Recording requested by and when recorded mail to:

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

The undersigned hereby declares this instrument to be exempt from Recording Fees (Govt. Code § 27383) and from Documentary Transfer Tax (CA Rev. & Tax. Code 11922 and SF Bus. and Tax Reg. Code 1105)

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

APN: 7334-015

## EMERGENCY VEHICULAR ACCESS EASEMENT AGREEMENT PRIVATE ALLEY WAY – LOT A

This EMERGENCY VEHICULAR ACCESS EASEMENT AGREEMENT (this "Agreement"), by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), and MAXIMUS PM PHASE 1C OWNER LLC, a Delaware limited liability company ("Owner"), is executed as of \_\_\_\_\_\_\_\_, 2023 (the "Effective Date").

#### **RECITALS**

- A. Owner owns the real property located in San Francisco, California, and fully described and depicted on the attached Exhibit A-1 (the "Burdened Property").
- B. The Burdened Property is Lot A on that certain map entitled "FINAL MAP No. 10699" filed for record in Book \_\_\_\_\_\_ of Final Maps, at Pages \_\_\_\_\_ inclusive, in the Office of the Recorder of the City and County of San Francisco, State of California (the "Final Map").
- C. The Burdened Property is located on Block 3W of the Project Site of the Parkmerced Development Project (the "**Project**"), as described in that certain Development Agreement dated for reference purposes only July 6, 2011 (the "**Development Agreement**") and recorded in the Official Records of San Francisco County (the "**Official Records**") as Document No. 2011J20995900. On June 7, 2011, the San Francisco Board of Supervisors adopted Ordinance No. 89-11, approving the Development Agreement and authorizing the Planning Director to execute the Development Agreement on behalf of the City (the "**Enacting Ordinance**"). The Enacting

Ordinance took effect on July 9, 2011. All capitalized terms herein and not otherwise defined herein shall have the meaning set forth in the Development Agreement.

- D. Pursuant to the Development Agreement, the Burdened Property is an alley way designated as a "Privately-Owned Community Improvement Full Public Access."
- E. Owner desires to grant a non-exclusive, irrevocable emergency vehicular ingress, egress and access easement over a portion of the Burdened Property as described on <u>Exhibit A-2</u> (the "Easement Area").
- F. Owner agrees to grant such an emergency access easement to City on the terms and conditions specified in this Agreement.

#### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. <u>Grant of Easement</u>. Pursuant to the terms and conditions specified in this Agreement, and commencing on the Effective Date, Owner grants to City a non-exclusive, irrevocable easement in gross on, over and across the Easement Area for emergency vehicular access over the Easement Area ("Emergency Access Easement"). The vertical limits of the Easement Area shall extend from ground level (finished surface) to a height of sixty-eight (68) feet above ground level (finished surface).

Without limiting the foregoing, this Agreement does not prohibit Owner, its successors, assigns, grantees, and licensees from using the Easement Area after the Effective Date in any manner that does not interfere with the Emergency Access Easement, including, but not limited to, installing, maintaining, repairing, replacing or removing improvements in the Easement Area, the Burdened Property, or the abutting privately owned lots, as long as interim measures are made available for emergency access over the Easement Area or the Burdened Property to the satisfaction of the City's Fire Department. City acknowledges that Owner may install, maintain, repair, replace or remove structures and appurtenances on the Burdened Property in the area outside of or airspace above the Easement Area after the Effective Date in any manner that does not interfere with the Emergency Access Easement.

2. <u>As-Is Condition</u>. City's use of the Emergency Access Easement pursuant to this Agreement shall be with the Easement Area in its "as is" physical condition. Owner makes no representations or warranties under this Agreement with respect to the current physical condition of the Easement Area and shall have no responsibility to City under this Agreement with respect thereto, except as otherwise specifically set forth in this Agreement. City waives any and all claims against Owner arising from, out of or in connection with the suitability of the physical conditions of the Easement Area for the Emergency Access Easement as long as Owner performs its maintenance obligations with respect to the Easement Area as specified in this Agreement and Owner does not take any action or allow any condition to remain that would impair City's use of the Emergency Access Easement. Nothing herein shall be construed in any way to alter, amend, or otherwise relieve

Owner of its responsibilities with regard to the physical condition of the Easement Area (including without limitation, responsibilities with regard to environmental investigation and remediation and construction of public improvements) set forth in any other document, instrument or agreement between City and Owner. Notwithstanding anything to the contrary in this Agreement, City shall have no liability for any claims or damages in connection with any hazardous material on or in the Easement Area, except to the extent that City caused the release on or in the Easement Area.

- 3. <u>Maintenance and Repair</u>. Commencing on the Effective Date, except as otherwise expressly permitted under Section 1 above, Owner shall maintain the Easement Area, and any surface improvements from time to time constructed on the Easement Area, at all times in a level, good and safe condition consistent with City's use of the Emergency Access Easement and City's load requirements for emergency vehicles. Owner shall perform such repair and maintenance at its sole expense and to City's reasonable satisfaction. City shall have no obligation under this Agreement to maintain or repair the Easement Area or to maintain, repair, replace or remove any improvements or materials in the Easement Area.
- 4. <u>No General Liability: Insurance</u>. City shall not be liable pursuant to this Agreement for any injury or damage to any person on or about the Burdened Property or any injury or damage to the Burdened Property, 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 such injury or damage is caused solely by City's willful misconduct or gross negligence relating to City's use of the Emergency Access Easement. City shall have no obligation to carry liability insurance with respect to its use of the Emergency Access Easement.
- 5. Default: Enforcement. Owner's failure to perform any if its covenants or obligations under this Agreement and to cure such non-performance within thirty (30) days of written notice by City of such failure shall constitute a default under this Agreement; provided that if more than thirty (30) days are reasonably required to cure such failure, no event of default shall occur if Owner commences such cure within such thirty (30) day period and diligently prosecutes such cure to completion. Upon such default, City 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 Emergency Access Easement herein granted. In the event of any breach of this Agreement, City shall be entitled to recover all attorneys' fees and costs reasonably incurred in connection with City's enforcement activities and actions.

City shall have all rights and remedies at law and in equity in order to enforce the Emergency Access Easement and the terms of this Agreement. 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.

6. Run with the Land; Exclusive Benefit of Parties. The rights and obligations set forth herein shall burden the Burdened Property, run with the land, and bind all successor owners of the Burdened Property for the benefit of City. This Agreement is for the exclusive benefit of City and Owner and their respective successors and assigns and not for the benefit of, nor give rise to any

claim or cause of action by, any other party. This Agreement shall not be deemed a dedication of any portion of the Easement Area to or for the benefit of the general public.

- 7. <u>Abandonment of Easement</u>. City may, at its sole option, abandon the Emergency Access Easement by recording a quitclaim deed. Upon recording such quitclaim deed, this Agreement and the Emergency Access Easement and all rights, duties and liabilities hereunder shall be terminated and of no further force or effect. No temporary non-use of the Easement Area or other conduct, except for recordation of the quitclaim deed as provided in this Section, shall be deemed City's abandonment of the Emergency Access Easement.
- 8. <u>Notices</u>. All notices, demand, consents or approvals given hereunder shall be in writing and shall be personally delivered, or sent by a nationally-recognized overnight courier service that provides next business day delivery services, provided that next business day service is requested, or by United States first-class mail, postage prepaid, to the following addresses (or any other address that a party designates by written notice delivered to the other party pursuant to the provisions of this Section):

If to City:

Director of Department of Public Works

Department of Public Works City and County of San Francisco

49 South Van Ness Avenue, Suite 1600,

San Francisco, California 94103

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: Shari Geller Diamant

and to:

Director of Property
Real Estate Department

25 Van Ness Avenue, Suite 400 San Francisco, California 94102

If to Owner:

Parkmerced Owner LLC

One Maritime Plaza Suite 1900 San

Francisco, California 94111 Attention: Rob Rosania with copies to: J. Abrams Law, P.C. 538 Hayes Street

San Francisco, California 94102 Attention: Jim M. Abrams

- 9. <u>MacBride Principles Northern Ireland</u>. City 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. City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Owner acknowledges that it has read and understands the above statement of City concerning doing business in Northern Ireland.
- 10. <u>Tropical Hardwood and Virgin Redwood Ban</u>. City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.
- 11. General Provisions. (a) This Agreement may be amended or modified only by a writing signed by City and Owner and recorded in the Official Records of the City and County of San Francisco. (b) No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) This Agreement contains the entire agreement between the parties with respect to the Emergency Access Easement and all prior negotiations, discussions, understandings and agreements are merged herein. (d) This Agreement shall be governed by California law and City's Charter. (e) If either party commences an action against the other or a dispute arises under this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes of this Agreement, the reasonable fees of attorneys of the Office of the City Attorney of the City and County of San Francisco 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 City Attorney's Office. (f) This Agreement does not create a partnership or joint venture between City and Owner as to any activity conducted by Owner on, in or relating to the Easement Area. (g) Time is of the essence of this Agreement and each party's performance of its obligations hereunder. (h) All representations, warranties, waivers, releases, indemnities and surrender obligations given or made in this Agreement shall survive the termination of this Agreement or the extinguishment of the Emergency Access Easement. (i) If any provision of this Agreement is deemed invalid by a judgment or court order, such invalid provision shall not affect any other provision of this Agreement, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as partially invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purpose of this Agreement. (i) All section and subsection titles are included only for convenience of reference and shall be disregarded in the construction and interpretation of the Agreement. (k) Owner represents and warrants to City that the execution and delivery of this Agreement by Owner and the person signing on behalf of Owner below has been duly authorized and Owner is a limited liability company duly formed, validly existing and in good standing under

the laws of the State of California. (l) City represents and warrants to Owner that the execution and delivery of this Agreement by City and the person signing on behalf of City below has been duly authorized.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

OWNER:	
MAXIMUS PM PHASE IC OWNER LLC, a Delaware limited liability company  By: Name: Robert A. Rossole  Fitle: Resident	
CITY:	
CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation	
Ву:	
Andrico Penick	
Director of Property	
APPROVED AS TO FORM:	
DAVID CHIU, City Attorney	
Зу:	
Shari Geller Diamant	
Deputy City Attorney	

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

#### **ACKNOWLEDGMENT**

STATE OF NEW YORK	)	
	) ss.	
COUNTY OF NEW YORK	)	

On the 30<sup>th</sup> day of November in the year 2023 before me, the undersigned, a Notary Public in and for said state, personally appeared Robert A. Rosania, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

SARA J. DAVIS
Notary Public, State of New York
No. 01DA6370931
Qualified in Kings County
Commission Expires February 12, 2026

Notary Public

[SEAL]

My commission expires:

# CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

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 he	afora ma	NIAA Dulili
		, a Notary Public,
personally appeared		, who proved to me on the basis of
satisfactory evidence to be the p	erson(s) whose nam	e(s) is/are subscribed to the within instrument
and acknowledged to me that he	e/she/they executed t	he same in his/her/their authorized
capacity(ies), and that by his/her	r/their signature(s) o	n the instrument the person(s), or the entity
upon behalf of which the person	(s) acted, executed t	he instrument.
I certify under PENALTY OF P	ERJURY 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

#### **Government Code Section 27281**

I his is to certify that the interest in the real	property conveyed by the Emergency Vehicular Access
Easement Agreement dated	, 202_, from MAXIMUS PM PHASE 1C
OWNER LLC, a Delaware limited liabil	lity company to the CITY AND COUNTY OF SAN
	City"), is hereby accepted by the undersigned on behalf
	by Ordinance No. 89-11 adopted on June 07, 2011 and
the City consents to the recordation thereo	f, by its duly authorized officer.
IN WITNESS WHEREOF, I have hereund	er set my hand this day of, 202
	CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation
	By:ANDRICO Q. PENICK Director of Real Estate

## Exhibit A-1 Burdened Property



# EXHIBIT A-1 LEGAL DESCRIPTION BURDENED PROPERTY

All that certain real propert being more particularly des	•	ty of San Francisco, State of California	a, and
		ed "FINAL MAP No. 10699" filed for re of Final Maps, at Pages	
inclusive, in the Office of th	e Recorder of the City and Co	ounty of San Francisco, State of Califor	rnia.
Containing 28,516 square f	eet, more or less, as calculated	d at and above an elevation of 106.75	feet.
Being all of APN 7334-015.			

#### **Horizontal Datum & Reference System**

The horizontal datum is the North American Datum of 1983: NAD 83 (2011) Epoch 2010.00 referenced by the "CCSF-2013 High Precision Network" (CCSF-HPN). Plane coordinates are based on the "City & County of San Francisco 2013 coordinate system (CCSF-CS13). CCSF-CS13 is a low distortion projection designed for CCSF to provide plane coordinates in a ground system. See ROS 8080, filed April 4, 2014, in Book EE of Survey Maps at pages 147-157 in the Office of the Recorder of the City and County of San Francisco.

#### **Vertical Datum & Reference System**

The vertical datum is the "CCSF 2013 NAVD88 Vertical Datum" (SFVD13) and referenced by the "CCSF 2013 Leveling Network".

Benchmark 10510: 2-1/2" domed brass disk at northeast corner of Lake Merced Blvd & Brotherhood Way stamped "T-0158." in concrete island formed by northbound Lake Merced Blvd & turn lanes of westbound Brotherhood Way. 10.3' north of north face of curb of handicap ramp in island. 10.3' east of pedestrian traffic signal. 6.7' east of east face of curb of Lake Merced Blvd. Elevation = 52.034 U.S. Survey Feet.

Benchmark 10166: 1/2" domed steel pin at southwest corner of 19th Ave & Crespi Drive in concrete sidewalk at curb return. Near back of walk. On line with end curb return. 10' southwesterly -radial of face of curb. Elevation = 176.214 U.S. Survey Feet.

A plat showing the above described parcel is attached hereto and made a part hereof.

**BKF ENGINEERS** 

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



David C. Jungmann, PLS 9267

09/26/2023 Dated

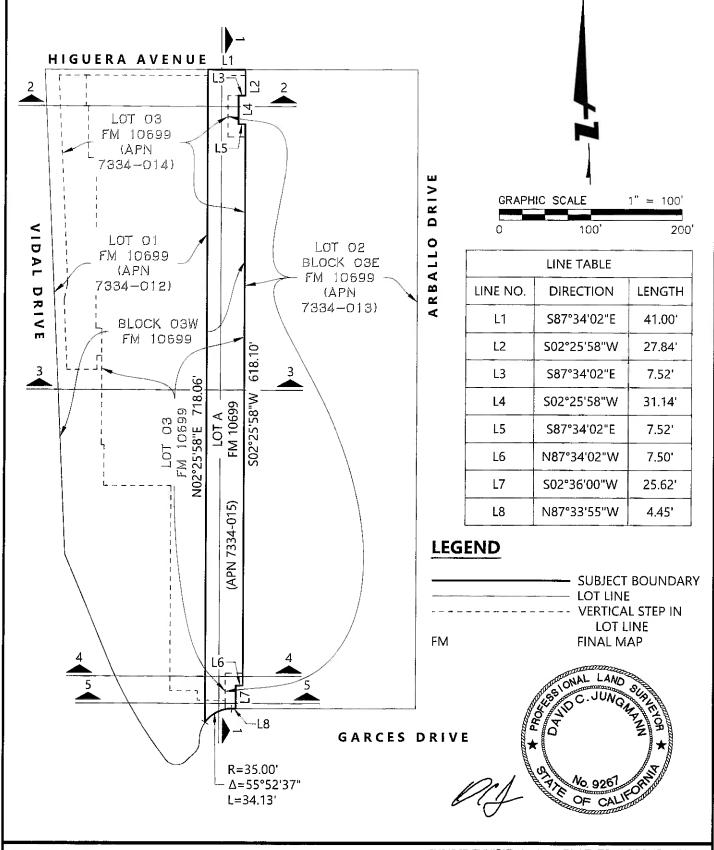
APPROVED LEGAL DESCRIPTION

Katharine S. Anderson, City and County Surveyor City and County of San Francisco

By: Katharine S. Anderson, P.L.S. 8499

**END OF DESCRIPTION** 





BKF

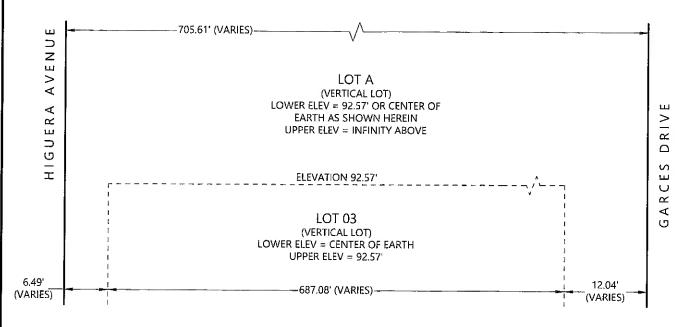
255 SHORELINE DR., SUITE 200 REDWOOD CITY, CA 94065 (650) 482-6300 www.bkf.com SUBJECT EXHIBIT A-1 - PLAT TO ACCOMPANY

LEGAL DESCRIPTION

JOB NO. 20200835-10

BY <u>JMS</u> APPR.<u>DCJ</u> DATE <u>09/26/2023</u> 3 OF 5 (2) BKF Enginee

#### **VERTICAL LOT CROSS SECTION 1** NOT TO SCALE





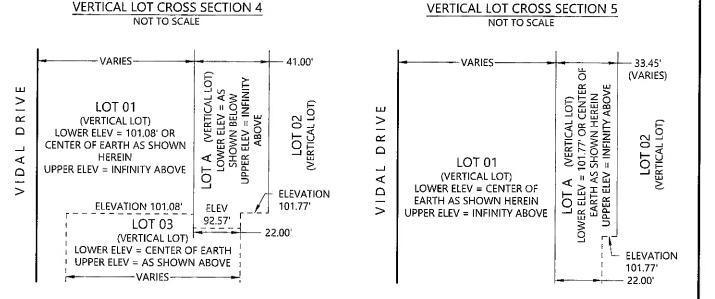
255 SHORELINE DR., SUITE 200 REDWOOD CITY, CA 94065 (650) 482-6300 www.bkf.com

SUBJECT EXHIBIT A-1 - PLAT TO ACCOMPANY

LEGAL DESCRIPTION
JOB NO. 20200835-10
BY JMS APPR.DO APPR.DCJ

DATE <u>09/26/2023</u> 4 OF 5

#### **VERTICAL LOT CROSS SECTION 2** VERTICAL LOT CROSS SECTION 3 NOT TO SCALE NOT TO SCALE -33,48 VARIES: VARIES-41.00 (VERTICAL LOT) LOWER ELEV = AS SHOWN BELOW UPPER ELEV = INFINITY ABOVE LOT 01 LOT 01 ш R < (VERTICAL LOT) LOT 02 (VERTICAL LOT) (VERTICAL LOT) (VERTICAL LOT) LOWER ELEV = AS SHOWN LOWER ELEV = 101.08' OR CENTER LOT A BELOW OR CENTER OF EARTH OF EARTH AS SHOWN HEREIN $\Box$ AS SHOWN HEREIN UPPER ELEV = INFINITY ABOVE VIDAL UPPER ELEV = INFINITY ABOVE VIDAL **ELEVATION 101.08'** ELEVATION 101.08' **ELEVATION**<sup>「</sup> 22.001 **ELEVATION** LOT 03 92.25 92.57 (VERTICAL LOT) **ELEVATION LOT 03** LOWER ELEV = CENTER OF EARTH 106.75 (VERTICAL LOT) UPPER ELEV = AS SHOWN ABOVE LOWER ELEV = CENTER OF EARTH **ELEVATION** UPPER ELEV = AS SHOWN ABOVE 92.57 **VARIES** -VARIES-





BKF Engineers

UPPER ELEV = INFINITY ABOVE

(VERTICAL LOT)

LOT 02

LOWER ELEV = 92.57"

### Exhibit A-2 Legal Description of Easement Area



# EXHIBIT A-2 LEGAL DESCRIPTION 24.00' EMERGENCY VEHICLE ACCESS EASEMENT

strip of land of the	al property situate in the City and County of San Francisco, State e uniform width of 24.00 feet, being a portion of Lot A, in Block on that certain map entitled "FINAL MAP NO. 10699" filed for rec	03W, as said lot and
on	, 2023 in Book	of Final Maps, at
pages	, in the Office of the Recorder of the City and County of the more particularly described as follows:	of San Francisco, State
COMMENCING at	t the northwest corner of Lot A as said lot is shown on said map	<b>;</b>
<ol> <li>South 87°34 right angles description;</li> <li>South 87°34</li> </ol>	northerly line of said Lot A, the following two (2) courses: 84'02" East, 2.50 feet to a line parallel with and distant 2.50 feet es, from the westerly line of said Lot A, and the <b>POINT OF BEGIN</b> 1; 84'02" East, 24.00 feet to a line parallel with and distant 26.50 feet gles, from said westerly line of said Lot A;	NNING of this
northerly line of Ga	d northerly line, along last said parallel line, South 02°25'58" We arces Drive and the beginning of a non-tangent curve, concave ich bears South 01°37'11" East;	
	said northerly line, southwesterly, along said non-tangent curve h a central angle of 45°05'39", an arc length of 27.55 feet to first	
Thence leaving said POINT OF BEGINN	d northerly line, along first said parallel line, North 02°25'58" Ea <b>NING</b> .	st, 714.80 feet to the
Containing 16,963 s	square feet, more or less, as calculated at and above an elevation	on of 106.75 feet.
Being a portion of A	APN 7334-015.	

#### **Horizontal Datum & Reference System**

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**BKF ENGINEERS** 

in Book EE of Survey Maps at pages 147-157 in the Office of the Recorder of the City and County of San Francisco.

#### **Vertical Datum & Reference System**

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The vertical limits of the Easement Area shall extend from ground level (finished surface) to a height of sixty-eight (68) feet above ground level (finished surface).

A plat showing the above-described parcel is attached hereto and made a part hereof.

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

David C. Jungmann, PLS 9267



09/21/2023 Date

APPROVED LEGAL DESCRIPTION

Katharine S. Anderson, City and County Surveyor City and County of San Francisco

Ву:

Katharine S. Anderson, P.L.S. 8499

**END OF DESCRIPTION** 



