

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

San Francisco Bay Area Rapid  
Transit District  
300 Lakeside Drive, 22<sup>nd</sup> Floor  
Oakland, CA 94612  
Attention: Real Estate Division

Space Above This line for Recorder's Use

DECLARATION OF RESTRICTIONS  
AND RESERVATION OF EASEMENTS

\_\_\_\_\_, 2021

DECLARATION OF RESTRICTIONS  
AND RESERVATION OF EASEMENTS

THIS DECLARATION OF RESTRICTIONS AND RESERVATION OF EASEMENTS (this "**Declaration**") is made this \_\_\_ day of \_\_\_\_\_, 2021 by the San Francisco Bay Area Rapid Transit District, a rapid transit district pursuant to Public Utilities Code Section 28500 et seq. ("**Declarant**" or "**District**"), the City and County of San Francisco, a municipal corporation (the "**City**"), acting through its Real Estate Division and the Mayor's Office of Housing and Community Development ("**MOHCD**"), and Balboa Park Housing Partners, L.P., a California limited partnership ("**Project Sponsor**").

RECITALS

A. Declarant is the owner of certain real property located on \_\_\_\_\_ Street between \_\_\_\_\_ Street and \_\_\_\_\_- Street in the City of San Francisco, County of San Francisco, State of California, and more fully described in **Exhibit A** to this Declaration (hereinafter referred to as the "**Burdened Property**"), which is adjacent to that certain real property owned by the City and County of San Francisco, under the jurisdiction of the San Francisco Mayor's Office of Housing and Community Development ("**MOHCD**"), commonly known as \_\_\_\_\_ Street, San Francisco, California more particularly described in **Exhibit B** hereto (hereinafter referred to as the "**Benefitted Property**" and, together with the Burdened Property, collectively, the "**Properties**"). The City and the Project Sponsor will enter into a long term ground lease of the Benefitted Property ("**Ground Lease**").

B. Under the Affordable Housing and Sustainable Communities Program ("**AHSC**"), District, MOHCD, and the Project Sponsor are collaborating on the development of 131 units of affordable housing on the Benefitted Property ("**Project**"), and MOHCD and the Project Sponsor have been award AHSC grant funds received from the State of California Department of Housing and Community Development for improvements to the Burdened Property ("**District Improvements**"). The Burdened Property is currently used as a public plaza for District's Balboa transit station. The Project Sponsor will own the Project in fee under the Ground Lease.

C. In order for the Project to be permitted pursuant to current law and governmental regulations, the Project must have windows on the property line and emergency access between the Burdened Property and the Benefitted Property. At the request of MOHCD and the Project Sponsor, Declarant has agreed to establish a no-build easement appurtenant to the Benefitted Property on the portion of the Burdened Property described in **Exhibit C** (the "**No-Build Easement Area**") [CW: Please send draft Exhibit C for review] for the benefit of the Benefitted Property.

D. In connection with the Project's building permit application, and in order to satisfy the requirements of the San Francisco Building Code and San Francisco Fire Code (collectively, the "**Code**") in effect as of the date hereof and obtain the City's Department of Building Inspection ("**DBI**") and the San Francisco Fire Marshal ("**Fire Marshal**")\_ approval of

the Project in its regulatory capacity, Declarant agrees to impose certain restrictions for the benefit of the Benefitted Property.

E. The City's DBI and the Fire Department are intended to be beneficiaries of this Declaration with respect to each department's approval of the Project under the Building Code and Fire Code, respectively, such that the written consent of the Director of the City's Department of Building Inspection (the "Director") and the Fire Marshal, as applicable, shall be required for the modification, revocation, or termination of the restrictions imposed herein, except as otherwise set forth in this Declaration.

NOW, THEREFORE, Declarant hereby declares that the Burdened Property is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following limitations, restrictions, reservations, rights, easements, conditions and covenants, all of which are imposed as equitable servitudes upon each of the Properties. All of the limitations, restrictions, reservations, rights, easements, conditions and covenants in this Declaration shall run with and burden the Burdened Property, and shall be binding on and for the benefit of each of the Properties, any portion of it and any interest in it, and all persons having or acquiring any rights, title or interest in the Properties, any portion of it, and any interest in it, and their successors, heirs and assigns as follows:

1. Ingress/Egress Easement. Declarant expressly reserves for the benefit of the Benefitted Property a nonexclusive easement over that portion of the Burdened Property identified on Exhibit C hereto ("**Ingress/Egress Easement**") for purposes of ingress and egress, including emergency egress, across the Burdened Property to \_\_\_\_\_ Street. The Ingress/Egress Easement may be used by the City and by City's employees, agents and other emergency personnel for the heretofore stated purposes. The Ingress/Egress easement may be used as an accessible path of travel by tenants, guests, contractors, agents, employees, licensees, occupants and/or invitees of the Project (together, the "**Project Sponsor Parties**") for pedestrian emergency egress only as may be necessary for access from the Benefitted Property to a public street, subject to requirements of the Building Code. [CW: We will need to confirm on the survey alternative vehicular access to the Project]

2. Light/Air Easement. Declarant expressly reserves for the benefit of the Benefitted Property an easement for light and air over the Burdened Property, as identified on Exhibit C attached hereto ("**Light/Air Easement**," and together with the Ingress/Egress Easement, the "**No-Build Easement**"). For so long as this Declaration continues in effect, no new structure or other improvements shall be constructed or maintained on the Light/Air Easement. This prohibition against construction shall not apply to paving, striping and wheel stops appropriate for vehicle access and loading purposes, or other improvements that do not interfere with vehicular and life safety ingress to or egress from the Property.

3. Maintenance and Repair. The Declarant shall at all times maintain the areas subject to the No-Build Easement described herein in condition consistent with its maintenance of similar areas within Declarant's transit system. Declarant may temporarily close off access to the No-Build Easement Area in the event of an emergency and as needed to perform maintenance and repair activities.

4. Subsequent Building Permits. As part of the submission of any building permit applications to DBI on or after the effective date of this Declaration, MOHCD shall submit a copy of this Declaration.

5. Duration. The restrictions contained in and the easements reserved in this Declaration shall continue until less than 100% of the residential rental units on Benefitted Property are utilized for the provision of affordable housing, unless modified, revoked or terminated pursuant to Section 6 below. Upon expiration of this Declaration, the Project Sponsor or the then-owner of the Project improvements on the Benefitted Property, including, without limitation, Project Sponsor's successors or assigns (collectively, "**Building Owner**"), shall develop an alternative means to satisfy the Code requirements for sufficient clearance in effect as of such date of expiration or termination. Project Sponsor or Building Owner, as applicable, shall provide no less than one hundred and eighty (180) days' prior written notice to the Director of the expiration of this Declaration.

6. Modification or Revocation. This Declaration has been recorded in order to satisfy the requirements of the Code in effect as of the date hereof and to obtain the approval by DBI of the building permit application. Except with respect to a termination pursuant to Section 5 hereof, this Declaration may not be modified, revoked or terminated without the written consent of the owners of both the Benefitted Property and the Burdened Property and each third party institutional and/or governmental lender(s) who provide mortgage financing for any portion of the Project (collectively, "**Lenders**"), and except with respect to a termination pursuant to Section 5, any such modification, revocation or termination shall not be effective unless and until the Director or his/her designee and the Fire Marshal and his/her designee, as applicable, consent thereto in writing after receiving written notice thereof from Declarant, and such modification, revocation or termination, executed by the Declarant, MOHCD, and Project Sponsor or Building Owner, as applicable, is recorded in the Official Records of the City. This Declaration shall survive any foreclosure, deed in lieu of foreclosure, voluntary or involuntary assignment, or other transfer of Declarant's, City's or Project Sponsor's right, title and, interest in and to their respective properties. Upon request by Declarant, Project Sponsor and/or Building Owner shall, within five (5) business days, provide Declarant with the name and contact information for any Lender(s).

7. Easements Appurtenant. Each of the easements reserved herein shall be appurtenant to, and shall pass with title to, the Properties benefited thereby. Each and all of the foregoing covenants, conditions and restrictions (i) shall run with the land; (ii) shall be binding upon, and shall inure to the benefit of Declarant, City, Project Sponsor and any person having or acquiring any interest in any portion of the Property, and all of their respective successive owners and assigns; and (iii) shall be binding upon, and shall inure to the benefit of the Properties, and every portion thereof and interest therein.

8. Building Code and Fire Code Approvals. The City's DBI and the Fire Department are intended beneficiaries of this Declaration with respect to each department's approvals of the Project's compliance under the Building Code and Fire Code, respectively, with the right to consent to any modification or revocation hereof and the right and authority, at their sole option, to enforce the provisions hereof (including, but not limited to, remedies for violation for a building permit), provided, however, that the City's DBI and Fire Department shall have no

liability whatsoever hereunder with respect to the condition of the Burdened Property. Project Sponsor or Building Owner, as applicable, shall be responsible for all costs associated with any claims, damages, liabilities or losses which arise from the approvals by City's DBI and Fire Department based on this Declaration. Project Sponsor or Building Owner, as applicable, shall defend and indemnify Declarant for any and all claims, damages, liabilities or losses which arise directly from the Project Sponsor Parties' use of the No-Build Easement under Section 1, except to the extent that said claims, damages, liabilities or losses are due to Declarant's gross negligence or willful misconduct.

9. No Public Dedication. Nothing contained herein shall be deemed to be a gift or dedication to the general public or for any public purposes whatsoever, it being the intention that this document be strictly limited to and for the purposes expressed.

10. Costs of Disputes. If any party fails to perform any of its obligations under this Declaration, the defaulting party or the non-prevailing party in such dispute, as the case may be, will pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights under this Declaration.

**DECLARANT**

San Francisco Bay Area Rapid Transit District,  
a rapid transit district pursuant to Public Utilities Code Section 28500 et seq.

By \_\_\_\_\_

Its \_\_\_\_\_

**CITY**

City and County of San Francisco, a  
municipal corporation

By \_\_\_\_\_

Andrico Q. Penick  
Director of Property

By \_\_\_\_\_

Eric D. Shaw  
Director, Mayor's Office of Housing and Community Development

**PROJECT SPONSOR:**

Balboa Park Housing Partners, LP, a  
California limited partnership

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

APPROVED

Director of the Department of Building Inspection

By \_\_\_\_\_

Fire Marshal

By \_\_\_\_\_

APPROVED AS TO FORM

Dennis J. Herrera, City Attorney

By \_\_\_\_\_

Robb Kapla

Deputy City Attorney

**[Notarization required by applicant only – delete this instruction and ensure that current State require notary statement language is included.]**

STATE OF CALIFORNIA )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, \_\_\_\_\_, personally known to me (or 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.

WITNESS my hand and official seal.

\_\_\_\_\_

(Notary Signature)

(THIS AREA FOR OFFICIAL NOTARIAL SEAL)

EXHIBIT "A"

LEGAL DESCRIPTION OF THE DISTRICT PROPERTY

[This description should include the Assessor's Lot & Block as well as metes and bounds descriptions for the parcel(s) subject to the DOR/Easement Agreement and the location of the Restriction/Easement Area]



DESCRIPTION

EXHIBIT A

PARCELS O-M395,  
O-M397  
Page 1 of 2

All that certain real property in the City and County of San Francisco, State of California, described as follows:

PARCEL O-M395

BEGINNING at a point on the southwesterly line of Geneva Avenue, distant thereon North 62° 30' 11" West 72.31 feet from the northwesterly line of San Jose Avenue; thence, along said line of Geneva Avenue, North 62° 30' 11" West 173.91 feet to the State of California right-of-way line; thence, along last said line, South 16° 04' 59" West 173.96 feet; thence, South 7° 32' 32" West 30.48 feet; thence South 14° 24' 19" West 133.26 feet; thence South 10° 56' 26" West 141.71 feet; thence, South 61° 57' 11" East 20.47 feet; thence South 8° 42' 02" West 63.59 feet; thence South 61° 57' 11" East 40.10 feet to the northwesterly line of San Jose Avenue; thence, along last said line, North 28° 02' 49" East 78.00 feet; thence, leaving last said line, North 61° 57' 11" West 30.00 feet to a point being at coordinates  $y=449,966.325$  feet and  $x=1,436,981.281$  feet; thence, North 24° 02' 49" East 126.28 feet; thence, on the arc of a tangent curve to the left, having a radius of 92.00 feet, a central angle of 6° 42' 38" a distance of 10.78 feet; thence, North 17° 20' 11" East 172.27 feet; thence, on the arc of a tangent curve to the right, having a radius of 92.00 feet, a central angle of 34° 28' 37" a distance of 55.36 feet; thence, North 51° 48' 48" East 95.34 feet to the Point of Beginning.

CONTAINING an area of 48,658 square feet, more or less.

RESERVING to the City and County of San Francisco two easements, "A" and "B", for existing underground water lines, including the right of access at any time for maintenance, repair, removal, or replacement thereof. Said two easements are described as follows:

EASEMENT "A"

A strip of land ten feet in width, five feet on each side of a centerline, described as follows:

COMMENCING at the intersection of the southwesterly line of Geneva Avenue with the northwesterly line of San Jose Avenue; thence along said northwesterly line of San Jose Avenue South 34° 47' 19" West 381.09 feet; thence continuing along said northwesterly line of San Jose Avenue South 28° 02' 49" West 87.61 feet to north line of Niagara Avenue (now vacated), vacation of which was approved by the Board of Supervisors, Resolution No. 103-69 dated February 10, 1969; thence continuing along said northwesterly line of San Jose Avenue South 28° 02' 49" West 37.00 feet to the true point of beginning of this description; thence North 61° 57' 39" West 48.14 feet to the northeasterly right-of-way line of Interstate Highway No. 280, known as the Southern Freeway; containing 481.40 square feet, more or less.

EASEMENT "B"

A strip of land, ten feet in width, five feet on each side of a centerline, described as follows:

COMMENCING at the intersection of the southwesterly line of Geneva Avenue with the northwesterly line of San Jose Avenue; thence along said northwesterly line of San Jose Avenue South 34° 47' 19" West 381.09 feet; thence continuing along said northwesterly line of San Jose Avenue South 28° 02' 49" West 87.61 feet to north line of Niagara Avenue (now vacated), vacation of which was approved by the Board of Supervisors, Resolution No. 103-69, dated February 10, 1969; thence continuing along said northwesterly line of San Jose Avenue South 28° 02' 49" West 30.13 feet to the true point of beginning of this description; thence North 30° 26' 53" West 11.73 feet;

21281

DESCRIPTION

EXHIBIT A

PARCELS O-M395,  
O-M397  
Page 2 of 2

thence North  $61^{\circ} 57' 39''$  West 20.00 feet; thence South  $89^{\circ} 25' 43''$  West 12.53 feet; thence South  $63^{\circ} 34' 59''$  West 11.06 feet to the northeasterly right-of-way line of Interstate Highway No. 280, known as the Southern Freeway, containing 553.20 square feet, more or less.

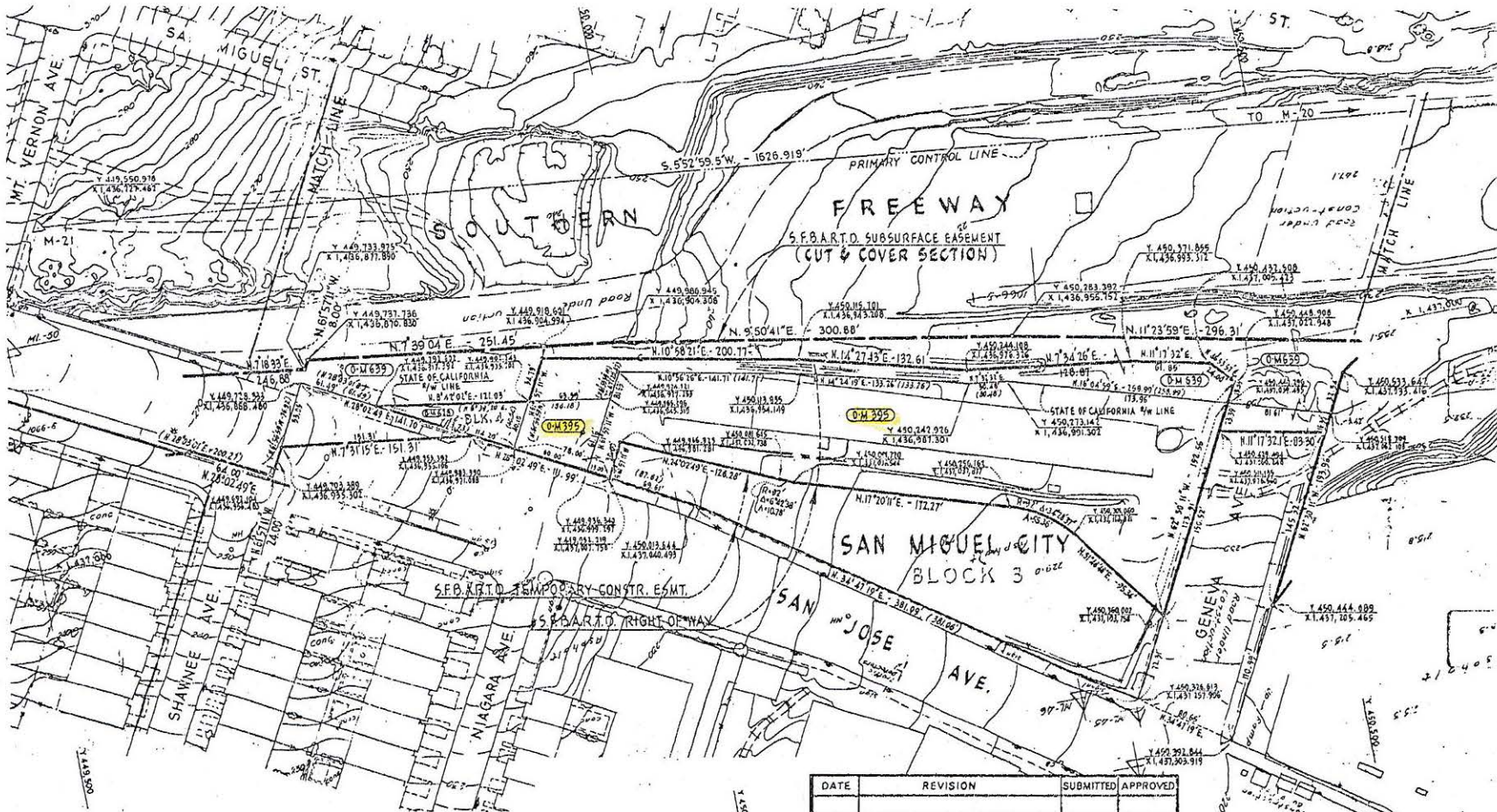
PARCEL O-M397

BEGINNING at a point on the northeasterly line of Geneva Avenue, distant thereon North  $62^{\circ} 30' 11''$  West 110.99 feet from the northwesterly line of San Jose Avenue; thence, along said line of Geneva Avenue, North  $62^{\circ} 30' 11''$  West 161.62 feet to the State of California right-of-way line; thence, along last said line, North  $16^{\circ} 04' 59''$  East 3.42 feet; thence, North  $12^{\circ} 02' 01''$  West 86.02 feet; thence North  $7^{\circ} 20' 03''$  East 335.88 feet; thence, North  $15^{\circ} 38' 24''$  East 180.11 feet; thence, South  $89^{\circ} 02' 26''$  East 49.93 feet; thence, leaving said right-of-way line, South  $11^{\circ} 17' 32''$  West 311.34 feet; thence South  $78^{\circ} 42' 28''$  East 9.33 feet; thence South  $11^{\circ} 17' 32''$  West 194.50 feet; thence South  $78^{\circ} 42' 28''$  East 10.25 feet; thence South  $11^{\circ} 17' 32''$  West 5.00 feet; thence on the arc of a tangent curve to the left, having a radius of 134.00 feet, a central angle of  $27^{\circ} 52' 14''$ , a distance of 65.18 feet; thence South  $63^{\circ} 42' 28''$  East 25.25 feet; thence southeasterly on the arc of a curve to the left, the center of which bears North  $64^{\circ} 58' 14''$  East, having a radius of 116.76 feet, a central angle of  $18^{\circ} 16' 02''$ , a distance of 37.22 feet; thence South  $43^{\circ} 17' 48''$  East 77.85 feet to the Point of Beginning.

CONTAINING 36,910 square feet, more or less.

The California Coordinate System Zone III, is the basis of coordinates, bearings, and grid lengths used herein. Multiply grid lengths by 1.0000755 to obtain ground level lengths.

Said parcels being part of an entire parcel.



PARCEL No	NAME	TOTAL AREA	TAKE	REMAINING AREA LEFT	AREA RIGHT
O-M 395	City & County of San Francisco Temporary Construction Esmt.	79,361 sf	48,658 sf		
O-M 639	See Sheet M.R.W. 9		30,703 sf		
O-M 628		2,290 sf	2,290 sf		

DATE	REVISION	SUBMITTED	APPROVED
2-10-66	Changed Title		O.L.
1-18-66	Added Temp. Constr. Esmt. Pcl. O-M 395		O.L.
8-25-61	Revised Pcl. O-M 628		O.L.
8-17-61	Added Pcl. O-M 628		O.L.
7-25-61	Changed Dimension O-M 639		O.L.
7-6-61	Changed Right of Way-Niagara to Geneva Ave.		O.L.
9-14-66	Corrected Coordinate - "11' 32' 15.30"		O.L.
8-29-66	Added Note "Cut & Cover Sect." to Subsurface Esmt.		O.L.
8-1-66	Changed Sub-Surface Esmt. bet. Shawnee & Niagara Ave.		O.L.
8-13-66	Revised Pcl. Area Schedule		O.L.
1-18-66	Changed Right of Way-Niagara to Geneva Ave.		O.L.
11-2-65	Changed Patches No.		
8-16-66			

Bearings and distances are in the California Coordinate System. Multiply distances by 1.0000759 to obtain ground level.

**SAN FRANCISCO BAY AREA RAPID TRANSIT SYSTEM**  
**RIGHT OF WAY MAP**

**SAN FRANCISCO - MISSION**

**MODOC AVE. TO COLONIAL WAY**

PRIMARY TRAVERSE STA TO STA  
 PARSONS BRINCKERHOFF - TUDOR - BECHTEL ENGINEERS  
 DATE APRIL 30, 1966 SCALE 1" = 40'  
 DANIEL COLEMAN ENGINEERING CO.

LIBER D936 PAGE 421

GRID

*David P. Coleman*

EXHIBIT B

LEGAL DESCRIPTION OF THE CITY PROPERTY

EXHIBIT "B"  
(NO-BUILD AREA)

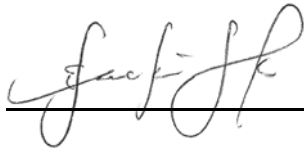
All that real property situated in the City and County of San Francisco, State of California, being a portion of PARCEL O-M395 as described in that certain Final Order of Condemnation, recorded October 02, 1974 in Liber B936, at Page 417, Official Records of City and County of San Francisco, more particularly described as follows:

BEGINNING at the most Easterly corner of said PARCEL O-M395; thence along the Northeasterly line of said PARCEL O-M395, North 62°30'38" West, 32.92 feet to a line parallel with, distant 30.00 feet Northwesterly of, measured at right angles from the general Southeasterly line of said PARCEL O-M395; thence along said parallel line the following five (5) courses: 1) South 51°48'21" West, 81.80 feet, 2) along a tangent curve to the left with a radius of 122.01 feet, through a central angle of 34°28'37", an arc length of 73.42 feet, 3) South 17°19'44" West, 172.24 feet, 4) along a tangent curve to the right with a radius of 62.01 feet, through a central angle of 06°42'38", an arc length of 7.26 feet, and 5) South 24°02'22" West, 126.29 feet; thence along a tangent curve to the left with a radius of 30.00 feet, through a central angle of 86°00'00", an arc length of 45.03 feet; thence South 61°57'38" East, 30.00 feet to said general Southeasterly line; thence along last said line the following seven (7) courses: 1) North 28°02'22" East, 30.00 feet, 2) North 61°57'38" West, 30.00 feet, 3) North 24°02'22" East, 126.29 feet, 4) along a tangent curve to the left with a radius of 92.01 feet, through a central angle of 06°42'38", an arc length of 10.78 feet, 5) North 17°19'44" East, 172.24 feet, 6) along a tangent curve to the right with a radius of 92.01 feet, through a central angle of 34°28'37", an arc length of 55.36 feet, and 7) North 51°48'21" East, 95.35 feet to the POINT OF BEGINNING.

CONTAINING 15,391 square feet, more or less.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

**Prepared by Luk and Associates**



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Jacqueline Luk, PLS 8934

Date: May 16, 2018

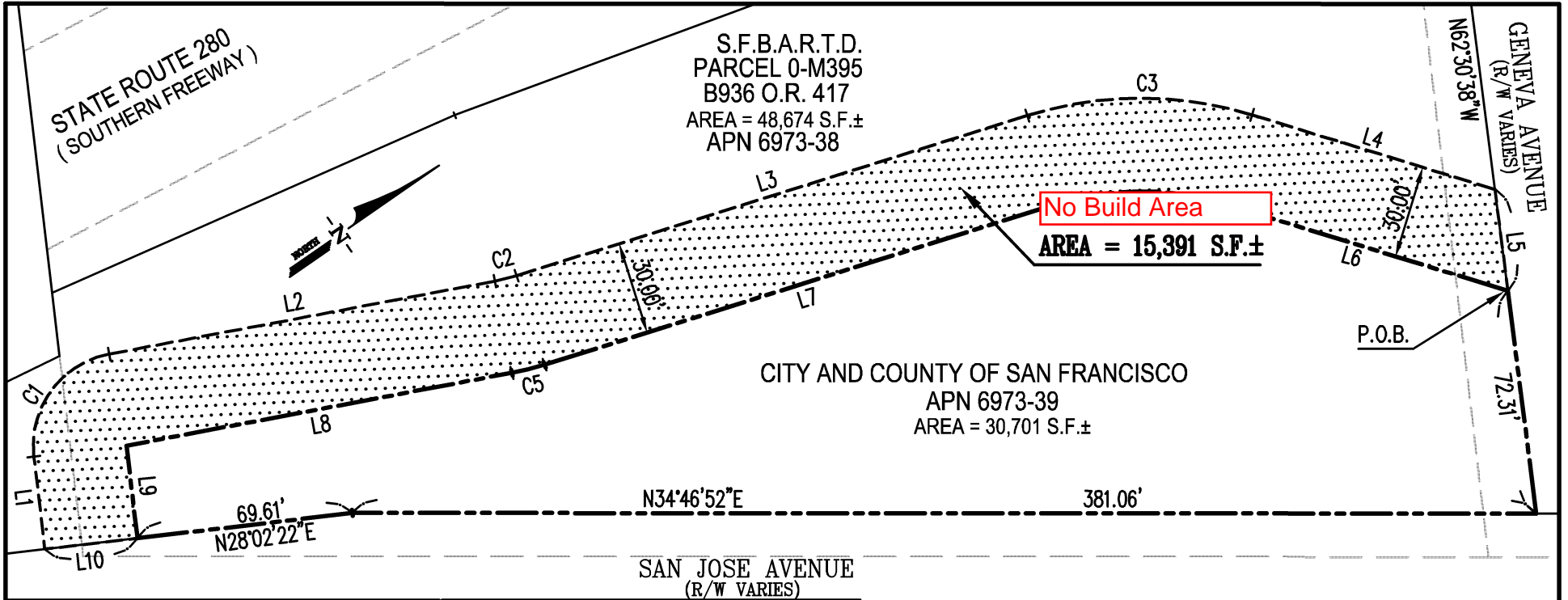


This real property description has been prepared by me or under my direction in conformance with the Professional Land Surveyors Act.

EXHIBIT "C"

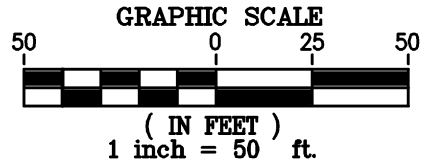
NO BUILD EASEMENT MAP

[This map should depict the Property, any lot adjustments/changes, and the location of the Restricted or Easement Area. It should clearly label the parcels subject to the DOR.]



LINE TABLE			CURVE TABLE			
LINE	LENGTH	BEARING	CURVE	LENGTH	RADIUS	DELTA
L1	30.00'	S61°57'38"E	C1	45.03'	30.00'	86°00'00"
L2	126.29'	S24°02'22"W	C2	7.26'	62.01'	06°42'38"
L3	172.24'	S17°19'44"W	C3	73.42'	122.01'	34°28'37"
L4	81.80'	S51°48'21"W	C4	55.36'	92.01'	34°28'37"
L5	32.92'	N62°30'38"W	C5	10.78'	92.01'	06°42'38"
L6	95.35'	N51°48'21"E				
L7	172.24'	N17°19'44"E				
L8	126.29'	N24°02'22"E				
L9	30.00'	N61°57'38"W				
L10	30.00'	N28°02'22"E				

- LEGEND**
- PROPERTY LINE
  - OLD LOT LINE
  - RIGHT OF WAY LINE
  - PROPOSED NO BUILD EASEMENT
  - S.F. SQUARE FEET
  - (T) TOTAL
  - P.O.B. POINT OF BEGINNING
  - ± MORE OR LESS
  - O.R. OFFICIAL RECORD
  - S.F.B.A.R.T.D. SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
  - APN ASSESSOR'S PARCEL NUMBER



**EXHIBIT "C"**  
 PLAT TO ACCOMPANY LEGAL DESCRIPTION  
**NO-BUILD EASEMENT**  
 CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA  
 MAY 2018  
 PREPARED BY  
**LUK AND ASSOCIATES**  
 CIVIL ENGINEER - LAND PLANNERS - LAND SURVEYORS  
 738 ALFRED NOBEL DRIVE  
 HERCULES, CALIFORNIA 94547  
 (510) 724-3388

JOB NO.: 17157A10/ESMT-NO-BUILD.dwg  
 PLOT DATE: MAY 7, 2018