

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 94108

This instrument exempt from Documentary Transfer
Tax (CA Revenue & Taxation Code § 11922 and
SF Business and Tax Regulations Code § 1105)

Free Recording Requested Pursuant to
to Government Code § 2738

**EASEMENT AGREEMENT
(Public Sidewalk Easement)**

This Easement Agreement ("*Agreement*") is made by and between the City and County of San Francisco, a municipal corporation ("*City*"), and Avalon Ocean Avenue, L.P., a Delaware limited partnership ("*Grantor*"), with reference to the following facts:

A. Grantor is the owner of that certain real property situated in the City and County of San Francisco, State of California, described in **Exhibit A** attached hereto ("*Burdened Property*").

B. City desires an easement for pedestrian access, ingress and egress for public sidewalk purposes over those portions of the Burdened Property generally depicted as "Proposed Easement" on the Plat to Accompany Legal Description ("*Plat*") attached as **Exhibit B** to this Agreement and more particularly described in **Exhibit C** attached to this Agreement.

C. Grantor made an irrevocable offer of dedication of an easement to the City for public sidewalk purposes, subject to the terms set forth in this Agreement, and City accepted said offer of dedication subject to improvements and subject to the covenants and restrictions set forth herein.

D. This Agreement is entered into by Grantor and City in order to provide the terms and conditions of the Public Sidewalk Easement (defined below).

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 Sidewalk Easement. Subject to the provisions of this Agreement, Grantor hereby grants to City a nonexclusive, irrevocable easement for the benefit of the public solely for pedestrian access and passage for public sidewalk purposes ("*Public Sidewalk Easement*"), over those portions of the Burdened Property described more particularly on the Plat and more particularly described in **Exhibit C** attached to this Agreement (collectively, the "*Easement Area*"). The Easement Area and the sidewalk and improvements thereon shall be

subject to the provisions of San Francisco Public Works Code Section 706, or any successor ordinance concerning sidewalk maintenance.

2. Limitation on Use. City acknowledges that the easement granted herein is nonexclusive. Grantor, its successors, assigns, grantees, and licensees shall have the right to use the Easement Area in a manner that will not unreasonably interfere with the use of the Easement Area for the Public Sidewalk Easement. Grantor, its successors, assigns, grantees, and licensees 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 (including without limitation, street furniture, such as benches, planters, tables and chairs, merchandise displays, signboards, and information kiosks), except for (i) temporary or permanent obstructions pursuant to City-issued permits under San Francisco Public Works Code Section 723.1 or any successor ordinance concerning sidewalk barriers, (ii) non-permanent obstructions reasonably required in connection with the installation, maintenance, repair or replacement of structural elements of or utility facilities serving the Burdened Property pursuant to City-issued permits or (iii) as needed for such activities not requiring City-issued permits, such as window-washing, which may require a limited use of the sidewalk for a temporary and reasonable period. City further acknowledges that Grantor may secure the Burdened Property, including the Easement Area and area Reserved for Future Use (as defined below), against unlawful activities, including vandalism, graffiti and loitering, pursuant to San Francisco Police Code Article 25 or any successor ordinance concerning private protection and security services and may utilize its own employees or private protection and security services to do so.

3. Term of Easement. The term of the Public Sidewalk Easement described in Section 1 of this Agreement shall be perpetual. City, may, however, terminate the Public Sidewalk Easement at any time as to all or any portion of the Easement Area by written notice to the Grantor.

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 Sidewalk Easement granted herein shall be with the Burdened Property 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 physical conditions of the Burdened Property for the uses permitted under Section 2 above. However, Grantor shall not take any action that would unreasonably impair the ability of the public to use the Public Sidewalk Easement granted herein except as otherwise provided in Section 2 above.

(b) Maintenance. Grantor agrees to maintain the Easement Area, including, without limitation, the sidewalk and improvements thereon, in a good and safe condition in accordance with San Francisco Public Works Code Section 706, or any successor ordinance concerning sidewalk maintenance. Grantor shall perform such repair and maintenance at Grantor's expense and to the reasonable satisfaction of City.

(c) Initial Improvements. As part of the improvements to be constructed on the Burdened Property, Grantor, at Grantor's cost, constructed a sidewalk in accordance with San Francisco Public Works Code Section 703 on the Easement Area.

5. No Liability; Indemnity.

(a) No Liability. City, by acceptance of the Public Sidewalk 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 to the extent arising from 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, 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 Sidewalk 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, agents or employees from any claim, loss, damage, liability or expense, of any nature whatsoever, to the extent arising from any 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 Sidewalk Easement and the terms of this Agreement (including, but not limited to, remedies for violation of a building permit or San Francisco Public Works Code Section 706, or any successor ordinance concerning sidewalk maintenance). 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 7 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's Office of City Attorney 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 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 address listed below or any other address notice of which is given.

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
San Francisco, California 94108

Grantor: Avalon Ocean Avenue, L.P.
c/o AvalonBay Communities, Inc.
185 Berry Street, Suite 3500
San Francisco, California 94107
Attention: Joe Kirchofer

with copies to: Farella Braun + Martel LLP
235 Montgomery Street
San Francisco, California 94104
Attention: Ilene Dick, Esq.

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 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 Sidewalk 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.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of November ____, 2013.

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:

AVALON OCEAN AVENUE, L.P.,
a Delaware limited partnership

By: California Multiple Financing, Inc.,
a Maryland corporation,
its General Partner

By: _____
Name:
Title:

~~APPROVED AS TO FORM:~~

~~FARELLA BRAUN & MARTEL, LLP~~

By: _____
~~Hene Dick~~

CALIFORNIA ALL-PURPOSE
CERTIFICATE OF ACKNOWLEDGEMENT

State of California)
)
County of _____)

On _____, before me, _____,
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)

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 _____, 2010, 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

PARCELS 1, 2, 3 AND 4, AS SHOWN ON THE FINAL MAP NO. 5410, AS FILED FOR RECORD ON NOVEMBER 16, 2011, IN BOOK "DD" OF SURVEY MAPS AT PAGES 164-169, INCLUSIVE, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

EXHIBIT B

Depiction of Easement Area

GRAPHIC SCALE

0 8 16 24 32 40

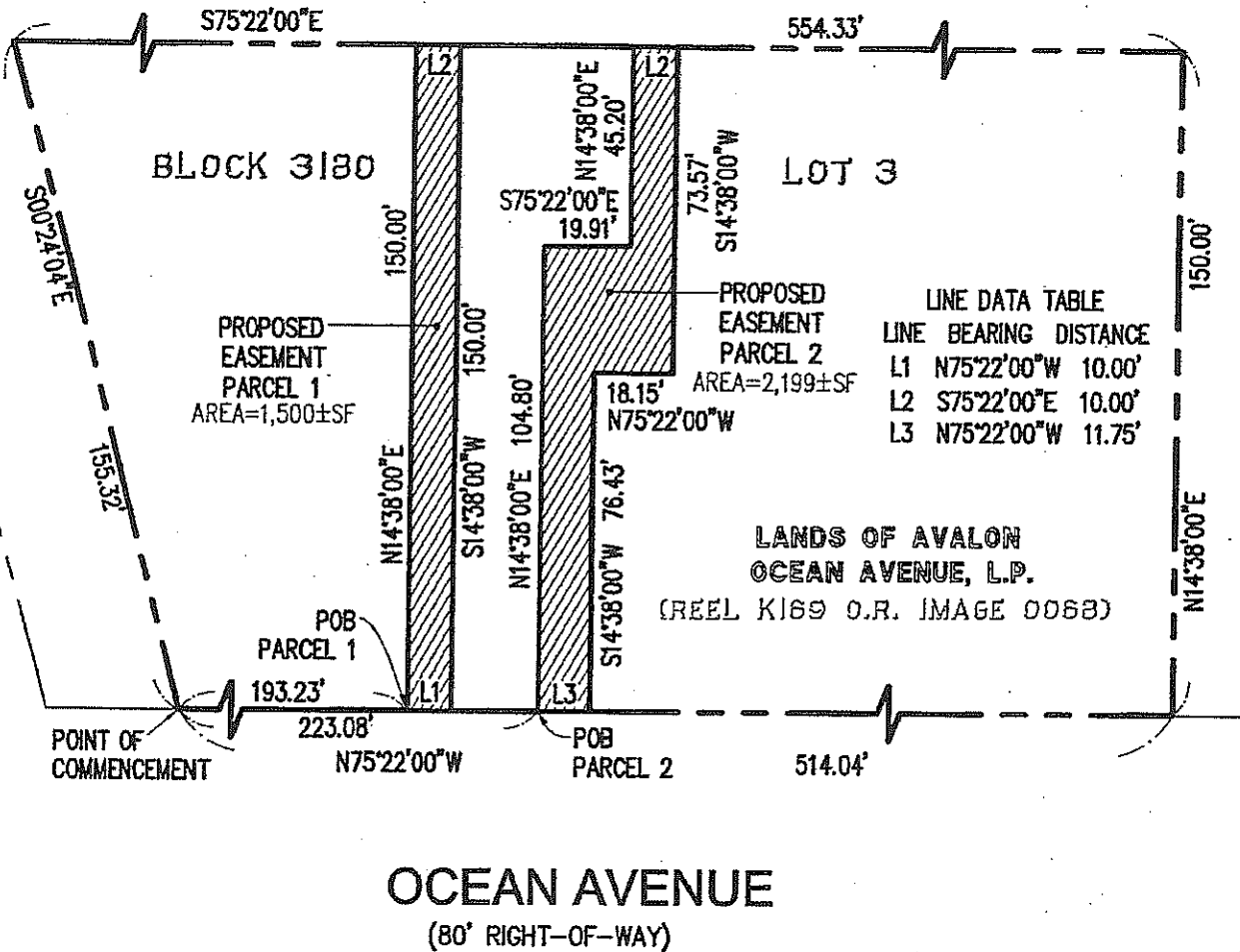


1 INCH = 40 FT.

(RECORD OF SURVEY 5951
BK DD SURVEY MAPS 38)

BASIS OF BEARINGS:

THE BEARING N75°22'00"W OF
THE MONUMENT LINE OF OCEAN
AVENUE PER MAP OF WESTWOOD
PARK, BK. H OF MAPS, PG. 65-71
SAN FRANCISCO COUNTY RECORDS



LINE DATA TABLE

LINE	BEARING	DISTANCE
L1	N75°22'00"W	10.00'
L2	S75°22'00"E	10.00'
L3	N75°22'00"W	11.75'

LANDS OF AVALON
OCEAN AVENUE, L.P.
(REEL K169 O.R. IMAGE 0068)

OCEAN AVENUE
(80' RIGHT-OF-WAY)

NOTES AND LEGEND

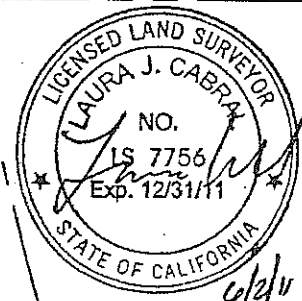
ALL DISTANCES AND DIMENSIONS
ARE IN FEET AND DECIMALS THEREOF.

BOUNDARY, BLOCK 3180 LOT 3

OTHER PROPERTY LINE

POB POINT OF BEGINNING

**BRIGHTON
AVENUE**



PLAT TO ACCOMPANY LEGAL DESCRIPTION



SANDIS

CIVIL ENGINEERS
SURVEYORS
PLANNERS

936 E. Duane Ave. | Sunnyvale, CA 94085 | P. 408.636.0900 | F. 408.636.0999 | www.sandis.net

SUNNYVALE

ROSEVILLE

OAKLAND

DATE: 06/02/11
SCALE: 1"=40'
DRAWN BY: MHC
APPROVED BY: LJC
DRAWING NO.:
606136

PUBLIC SIDEWALK EASEMENT
LANDS OF AVALON OCEAN AVENUE, L.P.
1150 OCEAN AVENUE
SAN FRANCISCO CA

SHEET

1

OF 1 SHEETS

SP-PLAT-010

EXHIBIT C

Legal Description of Easement Area

ALL THAT CERTAIN REAL PROPERTY IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL ONE:

COMMENCING AT A POINT ON THE NORTHEASTERLY LINE OF OCEAN AVENUE, SAID POINT BEING THE SOUTHWEST CORNER OF THAT CERTAIN GRANT DEED TO AVALON OCEAN AVENUE, L.P. RECORDED JUNE 22, 2010 IN REEL K169, IMAGE 0068 OF OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO;

RUNNING THENCE ALONG THE SAID NORTHEASTERLY LINE OF OCEAN AVENUE BEING ALSO THE SOUTHWESTERLY LINE OF SAID GRANT DEED, SOUTH 75°22'00" EAST, A DISTANCE OF 193.23 FEET TO THE POINT OF BEGINNING;

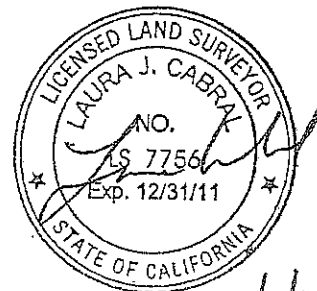
THENCE LEAVING SAID LINE, NORTH 14°38'00" EAST, A DISTANCE OF 150.00 FEET TO THE NORTHEASTERLY LINE OF SAID GRANT DEED;

THENCE ALONG SAID NORTHEASTERLY LINE, SOUTH 75°22'00" EAST, A DISTANCE OF 10.00 FEET;

THENCE LEAVING SAID NORTHEASTERLY LINE, SOUTH 14°38'00" WEST, A DISTANCE OF 150.00 FEET TO THE SAID NORTHEASTERLY LINE OF OCEAN AVENUE AND THE SOUTHWESTERLY LINE OF SAID GRANT DEED;

THENCE ALONG SAID LINE, NORTH 75°22'00" WEST, A DISTANCE OF 10.00 FEET TO THE POINT OF BEGINNING;

DESCRIBED PARCEL CONTAINING AN AREA OF 1,500 SQUARE FEET, MORE OR LESS.



6/2/11

PARCEL TWO:

ALL THAT CERTAIN REAL PROPERTY IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTHEASTERLY LINE OF OCEAN AVENUE, SAID POINT BEING THE SOUTHWEST CORNER OF THAT CERTAIN GRANT DEED TO AVALON OCEAN AVENUE, L.P. RECORDED JUNE 22, 2010 IN REEL K169, IMAGE 0068 OF OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO;

RUNNING THENCE ALONG THE SAID NORTHEASTERLY LINE OF OCEAN AVENUE BEING ALSO THE SOUTHWESTERLY LINE OF SAID GRANT DEED, SOUTH 75°22'00" EAST, A DISTANCE OF 223.08 FEET TO THE POINT OF BEGINNING;

THENCE LEAVING SAID LINE, NORTH 14°38'00" EAST, A DISTANCE OF 104.80 FEET;

THENCE SOUTH 75°22'00" EAST, A DISTANCE OF 19.91 FEET;

THENCE NORTH 14°38'00" EAST, A DISTANCE OF 45.20 FEET TO THE NORTHEASTERLY LINE OF SAID GRANT DEED;

THENCE ALONG SAID NORTHEASTERLY LINE, SOUTH 75°22'00" EAST, A DISTANCE OF 10.00 FEET;

THENCE LEAVING SAID NORTHEASTERLY LINE, SOUTH 14°38'00" WEST, A DISTANCE OF 73.57 FEET;

THENCE NORTH 75°22'00" WEST, A DISTANCE OF 18.15 FEET;

THENCE SOUTH 14°38'00" WEST, A DISTANCE OF 76.43 FEET TO THE SAID NORTHEASTERLY LINE OF OCEAN AVENUE AND THE SOUTHWESTERLY LINE OF SAID GRANT DEED;

THENCE ALONG SAID LINE, NORTH 75°22'00" WEST, A DISTANCE OF 11.75 FEET TO THE POINT OF BEGINNING;

DESCRIBED PARCEL CONTAINING AN AREA OF 2,199 SQUARE FEET, MORE OR LESS.

THE BASIS OF BEARINGS OF DESCRIBED PARCELS 1 AND 2 IS THE MONUMENT LINE OF OCEAN AVENUE SHOWN AS NORTH 75°22'00" WEST ON THE MAP OF WESTWOOD PARK FILED IN BOOK H OF MAPS, AT PAGES 65 THROUGH 71, SAN FRANCISCO COUNTY RECORDS;

THE PARCELS DESCRIBED HEREON ARE SHOWN ON THE ATTACHED PLAT, AND BY REFERENCE, MADE A PART HEREOF.