

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

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

Documentary Transfer Tax is Zero;  
No fee for recording pursuant to  
Government Code § 27383

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Situs: 30 Otis Street  
APN: 3505-084

**EASEMENT AGREEMENT  
(Public Sidewalk Easement)**

This Easement Agreement ("**Agreement**") is made by and between OTIS PROPERTY OWNER, LLC, a Delaware limited liability company ("**Grantor**") and the City and County of San Francisco, a municipal corporation ("**Grantee**"), dated for reference purposes as of \_\_\_\_\_ 2021.

RECITALS

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

All of that certain real property shown and described on Final Map 10606, a 4 Lot Vertical Subdivision and 429 Mixed-Use Condominium Project, being a merger and subdivision of the certain real property described in those certain grant deeds recorded April 6, 2018 in Document No. 2018-K598496, April 25, 2018 in Document No. 2018-K607021, July 19, 2018 in Document No. 2018-K641246 and September 12, 2018 in Document No. 2018-K672232, Official Records, being a portion of Mission Block 13, City and County of San Francisco, State of California, recorded in Book \_\_\_\_ of Final Maps, at Pages \_\_\_\_ to \_\_\_\_, inclusive, in the Office of the Recorder of the City and County of San Francisco ("**Final Map**").

B. Grantee desires an easement for pedestrian access, ingress and egress for public sidewalk purposes over that portion of the Burdened Property described on Exhibit A (Legal Description) and shown on Exhibit A-1 and Exhibit A-2 (Plat Map) (the "**Easement Area**").

C. Grantor made an irrevocable offer of dedication of an easement to the Grantee on the Final Map for public sidewalk purposes, subject to the terms set forth in this Agreement, and Grantee accepted said offer.

D. This Agreement is entered into by Grantor and Grantee in order to provide the terms and conditions of the sidewalk easement across the Easement Area. All references in this Agreement to "**Grantor**" shall mean the then-existing fee owner of the Burdened Property, as changed from time to time, during its period of ownership.

## AGREEMENT

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 Grantee and its officers, employees, and agents, for the general benefit of the public, a nonexclusive, irrevocable easement solely for pedestrian access, passage, ingress and egress for public sidewalk purposes ("**Public Sidewalk Easement**"), over the Easement Area. The horizontal limits of the Easement Area are shown and described on Exhibit A (Legal Description), Exhibit A-1 and Exhibit A-2 (Plat Map) attached hereto. The vertical limits of the Easement Area shall extend from the surface of the top of the sidewalk slab to a height of ten (10) feet above the surface of the top of the sidewalk slab. The Easement Area and the sidewalk and curb improvements 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. Grantee acknowledges that the easement granted herein is nonexclusive; provided Grantor shall not allow any use of the Easement Area that prevents or unreasonably interferes with the Public Sidewalk Easement. Nothing in this Agreement shall prevent Grantor from (a) constructing or installing any improvements in the Easement Area pursuant to street or sidewalk improvement plans and related permits approved in writing by the City and County of San Francisco, or (b) performing such work as may reasonably be required to repair or maintain the Easement Area and Burdened Property, including any work by a private or public utility company to repair or maintain any utility facility located on the Burdened Property. Grantor shall maintain the Easement Area in a manner that provides an unobstructed path of travel that is free of physical obstructions (including street furniture, such as benches, planters, tables and chairs, merchandise displays, signboards, and information kiosks). Grantor shall have the right to use the Easement Area in a manner that will not unreasonably impede the pedestrian use of the Easement Area for sidewalk purposes (i.e., that provides an unobstructed path of travel that is free from physical obstructions, excepting those improvements that have been approved for placement within the Easement Area by the Grantee).

3. Term of Easement.

(a) Term. The Public Sidewalk Easement shall be perpetual, unless terminated in accordance with this Section 3.

(b) Termination. The Public Sidewalk Easement shall terminate, as to all or applicable portions of the Easement Area upon the earliest to occur of: (i) a written

determination by the Grantee's Director of Public Works that the Public Sidewalk Easement (or a portion thereof) is no longer required by Grantee; and (ii) a written acceptance by Grantee, signed by both the Director of Property and the Director of Public Works, of a substitute easement that provides reasonable alternative access to the public. The access provided by any such alternative must, in the reasonable judgment of the Director of Public Works, be substantially equivalent in all respects (including, without limitation, the ease and ability to travel across any substitute easement area and continued access to all properties directly served by the Easement or portion thereof being terminated, either alone or in conjunction with other access) to the Easement or portion thereof being terminated. Upon any such termination, the parties agree to prepare, execute, and record a document reflecting the termination (and, if applicable, the replacement easement). For Grantee, any such document shall be signed by the Director of Property (without action by the Board of Supervisors). The Public Sidewalk Easement shall not terminate before any such recordation.

4. Condition of the Burdened Property.

(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 Easement Area shall be in its "as is" physical condition; provided the foregoing does not lessen or reduce Grantor's maintenance and repair obligations as set forth in this Easement. Grantee 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 1 above. Grantor shall not take any action that would unreasonably impair the ability of Grantee or the public to use the Public Sidewalk Easement as a public sidewalk. Nothing herein shall be construed in any way to alter, amend, or otherwise relieve Grantor of any responsibilities with regard to the physical condition of the Burdened Property (including without limitation, responsibilities with regard to environmental investigation and remediation) set forth in any document, instrument or other agreement.

(b) Maintenance. Grantor agrees to maintain and repair the Easement Area in a reasonably safe condition and in such physical condition so as to allow the public to walk on the Easement Area in a reasonably safe manner and otherwise consistent with the City's Public Works Code concerning public sidewalks, subject to the limitations in Section 2. Except as set forth above, Grantor shall not be obligated to make any repairs, replacements or renewals to the Easement Area. Grantee shall have no obligation to make or pay for any repairs, replacements or other improvements to the Easement Area.

5. No City Liability; Indemnity. Grantee, by acceptance of the Public Sidewalk Easement, shall not 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 only such injury or damage as is caused exclusively by the willful misconduct or gross negligence of Grantee. Grantor shall defend, hold harmless and indemnify Grantee for all claims and losses resulting from (i) any personal injury or property damage occurring in the Easement Area, and (ii) any default by Grantor under this

Agreement, except to the extent that such claims and losses as are caused exclusively by the willful misconduct or gross negligence of Grantee.

6. Enforcement. Grantee, but not the general public, shall have all rights and remedies at law and in equity in order to enforce 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 Grantee 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.

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

8. Amendment. This Agreement may be amended or otherwise modified only in writing signed and acknowledged by Grantor and Grantee.

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

10. 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.

11. 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.

12. Notice. Any notice given under this Agreement shall be in writing and given by delivering the notice in person, by commercial courier 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. For the convenience of the parties, copies of notices may also be given by telefacsimile, to the telephone number listed below or such other numbers as may be provided from time to time.

Grantor: Otis Property Owner LLC  
c/o Align Real Estate  
255 California Street, Suite 525  
San Francisco, CA 94111  
Attention: Logan Williams

with copies to: Reuben, Junius & Rose, LLP  
1 Bush Street, Suite 600  
San Francisco, CA 94104  
Attention: Jay Drake

Grantee: Director of Department of Public Works  
Department of Public Works  
City and County of San Francisco  
49 South Van Ness Avenue  
San Francisco, California 94103

with copies to: Office of the City Attorney  
Room 234, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4682  
Attention: Public Works – General Counsel

and to: Director of Real Estate  
Real Estate Department  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102

Any mailing address 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.

13. Successors. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, including without limitation successors-in-interest of Grantor's fee interest in any of the Burdened Property.

14. Representations and Warranties. Grantor represents, warrants and covenants to Grantee the following:

(a) Good Standing. Grantor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California.

(b) Authority. Grantor is the sole fee owner of the Burdened Property, and Grantor has full power and authority to enter into this Agreement and to consummate the transactions contemplated by it. This Agreement has been duly authorized by all necessary action on the part of Grantor and no other action on the part of Grantor is necessary to authorize the execution and delivery of this Agreement.

15. Exclusive Benefit of Parties. The provisions of this Agreement are for the exclusive benefit of Grantor and Grantee and their successors, 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 Grantee. The easement herein granted is in gross.

16. 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.

17. 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 that is the subject matter of this Agreement.

18. Compliance With Laws. Grantor shall comply with all applicable laws, statutes, ordinances, rules and regulations of federal, state and local authorities with respect to its use of the Easement Area.

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.

20. Tropical Hardwoods and Virgin Redwoods. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood wood product or virgin redwood or virgin redwood wood product.

21. MacBride Principles - Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Grantor acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

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

23. Notices Concerning Use. Grantor reserves the right to record, post and publish notices as referred to in Section 813, 1008 and 1009 of the California Civil Code; provided, that such notices shall not affect the rights and obligations of Grantor and Grantee hereunder and, where appropriate, any such notice shall include recognition of the provisions of this Agreement

24. Counterparts. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on \_\_\_\_\_, 2021.

CITY AND COUNTY OF SAN FRANCISCO  
a municipal corporation

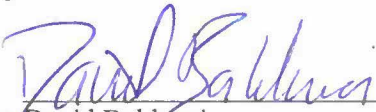
By: \_\_\_\_\_  
ANDRICO PENICK  
Director of Real Estate

OTIS PROPERTY OWNER, LLC, a Delaware limited liability company

By: OTIS TOWER HOLDINGS, LLC, a Delaware limited liability company  
Its: Managing Member

By: ALIGN OTIS, LLC, a California limited liability company  
Its: Managing Member

By: ALIGN REAL ESTATE, LLC, a California limited liability company  
Its: Manager

By:  \_\_\_\_\_  
Name: David Balducci  
Its: Manager

APPROVED AS TO FORM:

DENNIS J. HERRERA,  
City Attorney

By: \_\_\_\_\_  
JOHN MALAMUT  
Deputy City Attorney

ATTACH:

Exhibit A – Legal Description - Public Sidewalk Easement

Exhibit A-1 & Exhibit A-2 – Plat to Accompany Legal Description - Public Sidewalk Easement



EXHIBIT A

LEGAL DESCRIPTION

"PUBLIC SIDEWALK EASEMENT"

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO,  
STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHWESTERLY LINE OF OTIS  
STREET (WIDTH VARIES) WITH THE SOUTHWESTERLY LINE OF 12TH STREET (WIDTH  
VARIES); THENCE SOUTHWESTERLY ALONG SAID LINE OF OTIS STREET 12.00 FEET;  
THENCE AT A DEFLECTION ANGLE OF 124°28'31" TO THE RIGHT 0.76 FEET; THENCE AT  
A DEFLECTION ANGLE OF 35°27'35" TO THE RIGHT 8.90 FEET; THENCE AT A  
DEFLECTION ANGLE OF 69°56'06" TO THE LEFT 5.12 FEET; THENCE AT A RIGHT ANGLE  
NORTHEASTERLY 3.21 FEET TO SAID SOUTHWESTERLY LINE OF 12TH STREET; THENCE AT  
A RIGHT ANGLE SOUTHEASTERLY, ALONG SAID LINE OF 12TH STREET, 8.80 FEET TO THE  
POINT OF BEGINNING.

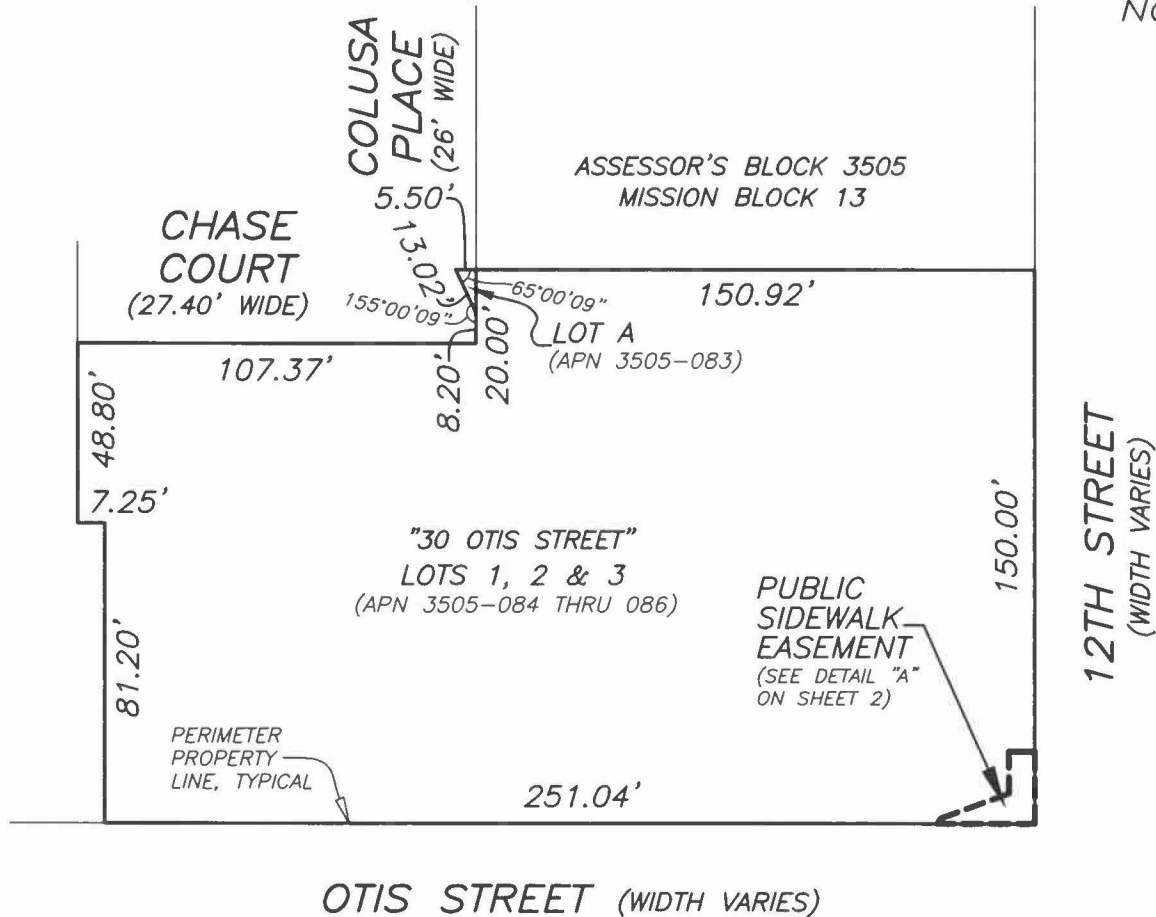
BEING A PORTION OF MISSION BLOCK 13

CONTAINING 46 SQ.FT., MORE OR LESS



# EXHIBIT A-1

PLAT TO ACCOMPANY LEGAL DESCRIPTION  
PUBLIC SIDEWALK EASEMENT



**MAP REFERENCE:**

LOTS A, 1, 2 & 3 ARE AS SHOWN ON  
FINAL MAP 10606.

**NOTES:**

1. DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
2. ALL PROPERTY LINE ANGLES ARE 90 DEGREES UNLESS NOTED OTHERWISE.

**PUBLIC SIDEWALK EASEMENT**

ASSESSOR'S BLOCK 3505  
SAN FRANCISCO, CALIFORNIA

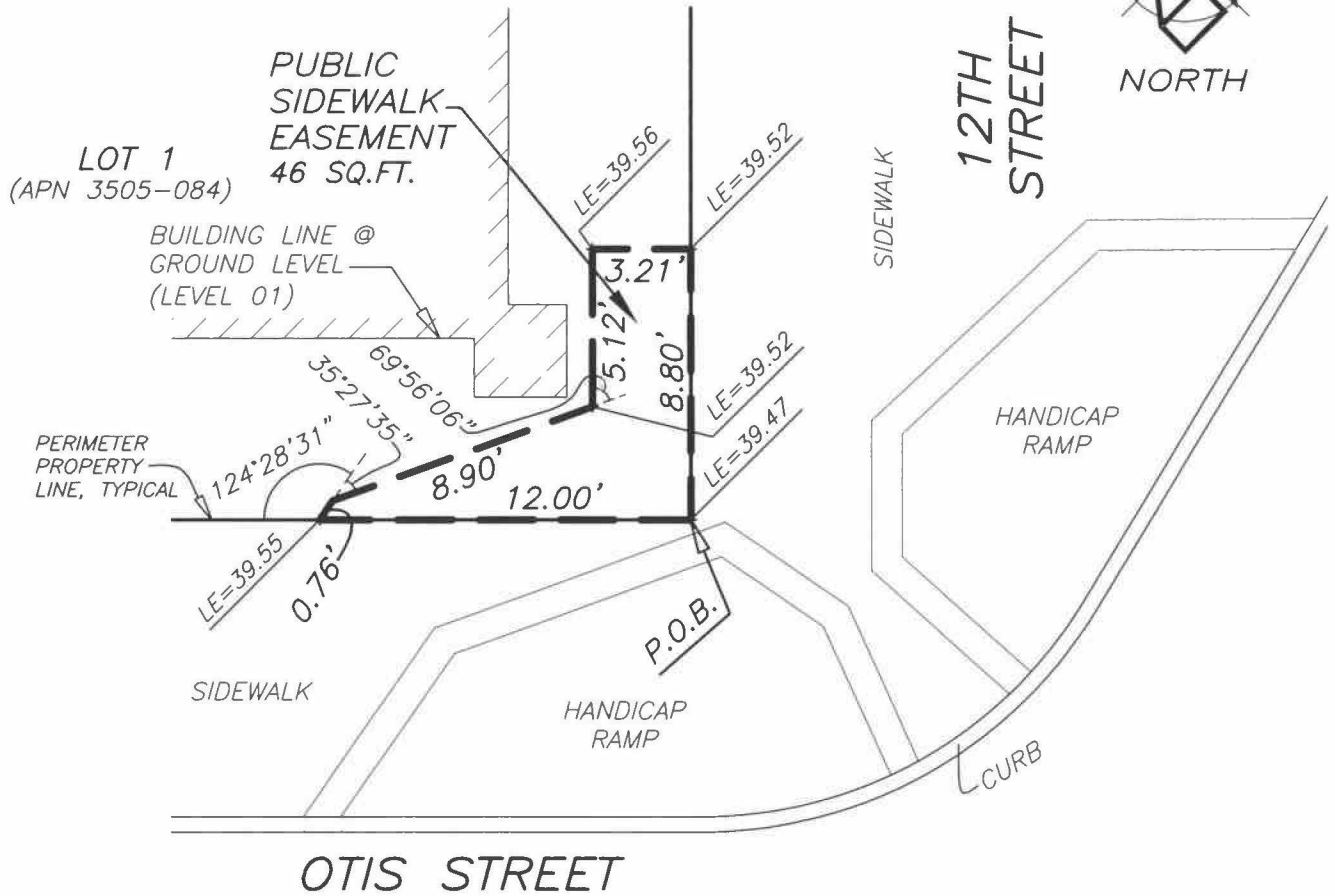
BY JP CHKD. BR DATE 4-28-21 SCALE NONE SHEET 1 OF 2 JOB NO. S-8956

**MARTIN M. RON ASSOCIATES, INC.**  
LAND SURVEYORS

859 HARRISON STREET  
SAN FRANCISCO, CA. 94107  
(415) 543-4500  
S-8956\_PUBLIC SIDEWALK ESMT PLAT.dwg

# EXHIBIT A-2

PLAT TO ACCOMPANY LEGAL DESCRIPTION  
PUBLIC SIDEWALK EASEMENT



## OTIS STREET DETAIL "A"

### LEGEND

P.O.B. POINT OF BEGINNING  
LE LOWER ELEVATION  
APN ASSESSOR'S PARCEL NUMBER

$\swarrow$  39.47  
SPOT ELEVATION AT  
TOP OF SIDEWALK SLAB

### NOTES:

1. DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
2. ALL PROPERTY LINE ANGLES ARE 90 DEGREES UNLESS NOTED OTHERWISE.

### VERTICAL LIMITS:

LOWER ELEVATION = TOP OF SIDEWALK SLAB  
UPPER ELEVATION = 10 FEET ABOVE TOP OF SIDEWALK SLAB.

### BENCHMARK:

BM 11212, CCSF STANDARD 1/2" DOMED STAINLESS STEEL ANCHOR SCREW WITH WASHER STAMPED "CCSF CONTROL" AT THE NORTHEAST CORNER OF SOUTH VAN NESS AVENUE AND MISSION STREET, #1580 MISSION STREET.  
ELEVATION = 39.17 FEET CCSF 2013 NAVD88 VERTICAL DATUM.

## PUBLIC SIDEWALK EASEMENT

ASSESSOR'S BLOCK 3505  
SAN FRANCISCO, CALIFORNIA

BY JP CHKD. BR DATE 4-28-21 SCALE NONE SHEET 2 OF 2 JOB NO. S-8956

MARTIN M. RON ASSOCIATES, INC.  
LAND SURVEYORS

859 HARRISON STREET  
SAN FRANCISCO, CA. 94107  
(415) 543-4500  
S-8956\_PUBLIC SIDEWALK ESMT PLAT.dwg

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

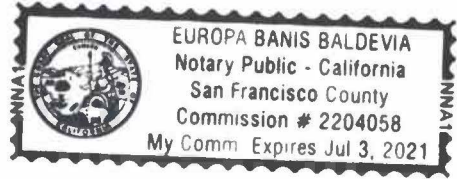
State of California )  
County of San Francisco )

On May 20, 2021, before me, Europa Banis Baldevia, a Notary Public, personally appeared David Balducci, 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 *Europa Banis Baldevia*



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Francisco )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, 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 \_\_\_\_\_

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by this easement agreement dated \_\_\_\_\_, from the grantor to the City and County of San Francisco, a municipal corporation, is hereby accepted by order of its Board of Supervisors' Ordinance No. \_\_\_\_\_, adopted on \_\_\_\_\_, 2021, and the grantee consents to recordation thereof by its duly authorized officer.

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

CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_  
ANDRICO PENICK  
Director of Real Estate