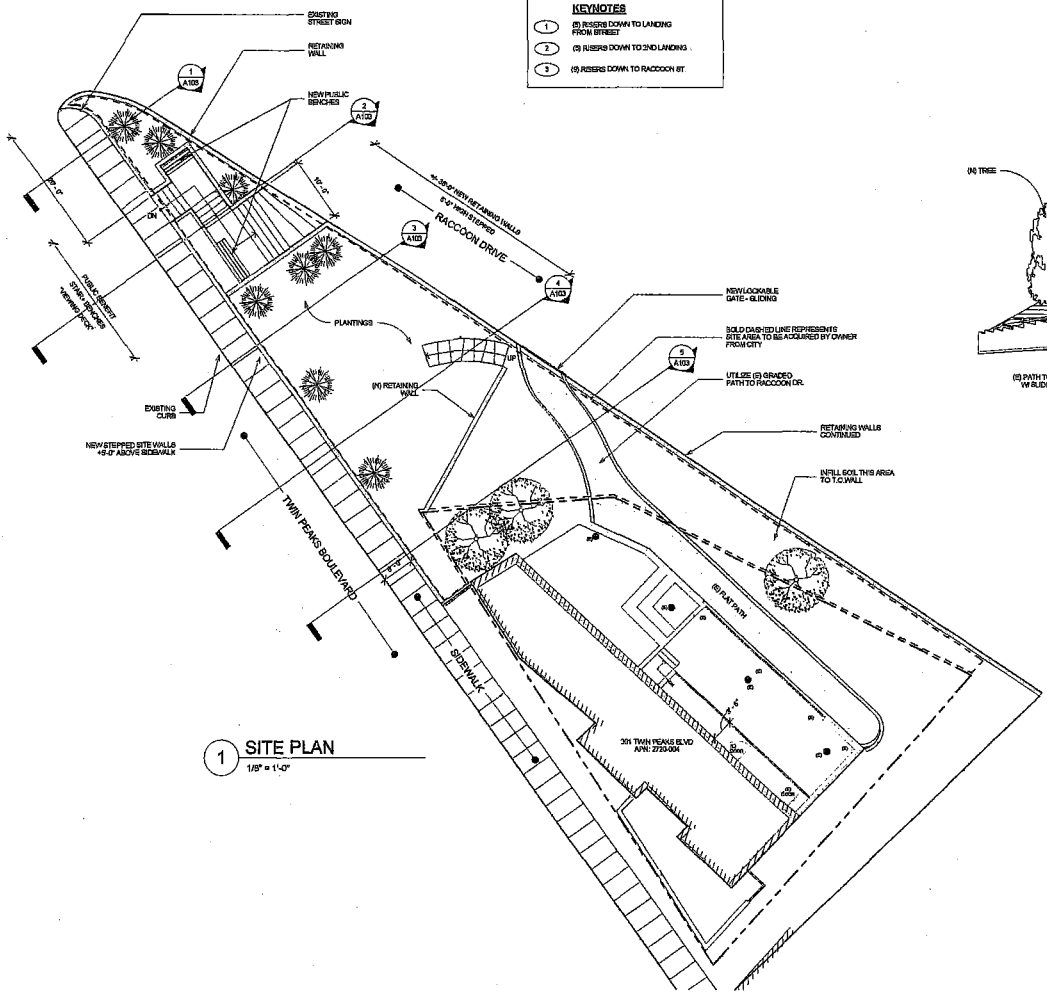
WALKER
 201 HYDE PARK BLVD
 SAN FRANCISCO, CA

REVISIONS		
No.	Description	Date

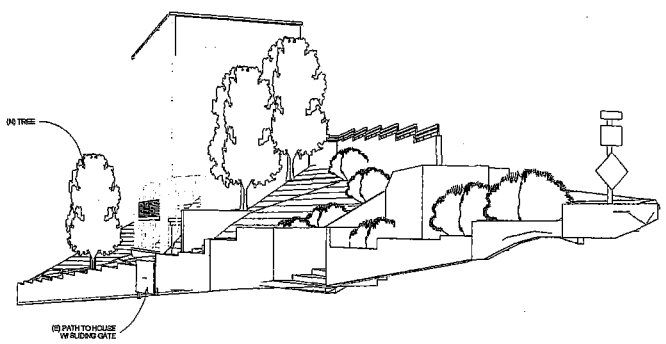
Site Plan

Project number: 1
 Date: _____
 Drawn by: cto
 Checked by: _____
A102
 Scale: AS SHOWN

- KEYNOTES**
- 1 (1) RISERS DOWN TO LANDING FROM STREET
 - 2 (2) RISERS DOWN TO 2ND LANDING
 - 3 (3) RISERS DOWN TO RACCOON ST.



1 SITE PLAN
 1/8" = 1'-0"



2 SITE-1 VIEW

