RECORDING REQUESTED BY, AND
WHEN RECORDED RETURN TO:

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

No fee for recording pursuant to Government Code Section 27383

APN: Block 4624; Lots 448 and 452 **[Space Above for Recorder's Use]**

EASEMENT AGREEMENT

(Easement for Access to Maintain Retaining Wall)

(Final Map No. 9677)

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the HOUSING AUTHORITY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body corporate and politic ("**Grantor**"), grants to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation and its successors and assigns ("**City**"), a perpetual easement for ingress, egress, and access, in, across, and through Grantor's certain real property which is located in San Francisco, California and described in attached Exhibit A and depicted in Exhibit B (the "**Easement Area**") in order to provide for repair, maintenance, and if necessary, reconstruction of a retaining wall supporting Street 1 immediately adjacent to the Easement Area (the "**Retaining Wall**"), which shall be referred to hereafter as the "**Easement**."

1. Nature of Easement. The Easement is a perpetual, non-exclusive easement in gross for the purpose of providing the City and its respective contractors and subcontractors (collectively, "**City's Agents**"), vehicles and equipment: (a) access in, across, and through the Easement Area to provide for repair, maintenance, and reconstruction of the Retaining Wall, and (b) to place temporary facilities and equipment on the Easement Area when needed in connection with any work on the Retaining Wall (provided that City's Agents will maintain any temporary facilities and equipment only so long as needed to address perform the work).

2. Grantor's Reserved Rights. Grantor, on behalf of itself, its agents, contractors, subcontractors, suppliers, consultants, employees, invitees or other authorized persons acting for or on behalf of Grantor, including but not limited to any lessee and its tenants (collectively, "**Grantor's Agents**"), reserves the right to use the Easement Area, in any way not inconsistent with the above grant of the Easement, subject to the conditions below.

a. Interference. Grantor and Grantor's Agents shall not use the Easement Area or permit the same to be used for any purpose or in any manner that will interfere with the Easement.

b. Maintenance and Repair. Except as set forth in Sections 1 and 3 , City shall have no obligation under this Easement Agreement to maintain or repair the Easement Area or to maintain, repair, replace or remove any improvements or materials in the Easement Area.

c. Shrubs and Trees. Grantor may not plant shrubs or trees in the Easement Area.

d. Fences and Gates. In the event that Grantor elects to construct and maintain fences within or surrounding the Easement Area, Grantor shall provide for City's immediate right of access to the Easement Area without prior notice or authorization to Grantor.

e. Other Structures. Except as set forth in Section 2(d) above, Grantor may not install any surface structures that could impede access within the Easement Area without the prior written consent of City's Public Works Director.

f. Default; Enforcement. Grantor's failure to perform any of its covenants or obligations under this Section and to cure such non-performance within thirty (30) days of written notice by City of such failure shall constitute a default under this Easement Agreement; provided that if more than thirty (30) days are reasonably required to cure such failure, no event of default shall occur if Grantor commences such cure within such thirty (30) day period and diligently prosecutes such cure to completion. Upon such default, City shall be entitled to enforce its rights under this Section and the Easement Agreement in any forum of appropriate jurisdiction.

3. City's Use of the Easement.

a. City's rights under this Agreement may be exercised by City's Agents.

b. In undertaking work on the Retaining Wall, City shall use reasonable efforts to (i) complete all activities in an expeditious and diligent manner; and (ii) minimize disruption to Grantor's use of the Easement Area. Grantor hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of City's entry onto or use of the Easement Area, except to the extent resulting directly from the active negligence or willful misconduct of City or City's Agents, or City's breach of its covenants in this Easement Agreement.

c. Upon completion of any work within or around the Easement Area, City shall, at its cost, backfill the excavation and restore the surface in accordance with the terms of this Section. Where the disturbed surface area is paved, City shall restore the area with three-inch (3") thick asphalt concrete over eight-inch thick (8") Portland cement concrete or its cost equivalent. Where the disturbed surface area is not paved, City shall restore the area with native backfill. Except as provided above, City shall not be liable for damage to, or required to restore, any other improvements or vegetation within the Easement Area. In a non-emergency, City shall provide a minimum of ten (10) business days' notice to Grantor to remove such improvements prior to City commencing work within the Easement Area.

d. City shall indemnify, defend (with counsel reasonably approved by Grantor and Grantor's Agents), and hold Grantor and Grantor's Agents harmless from and against any cost, expense, liability, damage or injury to property or persons to the extent caused by City's gross negligence or willful misconduct (or that of City's Agents) in the exercise of the rights granted to,

or reserved by, City hereunder. Notwithstanding anything herein to the contrary, this Section 3(d) shall survive the expiration and termination of this Easement.

4. Condition of Easement Area. Except as provided in Section 2 above, City accepts its rights in the Easement Area in its current "as is" condition without any warranty (express or implied) by Grantor. Grantor and City shall conduct all of their respective activities within the Easement Area in a manner such that the Easement Area remains in a good, safe condition.

5. Notices, Demands and Communications. Whenever any notice or any other communication is required or permitted to be given under any provision of this Easement Agreement (as, for example, where a party is permitted or required to "notify" the other party), such notice or other communication shall be in writing, signed by or on behalf of the party giving the notice or other communication, and shall be deemed to have been given on the earliest to occur of (i) the date of the actual delivery, or (ii) if mailed, on the delivery date shown on the return receipt, in each case to the respective address(es) of the party to whom such notice is to be given as set forth below, or at such other address of which such party shall have given notice to the other party as provided in this Section 5. Legal counsel for any party may give notice on behalf of such party.

If to Grantor, to:	Housing Authority of the City and County of San Francisco 1815 Egbert Avenue San Francisco, California 94124 Attention: Chief Executive Officer
With a copy to	Goldfarb & Lipman LLP 1300 Clay Street, 11th Floor Oakland, California 94612 Attention: Dianne Jackson McLean, Esq.
If to City, to:	Attn: Director of Property San Francisco Real Estate Division 25 Van Ness Avenue, Suite 400 San Francisco, CA 94102
With copies to:	Attn: Public Works Director San Francisco Public Works 49 South Van Ness Avenue San Francisco, CA 94103 Attn: Real Estate/Finance Team Office of the City Attorney City Hall, Room 234 1 Dr. Carlton R. Goodlett Place San Francisco, CA 94102

6. Abandonment of Easement. City may, at its sole option, abandon the Easement by recording a quitclaim deed. Except as otherwise provided in this Easement Agreement, upon recording such quitclaim deed, the 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 paragraph shall be deemed abandonment of the Easement.

7. HUD Requirements. The Parties acknowledge and agree that this Easement Agreement is subject to the review and approval of the United States Department of Housing and Urban Development ("**HUD"**).

a. Conflict Clause. To the extent that any of the foregoing is in conflict with the requirements of the United States Housing Act of 1937 (1937 Act), as amended, federal regulations, and the Annual Contributions Contract ("**ACC**"), as amended, and other HUD requirements, the HUD requirements shall control and govern in such instances of conflict.

b. Indemnification Clause. It is acknowledged and agreed that Grantor has no authority to provide guarantees, indemnifications, rights of set off, or other pledges involving the assets of any Public Housing Project (as the term 'Project' is defined in the ACC between Grantor and HUD (the "**Public Housing Project**") or other assets of Grantor, including any Housing Choice Voucher ("**HCV**") related assets of Grantor. Accordingly, except as approved by HUD in writing, it is acknowledged that there is no legal right of recourse against: (1) any Public Housing Project of Grantor; (2) any operating receipts (as the term "operating receipts" is defined in ACC), HCV receipts or Capital or Operating Funds of Grantor; (3) any public housing operating reserve of Grantor reflected Grantor's annual operating budget and required under the ACC, or (4) any other asset of Grantor related to the 1937 Act. Should any assets of Grantor be identified at a later date as meeting the criteria set forth above, any guarantees, indemnifications, right of set off, or other pledges involving those assets will be deemed null, void, and unenforceable.

c. Termination Clause. If HUD approves the termination of the ACC at the Public Housing Project and/or release of the Declaration of Trust/Declaration of Restrictive Covenant(s) (e.g., through a disposition under Section 18 of the 1937 Act, the Rental Assistance Demonstration ("**RAD**") program or any other removal action of the Special Applications Center), Grantor may terminate this Easement. In addition, if HUD determines that the Easement does not comply with federal public housing requirements, Grantor may terminate this Easement.

d. HUD is not a Guarantor. HUD is not a Guarantor of Grantor and is not liable for the actions of Grantor under this Easement Agreement.

e. No Assignment Rights or Rights of Mortgage or Security Interests. The Easement Agreement does not include any assignment rights or rights of mortgage or security interests unless HUD approval under section 30 of the 1937 Act has been obtained.

8. Exhibits. The exhibits referenced in and attached to this Easement Agreement are incorporated into and made a part of this Easement Agreement. Grantor and City acknowledge that the precise locations described in the attached exhibits may change upon construction of the Retaining Wall and surrounding improvements. In such an event, Grantor and City agree to work

together in good faith to amend and restate this Easement Agreement as needed to reflect the area required for the improvements as actually installed.

The conditions and covenants contained in this Easement Agreement shall run with the land, burden the Easement Area and be binding on and benefit Grantor and City and their respective agents, successors and assigns unless earlier terminated by written agreement of the parties or their respective successors and assigns.

[Signature pages follow.]

Executed as of this _____ day of _____, 20___.

GRANTOR:

HOUSING AUTHORITY OF THE CITY AND COUNTY OF SAN FRANCISCO,
a public body corporate and politic

By: _____
Name: Daniel Adams
Title: Acting Executive Director

APPROVED AS TO FORM AND LEGALITY:

_____
Dianne Jackson McLean, Esq.
Goldfarb & Lipman LLP
Special Counsel to Authority

Accepted and agreed:
GRANTEE:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Sarah R. Oerth
Director of Property

RECOMMENDED:

By: _____
Carla Short
Director
San Francisco Public Works

APPROVED AS TO FORM:

DAVID CHIU
City Attorney

By: _____
Vicente P. Reyes
Deputy City Attorney

DESCRIPTION CHECKED/APPROVED:

By: _____

NOTARY ACKNOWLEDGMENT

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)

) ss

County of San Francisco)

On _____, before me, _____, a notary public in and for said State, 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)

Exhibit A

LEGAL DESCRIPTION OF EASEMENT AREA

[As Attached]

EXHIBIT A
Retaining Wall Maintenance Access Easement
(over Lot B and Lot 5 – Final Map No. 9677)

Lying within the City of San Francisco, County of San Francisco, State of California, and being a portion of Lot 10 as shown on "Final Map No. 5461", filed for record in the Office of the Recorder of the City and County of San Francisco in Book DD of Survey Maps, at Pages 90 through 97, San Francisco City and County Records, and a portion of the lands described in that deed recorded February 7, 1962 in Book A378, Page 300, Official Records, San Francisco City and County Records, and a portion of Ingalls Street lying northeasterly of Innes Street as shown on said Final Map, being more particularly described as follows:

Commencing at the southeast corner of Lot 10, said point being the southerly terminus of a course being North 35°31'39" East, 356.36 feet as shown on said Final Map No. 5461; thence along the southerly line of said Lot 10, North 54°28'21" West, 193.49 feet to the Point of Beginning; thence from said Point of Beginning, continuing along said southerly line, North 54°28'21" West, 6.51 feet to the southeasterly line of Ingalls Street; thence along the southeasterly line of said Ingalls Street, South 35°31'39" West, 4.56 feet; thence leaving said southeasterly line of said Ingalls Street, North 89°29'16" West, 59.22 feet; thence North 0°30'44" East 15.00 feet; thence South 89°29'16" East, 155.00 feet; thence on a curve to the left having a radius of 53.50 feet, a central angle of 57°22'12", an arc distance of 53.57 feet; thence SOUTH, 22.57 feet; thence along a curve to the right, from a tangent that bears South 49°09'33" West, with a radius of 68.50 feet, a central angle of 41°21'11", an arc distance of 49.44 feet; thence North 89°29'16" West 87.84 feet to the Point of Beginning.

Containing 3,076 square feet more or less

See Exhibit B for graphic depiction.

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

James Lee Smith
PLS 8185

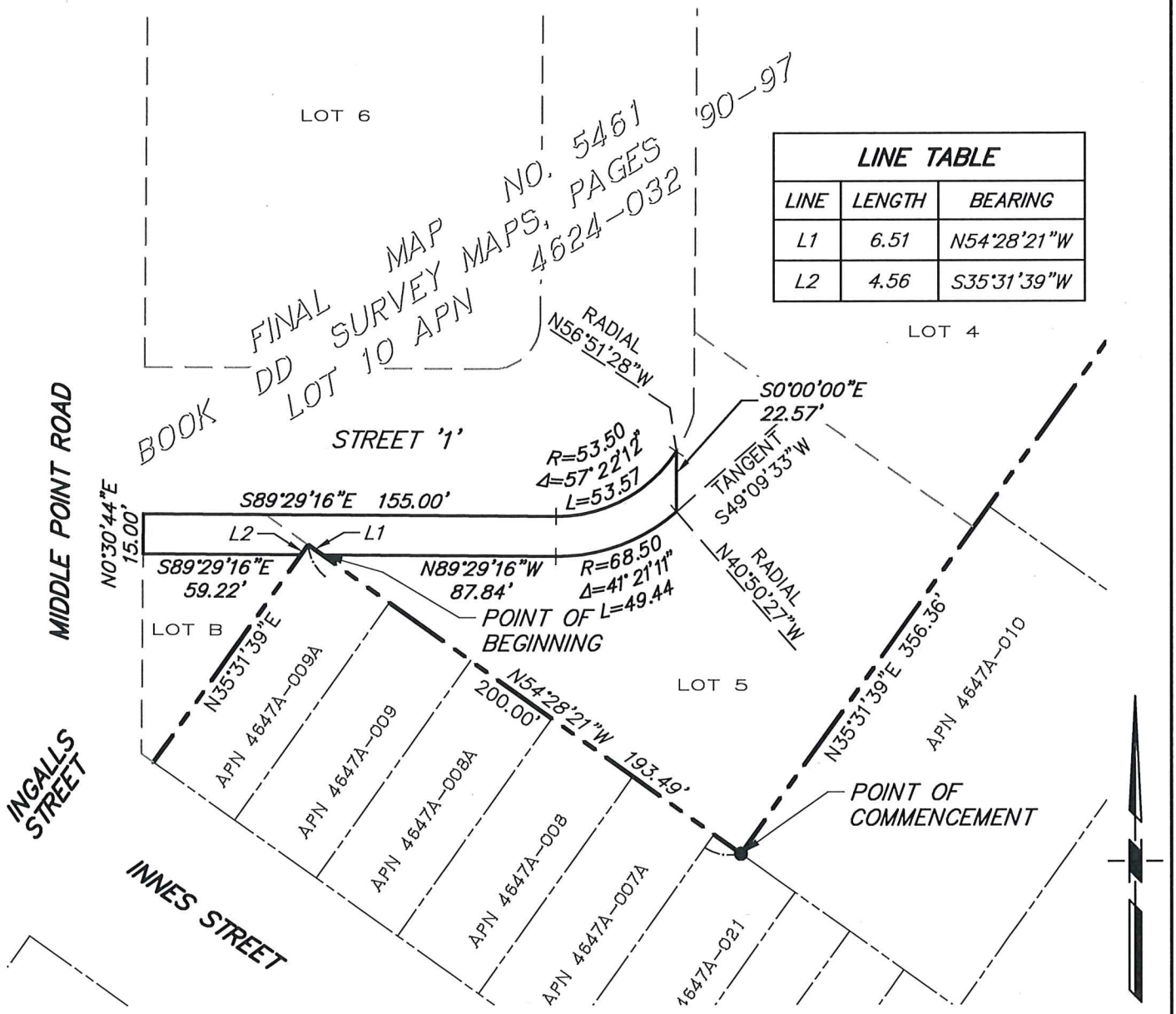
5-6-2021
Date

END OF DESCRIPTION

Exhibit B

DEPICTION OF EASEMENT AREA

EXHIBIT B



LINE TABLE		
LINE	LENGTH	BEARING
L1	6.51	N54°28'21"W
L2	4.56	S35°31'39"W

LICENSED LAND SURVEYOR
JAMES LEE SMITH
No. 8185
STATE OF CALIFORNIA

THIS EXHIBIT IS FOR GRAPHIC PURPOSES ONLY, ANY ERRORS OR OMISSIONS SHALL NOT AFFECT THE DEED DESCRIPTION

BASIS OF BEARINGS: FINAL MAP NO. 5461, FILED IN BOOK DD OF SURVEY MAPS, PAGES 90–97

OWNER AND MAILING ADDRESS	PROPERTY AREAS	CITY OF SAN FRANCISCO
HOUSING AUTHORITY OF THE CITY AND COUNTY OF SAN FRANCISCO. 1815 EGBERT AVENUE SAN FRANCISCO CA., 94124	AREA 3,076 Sq. Ft.±	RETAINING WALL MAINTENANCE EASEMENT SAN FRANCISCO HOUSING AUTHORITY TO THE CITY OF SAN FRANCISCO
A.P. No. 4624–032 O.R. No. _____ O.R. No. _____	CITY ACQUISITION DEED O.R. _____	Scale: 1"=60' | Date: 05/05/21 DWN. PCR | CHK. JLS | APPROVED | FILE NO. R–

[AutoCAD file name: 07030-PH3-ESMT-RSHT_RWALL-MAIN.dwg] [Xref files: 07030-BNDY-PH3; 07030-PH3-HC]

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by this Easement Agreement, dated _____, 20__, to the City and County of San Francisco, is hereby accepted pursuant to Board of Supervisors' Resolution No. _____, approved _____, and the Grantee consents to recordation thereof by its duly authorized officer.

Dated: _____, 20___

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Sarah R. Oerth
Director of Property