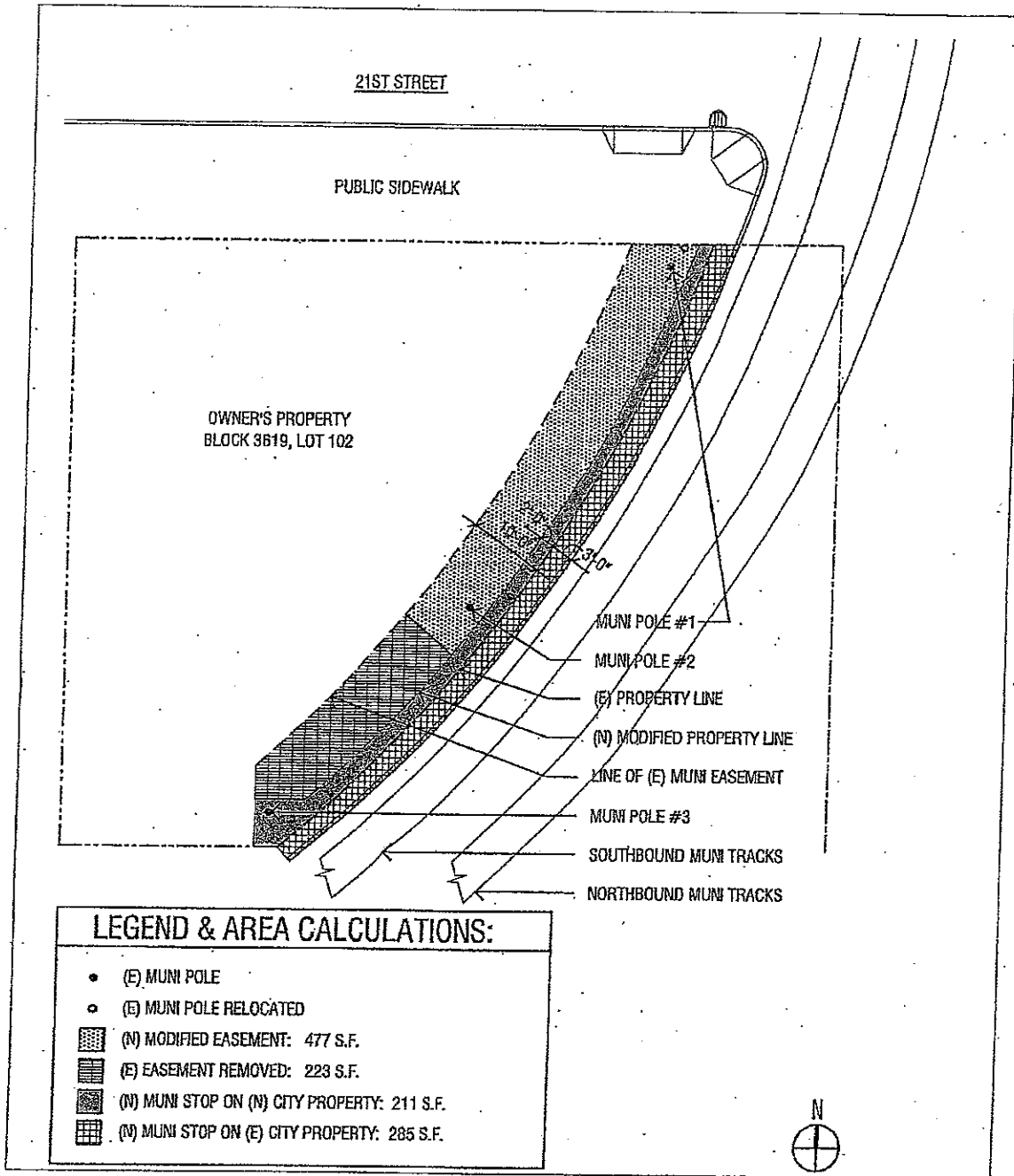


Muni Layout
 SCALE: 1/8" = 1'-0"

The Residences at 3563-3567 21st Street

JOB NO: 02039
 DATE: 08-10-07

ENCLOSURE 3



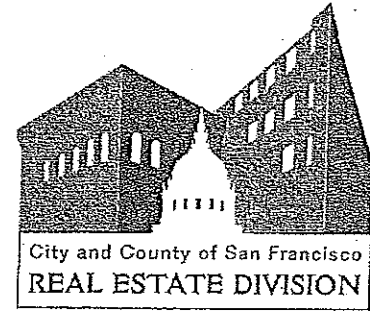
MUNI Stop Easement Diagram
 SCALE: 1/16" = 1'-0"

3563-3567 21st Street

JOB NO: 02039
 DATE: 07-11-07



ENCLOSURE 4



Any L. Brown
Director of Real Estate

MEMORANDUM

November 19, 2007

To: Jim Nelson
Facilities Planning
Municipal Transportation Agency

From: John Updike
Assistant Director of Real Estate
Real Estate Division

Subject: Proposed Municipal Railway Easement Modification

A Private Property Owner adjacent to existing Municipal Railway right of way and railway stop, 21st Street and Chattanooga Streets, is proposing that MUNI modify (reduction in rights) its existing easement, and in exchange the owner will provide certain improvements and convey certain property rights to MUNI. See the attached map.

Presently, MUNI railway improvements at this location consist of rail right of way, and a pedestrian stop with shelter on one side of the rail right of way, the southeast. Northwest of MUNI's right of way is a privately owned pie-shaped parcel that is encumbered with a ten (10) foot wide easement for MUNI's overhead power line supports and any other use necessary to provide passenger transit service. At this time, this easement is improved with three (3) light standards. This easement is separated from the railway right of way by a retaining wall and fence.

Owner's Proposal

The adjacent property owner is proposing a modification of MUNI's existing easement rights. The proposal is for the adjacent owner to convey fee title to a two (2) foot strip of land which is the most easterly portion of MUNI's existing easement (adjacent to the railway right of way); this strip is approximately 211 square feet in area. In addition, the owner is proposing to construct a new pedestrian platform on MUNI property, relocate one of the existing light standards (most northerly pole), reconstruct the retaining wall and fence and replace the entire existing electrical conduit system for the power and light standard.

h:\mta 21st street\final21ststmemo.doc

The estimated cost for the construction of the proposed MUNI stop to be constructed to MUNI's specifications is \$75,755.00.

In addition, owner/applicant shall provide to City, at no cost, legal descriptions for all property rights to be conveyed by City to applicant as part of this proposed transaction.

Municipal Transportation Authority (MTA)'s Proposed Involvement

Under this proposal, MUNI will modify its existing easement rights on the remaining eight foot wide existing easement, reducing rights on the northern two-thirds of the existing easement strip, approximately 477 square feet, and quitclaiming all of its interest in the remaining one-third portion of the existing easement (most southerly portion), approximately 223 square feet.

On the northerly two-thirds of the proposed eight foot wide easement, MUNI will reduce its existing rights to access only for access, installation, maintenance, and repair purposes requiring 72 hour written notice to the owner of record. On the remaining one-third portion of the eight foot easement strip, the most southerly portion, MUNI will quitclaim its entire easement interest.

Real Estate Division believes this proposal is reasonable in concept and will need concurrence from MUNI Maintenance and Operations Department. In addition, the proponent will need to reimburse the City for all administrative costs associated with this proposed transaction.

Easement Modification Process

The process for easement modification will require input from multiple City Departments, the MTA Board, and the Board of Supervisors, if required. City will need to be reimbursed for all administrative costs involved in this proposed transaction. The fee schedule for this proposed transaction is listed below.

\$2,768.00 plus time and materials - Planning General Plan Referral

\$2,500.00 - Real Estate Administrative Fee

\$2,500.00 - City Attorney's Administrative Fee

Total Costs - \$7,768.00

All costs involving publicly initiated projects are paid in advance

Per City Planning, the applicant's proposed development supports the development of four (4) residential units, before the easement modification as well as after; therefore, the nominal increase in square footage to the applicant's property, twenty-two (22)

square feet after easement modification, has no impact on the value of applicant's proposed development.

With receipt of the fees referenced above Real Estate Division recommends proceeding to secure approval for an easement granted at no additional cost to the applicant. This course of action is supported by the fact that the rights granted to the City and the improvements provided by the owner/applicant exceed the value of the easement rights proposed to be modified by the City on the applicant's behalf.

Attachment

**AGREEMENT FOR THE EXCHANGE
AND CONVEYANCE OF REAL ESTATE**

This Agreement for the Exchange and Conveyance of Real Estate (this "**Agreement**"), dated for reference purposes only as of _____, 2008 (the "**Agreement Date**"), is by and between the City and County of San Francisco, a municipal corporation (the "**City**"), and 3563 Twenty First LLC, a California limited liability company (the "**Owner**"). City and the Owner may each be referred to herein as a "**Party**" and together referred to herein as the "**Parties**".

RECITALS

A. The Owner owns certain real property commonly known as 3563-3567 21st Street, San Francisco, California, as more particularly described in the attached Exhibit A (the "**Owner Property**").

B. Pursuant to a deed recorded in the Official Records of San Francisco on May 28, 1985, in Book D847, Page 166 (the "**Deed**"), City holds an easement (the "**Easement**") that encumbers the portion of the Owner Property described in such Deed, as further depicted in the attached Exhibit B (the "**Existing Easement Area**").

C. The Owner wishes to transfer fee interest in the portion of the Existing Easement Area described in the attached Exhibit C (the "**Transfer Portion**"), reducing the portion of the Owner Property encumbered by the Easement to the remaining portion of the Existing Easement Area described in the attached Exhibit D (the "**Remaining Easement Area**"), and to reduce City's easement rights with respect to the Easement to facilitate the Owner's development of the Owner Property. The "**Remainder Property**" shall mean the Owner Property less the Transfer Portion.

D. City is willing to accept fee interest in the Transfer Portion and reduce its rights under the Easement on the terms and conditions set forth in this Agreement.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and the Owner hereby agree as follows:

ARTICLE 1: PROPERTY EXCHANGE AND ESCROW

1.1. Exchange of Property. Subject to the terms and conditions in this Agreement, at Closing (as defined in Section 6.1), the Owner agrees to convey the Transfer Portion to City and to enter in the Easement Agreement attached hereto as Exhibit E (the "**Amended Easement Agreement**"), and City agrees to accept the Transfer Portion from the Owner and to enter in the Amended Easement Agreement.

1.2. Consideration. In consideration of City's agreement to modify the Easement and reduce the Existing Easement Area pursuant to this Agreement (the "**Easement Modification**"), which the Parties believe will increase the value of the Remainder Property, the Owner agrees to transfer fee interest in the Transfer Portion to City and to construct and transfer to City the Muni Improvements (as defined in Section 2.1) at the Closing. The Parties have each concluded that the collective value of such fee interest in the Transfer Portion and in the construction of the Muni Improvements exceeds the increased value the Remainder Property that will result from the Easement Modification.

1.3. Escrow. Within fifteen (15) days following the Effective Date, the parties shall open an escrow for the Exchange ("**Escrow**") with Chicago Title Company in San Francisco (the "**Title Company**") and deposit a fully executed copy of this Agreement with Title Company. This

Agreement shall serve as instructions to Title Company as the escrow holder for consummation of the Exchange. The Owner and City agree to execute such additional or supplementary instructions as may be reasonably appropriate to enable the Title Company to comply with the terms of this Agreement and effect Closing; provided, however, that if there is any conflict between the provisions of this Agreement and any additional supplementary instructions, the terms of this Agreement shall control.

ARTICLE 2: CONSTRUCTION OF MUNI IMPROVEMENTS

2.1. Muni Improvements. On or before October 10, 2009, the Owner agrees to construct a Muni stop (the "**Muni Stop**"), a new retaining wall and fence and install a new electrical conduit system (collectively, the "**Muni Improvements**"), all of which shall conform to Sheets A0.4, A1.0, A2.2, A2.3, A3.1, A3.2, S2.1, S3.1, S5.1, C-3, C-4 and C-5 of the plans and specifications prepared by Baum Thornley Architects LLP for Job No. 02039, dated July 26, 2007 (the "**Plans**"), and shall provide for sufficient drainage to prevent the flow of water from the Owner Property onto the City property abutting the Remaining Easement Area. The Owner shall not make any material change to the Plans nor consent to any change order thereto during the course of construction of the Muni Improvements without first obtaining City's written approval, which shall not be unreasonably withheld, conditioned or delayed. The Muni Improvements will be partially located on the Transfer Portion and partially located on the portion of City property that abuts the Transfer Portion, as further depicted on the attached Exhibit B (the "**Right of Way**").

2.2. Construction of Muni Improvements. The Owner, at its sole cost, shall secure and pay for any building and other permits and approvals, government fees, licenses and inspections necessary to construct the Muni Improvements (the "**Work**") in substantial compliance with the Plans and all Applicable Laws (as defined in Section 8.8). The Owner acknowledges and agrees that the Owner's construction and transfer of the Muni Improvements to City pursuant to this Agreement shall be partial consideration for City's agreement to the Easement Modification. The City will subsequently be inspecting the Work and, if Closing occurs, accepting the Muni Improvements from the Owner pursuant to this Agreement in its proprietary capacity, not its regulatory capacity. City makes no representations or warranties as to whether the Owner will be required to acquire any permits or approvals (from City or any other regulatory agency with jurisdiction) to construct the Muni Improvements in compliance with the Plans and all Applicable Laws and City shall have no obligation to effect or issue, or assist in effecting or issuing, any such necessary permits or approvals; provided, however, that City, acting in its proprietary capacity as the holder of the Easement, shall take good faith efforts to deliver any documents reasonably required by Owner to acquire any such permits or approvals.

The Owner, at its sole cost, shall (a) cause the Muni Improvements to be constructed by a licensed contractor approved by City, which approval shall not be unreasonably withheld, conditioned or delayed, and in a good and professional manner in accordance with sound building practice and in compliance with this Agreement, (b) comply with and give notices required by all Applicable Laws in constructing the Muni Improvements, (c) ensure that the performance of the Work does not obstruct City's use of the Right of Way nor unreasonably interfere with City's use of the Easement Area pursuant to the Deed, and (d) provide City with at least twenty-one (21) days' prior written notice of the date that concrete is poured to construct the Muni Stop, which pouring shall occur during normal working hours or at a time otherwise mutually acceptable to City and the Owner. The Owner acknowledges and agrees that City shall have the right to have a City employee, agent or contractor present to observe the performance of the Work. In addition to the foregoing obligations, prior to commencing any of the Work, the Owner shall ensure that any employee or contractor of the Owner performing such Work attends the City's required Tracksides Safety Class for all contractors working within the general location of City rail rights-of-ways and complies with any other standard requirements City requires of all such contractors.

The Owner shall deliver a copy of the final as-built plans and specifications for the Muni Improvements to City once the Work is substantially completed. The Work shall be deemed to be "substantially completed" for purposes of this Agreement when the Muni Improvements are completed in accordance with the Plans and this Agreement and City, acting in its proprietary capacity hereunder, has approved the Muni Improvements. No approval by City or any of its Agents (as defined in Section 8.14) of the Plans or completion of the Work for purposes of this Agreement shall be deemed to constitute approval of any governmental or regulatory authority with jurisdiction over thereto, and nothing herein shall limit the Owner's obligations to obtain all such approvals.

The Owner shall keep City apprised on a regular basis of the progress of the Work. When construction progress so permits, but not less than fifteen (15) days in advance of completion, the Owner shall notify City of the approximate date on which the Muni Improvements will be substantially completed in accordance with the Plans. The Owner shall revise such notice of the approximate substantial completion date as appropriate from time to time and shall immediately notify City when the Muni Improvements are in fact substantially completed. City and its authorized representatives shall have the right to enter the Transfer Portion and the Right of Way to review and inspect the Muni Improvements and the construction thereof at any time, provided that City shall do so in a manner that does not unreasonably interfere with the Muni Improvements construction work and the City shall be solely responsible for any damages or injuries to the extent caused by such entry and inspection.

2.3. Prevailing Wages. The Owner agrees that any person performing the labor for the Work shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the City and County of San Francisco Administrative Code, and shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. The Owner shall include, in any contract for construction of the Muni Improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. The Owner shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of the Muni Improvements.

2.4. Entry on Right of Way. The Owner intends to enter the Right of Way to perform the Work, and City acknowledges such entry will be necessary to perform the Work. The Owner acknowledges that the Right of Way is part of the City's municipal railway system and is used for transportation and right-of-way purposes. Accordingly, the Owner recognizes and agrees that notwithstanding anything to the contrary in this Agreement, any and all of the Owner's rights to enter and use the Right of Way to perform the Work shall be subject and subordinate at all times to such public easement and railway system the uses related thereto, including, but not limited to, public use as a street, utility uses, and City's uses for other purposes.

The Owner and its Agents shall work closely with City personnel to avoid disruption (even if temporary) of City property in, under, on or about the Right of Way and City uses of the Right of Way. The Owner shall further use, and shall cause its Agents to use, due care at all times to avoid any damage or harm to the Right of Way or to City's property, and shall do everything reasonably within its power, both independently and upon request by City, to prevent and suppress fires on and adjacent to the Right of Way attributable to the Work. The Owner shall minimize its use of and impact on the Right of Way in performing the Work to the extent reasonably possible.

No less than twenty-one (21) days prior to entering the Right of Way to perform the Work, the Owner shall submit a construction schedule with respect to its entry on and use of the Right of Way, including the scheduled dates for grading, installation of rebar and forms, and concrete pouring, that is approved by the City (the "**Right of Way Schedule**"), which approval shall not be unreasonably withheld, conditioned or delayed. The Owner shall notify Kerstin

Magary (telephone number: 415-701-4323), or such other person designated by City in writing (the "**City Contact Person**"), of the date such Work shall commence. The Owner shall use good faith efforts to comply with the dates specified in the Right of Way Schedule and to complete the Work within the completion date specified in the Right of Way Schedule, subject to unavoidable delays. For purposes hereof, "unavoidable delays" shall mean any delays by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, inability to obtain labor, materials, or permits, enemy action, civil commotion, protests, riots, demonstrations, federal or state governmental restrictions, or by any other reason beyond the reasonable control of the Owner. If the Owner anticipates the need to modify the Right of Way Schedule for any reason, the Owner shall promptly notify the City Contact Person.

2.5. Restoration of Construction Area. Immediately following completion of Work, the Owner shall remove all debris and any excess dirt and restore any portion of the Right of Way and the Existing Easement Area (collectively, the "**Construction Area**") affected by the Work to the condition it was in immediately prior to the commencement of the Work, subject to the Improvements (as defined in the Amended Easement Agreement). In addition, immediately following completion of the Work, the Owner shall remove all debris and any excess dirt and restore the affected portion of the Right of Way to its condition immediately prior to the commencement of the Work (subject to the completed Muni Improvements, provided that the completed Muni Improvements conform to the requirements specified in this Agreement).

If any portion of the Construction Area or any property of City located on or about the Construction Area is damaged by the performance of any of the Work, the Owner shall promptly, at its sole cost, repair any and all such damage and restore such affected portion of the Construction Area or City property to its condition immediately prior to such damage. If this Agreement is terminated prior to Closing for any reason, including for failure of any City Condition Precedent (as defined in Section 5.1) or any Owner Condition Precedent (as defined in Section 5.3), the Owner shall promptly restore the Construction Area to the condition in which it was in immediately prior to the commencement of any of the Work. If this Agreement is terminated due to City's default of its obligations hereunder, the Owner shall have all remedies available to it under law and equity.

2.6. Hazardous Materials. The Owner shall not cause, nor shall the Owner allow any of its Agents or Invitees (as defined in Section 8.14) to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated or disposed of in, on or about the Construction Area, or to be transported to or from the Construction Area, in the performance of the Work, except for construction materials that are typically used in similar projects and are used in a manner that complies with all Applicable Laws. The Owner shall immediately notify City when the Owner learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about the Construction Area. The Owner shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination.

If the Owner or its Agents or Invitees cause a release of Hazardous Material on or about the Construction Area, the Owner shall, without cost to City and in accordance with all laws and regulations, return the affected Construction Area to the condition immediately prior to the release. In connection therewith, the Owner shall afford City a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material.

For purposes hereof, "**Hazardous Material**" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. "Hazardous Material" includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to

the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 *et seq.*, or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Construction Area or are naturally occurring substances in the Construction Area, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Construction Area.

2.7. Insurance: Bonds; Construction Warranty.

(a) The Owner, at its sole expense, shall procure and keep in effect at all times during the performance of the Work, and cause its contractors and subcontractors to maintain at all times during any construction activities on the Construction Area, insurance on an occurrence basis as follows:

(i) General Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Independent Permittees, Explosion, Collapse and Underground (XCU), Broadform Property Damage, [Sudden and Accidental Pollution,] Products Liability and Completed Operations;

(ii) Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired automobiles, as applicable, and sudden and accidental pollution; and

(iii) Workers' Compensation Insurance with Employer's Liability Coverage with limits of not less than One Million Dollars (\$1,000,000) each accident.

(b) All liability policies required hereunder shall provide for the following: (i) name as additional insureds the City and County of San Francisco; and (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. Sudden and accidental pollution coverage in the liability policies required hereunder shall be limited to losses resulting from the activities of the Owner and its Agents and Invitees with respect to the Work (excluding non-negligent aggravation of existing conditions with respect to Hazardous Materials).

(c) All policies shall be endorsed to provide at least ten (10) business days' prior written notice of cancellation, non-renewal or reduction in coverage to City.

(d) Prior to commencing any of the Work, the Owner shall deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverages required hereunder, together with complete copies of the policies at City's request. If the Owner fails to procure such insurance, or to deliver such policies or certificates, City may procure, at its option, the same for the account of the Owner, and the cost thereof shall be paid to City within ten (10) days after delivery to the Owner of bills therefor.

(e) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(f) Prior to commencing any of the Work, the Owner shall deliver to City evidence that the contractor constructing the Muni Improvements will issue a warranty that guaranties in full the contractor's performance of such work, is effective for at least two (2) years following Owner's acceptance of the Muni Improvements, and is assignable from the Owner to City if City accepts the Muni Improvements (the "**Construction Warranty**").

(g) The Owner's compliance with the provisions of this Section shall in no way relieve or decrease its obligations under this Agreement, including but not limited to the Owner's indemnification obligations. The Owner's obligations under this Section shall survive any termination of this Agreement.

2.8. Utilities. City has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the Construction Area. The Owner has the sole responsibility to locate such utilities and protect them from damage and shall arrange and pay for any necessary temporary relocation of City and public utility company facilities, subject to the prior written approval by City and any such utility companies of any such relocation. The Owner shall be solely responsible for arranging and paying directly for any utilities or services necessary for its activities hereunder.

2.9. City's Right to Restore or Repair. If the Owner fails to perform any of its obligations under this Agreement to restore or repair damage to the Construction Area, or otherwise defaults in the performance of any of its other obligations hereunder with respect to the performance of the Work, then City may, at its sole option, remedy such failure for the Owner's account and at the Owner's expense by providing the Owner with at least three (3) days' prior written or oral notice of City's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by City, where City shall use reasonable efforts to notify Owner). Such action by City shall not be construed as a waiver of any rights or remedies of City under this Agreement or under law or equity, and nothing herein shall imply any duty of City to do any act that the Owner is obligated to perform. The Owner shall pay to City upon demand, all costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such default. The Owner's obligations under this Section shall survive the termination of this Agreement.

2.10. As-Is Condition. The Owner acknowledges that it accepts the Right of Way in its "AS IS" condition, without representation or warranty of any kind by City, its officers, agents or employees, including, without limitation, the suitability, safety, or duration of availability of the Right of Way for the Work. Without limiting the foregoing, the Owner's rights to enter the Right of Way in performing the Work is subject to all Applicable Laws governing the use of the Right of Way, and to any and all covenants, conditions, restrictions, easements, encumbrances, claims of title and other title matters affecting the Right of Way, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey. It is the Owner's sole obligation to conduct an independent investigation of the Right of Way and all matters relating to its performance of the Work in the Right of Way, including, without limitation, the suitability of the Right of Way for such uses. The Owner, at its own expense, shall obtain such permission or other approvals from any third parties with existing rights as may be necessary for the Owner to perform the Work in the Right of Way in the manner contemplated hereby.

ARTICLE 3: TITLE

3.1 Permitted Title Exceptions to the Transfer Portion. At the Closing, the Owner shall convey its right, title and interest in and to the Transfer Portion to City by using the form of deed attached hereto as Exhibit F (the "**Deed**"). Title to the Transfer Portion shall be subject to (i) pro rated liens of local real estate taxes and assessments that are not yet payable, and (ii) any other exceptions approved in writing by City in its sole discretion. All of the foregoing permitted exceptions to title shall be referred to collectively as the "**Permitted Title Exceptions**" and shall be reflected in a CLTA owner's title insurance policy issued by the Title Company to City, with such coinsurance or reinsurance and direct access agreements as City may reasonably request, in an amount of not less than \$110,705, insuring City's interest in the Transfer Portion, subject only to the Permitted Title Exceptions, all at the sole cost and expense of the Owner.

3.2. Legal Description; Legal Status. The Transfer Portion and the Remaining Property are not separate legal parcels and the Parties agree to use the legal description for the Transfer Portion attached to this Agreement as Exhibit C and Exhibit D (the "**Legal Descriptions**") to effect the Easement Modification. If the Owner wishes to cause the Remaining Property to be either a separate legal parcel or part of a larger legal parcel owned by the Owner (a "**Parcel Action**"), the Owner shall do so at its sole cost and responsibility. Owner acknowledges and agrees that City is accepting the Transfer Portion from Owner pursuant to this Agreement in its proprietary capacity, not its regulatory capacity, and that City (a) makes no representations or warranties as to whether the Owner will be required to effect a Parcel Action or as to any costs or liabilities that the Owner may incur if the Owner does not effect a Parcel Action, and (b) shall have no obligation to assist in, effect, or approve of a Parcel Action. City further acknowledges that Transfer Portion is not a separate legal parcel and City, acting in its proprietary capacity, is willing to accept the Transfer Portion in such condition.

3.3. Record of Survey. The Transfer Portion is a portion of the Owner Property and neither the Transfer Portion nor the Remainder Property will be separate legal parcels as of the Closing. The City, acting in its regulatory capacity, is accordingly requiring that record of survey of the Transfer Portion (a "**Record Survey**") be recorded in the Official Records of San Francisco County prior to Closing if the Closing occurs (the "**Record Survey Condition**"). The Owner acknowledges and agrees that City is accepting the Transfer Portion from the Owner pursuant to this Agreement in its proprietary capacity, not its regulatory capacity, and that (a) City makes no representations or warranties that the Remainder Property will satisfy the provisions of California Government Code Sections 44610 *et seq.* (the "**Subdivision Map Act**") or whether City, acting in its regulatory capacity, or any other party will require that the Remainder Property comply with the Subdivision Map Act (a "**Compliance Action**"), or as to any costs or liabilities that the Owner may incur as a result of any Compliance Action or of the Remainder Property not being in compliance with the Subdivision Map Act, (b) City shall have no obligation to assist in, effect, or approve of any applications or documents submitted by the Owner in connection with a Compliance Action, (c) any City department reviewing any application or documents submitted by the Owner for a Compliance Action shall do so in its sole discretion without any obligation to provide special consideration thereto, and (d) City's Board of Supervisors and Mayor shall have no obligation to approve of any ordinance or resolution (as applicable) submitted for a Compliance Action, which shall be subject to their sole discretion.

3.4. Property Agreements; No New Improvements. From the Agreement Date until the Closing or earlier termination of this Agreement, the Owner shall not enter into any binding lease or contract with respect to the Transfer Portion or construct any improvements on the Transfer Portion without first obtaining the City's prior written consent to such action, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 4: REPRESENTATIONS AND WARRANTIES

4.1. Representations and Warranties of Owner. The Owner represents and warrants to and covenants with City as of the Agreement Date and as of the Closing Date:

(a) To the Owner's knowledge, there are no easements or rights of way which have been acquired by prescription or which are otherwise not of record with respect to the Transfer Portion, and there are no easements, rights of way, permits, licenses or other forms of agreement which afford third parties the right to traverse any portion of the Transfer Portion to gain access to other real property.

(b) There is no litigation pending or, to the best of Owner's knowledge, threatened, against Owner or any basis therefor that arises out of the ownership of the Transfer Portion or that might detrimentally affect the use or operation thereof, the value of the Owner Property or the Owner's ability to perform its obligations under this Agreement.

(c) The Owner has not granted any option or right of first refusal or first opportunity to any third party to acquire any interest in any of the Transfer Portion.

(d) The Owner is a duly organized and validly existing limited liability company under the laws of the State of California, Nancy Zeng is its sole manager and is authorized to cause the Owner to enter into this Agreement and perform its obligations hereunder, and no other approval is necessary to authorize the Owner to enter into this Agreement or perform its obligations hereunder.

(e) This Agreement and all documents executed by Owner that are to be delivered to City at the Closing are, or at the Closing will be, duly authorized, executed and delivered by the Owner, are, or at the Closing will be, legal, valid and binding obligations of the Owner, enforceable against the Owner in accordance with their respective terms, subject to applicable laws and principles of equity, are, and at the Closing will be, sufficient to convey good and marketable title (if they purport to do so), and do not, and at the Closing will not, violate any provision of any agreement or judicial order to which the Owner is a party or to which the Owner or the Transfer Portion is subject.

(f) The Owner represents and warrants to City that it has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. If the Owner has been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it shall immediately notify the City of same and the reasons therefore together with any relevant facts or information requested by City. Any such suspension, debarment, discipline or prohibition may result in the termination or suspension of this Agreement.

(g) Owner hereby represents and warrants to and covenants with City that it has not received any notice that (i) the Transfer Portion is in violation of any Environmental Laws, (ii) there has been any release or any threatened release of any Hazardous Material in, on, under or about the Trust Property, (iii) there are, or have been, any underground storage tanks, septic tanks or wells or any aboveground storage tanks at any time used to store Hazardous Material located in, on or under the Transfer Portion, (iv) the Transfer Portion is subject to any claim by any governmental regulatory agency or third party related to the release or threatened release of any Hazardous Material, or subject to any inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in, on, under or about the Transfer Portion or the migration of Hazardous Material from or to other property. As used in this Agreement, the following terms shall have the meanings below:

(1) "**Environmental Laws**" shall mean any present or future federal, state or local laws, ordinances, regulations or policies relating to Hazardous Material (including, without limitation, their use, handling, transportation, production, disposal, discharge or storage) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Transfer Portion, including, without limitation, soil, air and groundwater conditions.

(2) "**Hazardous Material Laws**" shall mean any present or future federal, state or local laws, rules, regulations or policies relating to Hazardous Material (including, without limitation, its handling, transportation or release) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Property and any other property, including, without limitation, soil, air, air quality, water, water quality and groundwater conditions. "Hazardous Materials Laws" includes, without limitation, CERCLA, as amended by SARA, the RCRA, the Clean Water Act, TSCA, the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 *et seq.*), the California Superfund law, the Hazardous Waste Control Act (California Health and Safety Code Section 25100 *et seq.*), the Business Plan Law, Porter-Cologne Water Quality Control Act (California Water Code Section 13000 *et seq.*), Proposition 65, City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), and Article 20 of the San Francisco Public Works Code ("Analyzing Soils for Hazardous Waste").

(h) There are now, and at the time of Closing will be, no leases or other occupancy agreements affecting any of the Transfer Portion. At the time of Closing there will be no outstanding written or oral contracts made by the Owner for any improvements located on the Transfer Portion that have not been fully paid for and the Owner shall cause to be discharged all mechanics' or materialmen's liens arising from any labor or materials furnished to the Transfer Portion prior to the time of Closing. There are no obligations in connection with the Transfer Portion which will be binding upon City after Closing.

The term "**Owner's knowledge**" shall mean the actual knowledge of each of Paul Kollerer, Nancy Zeng, Kelvin Zeng and Greg Fulford as of the Agreement Date and as of the Closing Date.

4.2. Indemnity. The Owner, on behalf of itself and its successors and assigns, hereby agrees to indemnify, protect, defend and hold harmless City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, all of the Agents of City, and their respective heirs, legal representatives, successors and assigns (collectively, with the City, the "**City Indemnified Parties**"), from and against any Losses (defined as follows) resulting from any material misrepresentation or breach of warranty or breach of covenant made by the Owner in this Agreement or in any document, certificate, or exhibit given or delivered to City pursuant to or in connection with this Agreement or arising out of or relating to the Work or the conduct of Owner or its Agents, as applicable, or its or their activities during any entry on, under or about the Construction Area in performing any inspections, testings or inquiries thereof, whether prior to the date of this Agreement or during the term hereof, including, without limitation, any injuries or deaths to any party (including, without limitation, the Owner's Agents) and damage to any property, from any cause whatsoever, except to the extent caused by the negligence or willful misconduct of City.

Owner acknowledges that the foregoing indemnity includes any claims, demands, losses, damages, costs, expenses, and legal liability that arise out of, result from, or are in any way connected with the release or spill of any legally designated hazardous material or waste or contaminated material as a result of the Work, the costs, expenses, and legal liability for environmental investigations, monitoring, containment, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from the violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs are expressly within the scope of this indemnity and the costs that may be incurred by any of the City Indemnified Parties

in connection with the foregoing indemnity, including reasonable attorney's fees; provided, however, that the foregoing indemnity shall not include any claims resulting from the discovery or disclosure of pre-existing environmental conditions or the non-negligent aggravation of pre-existing environmental conditions on, in, under or about the Right of Way. On request, Owner shall defend any action, claim or suit asserting a claim covered by this indemnity. Contractor shall pay all. Contractor's liability shall not be limited to the amount of insurance coverages required under this Agreement. This indemnity shall survive the termination of this Agreement or the Closing, as applicable.

"Loss" or "Losses" shall mean any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and reasonable costs and expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, or contingent or otherwise, including, without limitation, any and all reasonable attorneys' fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and the costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, fees and costs associated with execution upon any judgment or order, and costs on appeal (collectively, "**Attorneys' Fees and Costs**").

4.3. As-Is Condition of Construction Area; Release. The Owner represents and warrants to City that the Owner has performed an independent, diligent and thorough inspection and investigation of each and every aspect of the Construction Area with respect to the performance of the Work. As part of its consideration to City for City's agreement to the Easement Modification, the Owner, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges, the City or its respective Agents, officers, employees, agents, contractors and representatives, and their respective heirs, successors, legal representatives and assigns, from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with (i) City's and its Agents and customer's past, present and future use of the Construction Area, (ii) the fact that the portion of the Owner Property that will remain after the Closing is not a separate legal parcel, or (iii) the physical, geological or environmental condition of the Right of Way, including, without limitation, any Hazardous Material in, on, under, above or about the Right of Way and any federal, state, local or administrative law, rule, regulation, order or requirement applicable thereto, including, without limitation, all Environmental Laws.

In connection with the foregoing release, the Owner expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

The Owner acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. The Owner realizes and acknowledges that it has agreed upon these releases in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Agreement.

4.4. As-Is Condition of Transfer Portion; Release. The City represents and warrants to the Owner that the City has performed an independent, diligent and thorough inspection and investigation of each and every aspect of the Transfer Portion. The City waives any right to recover from, and forever releases and discharges, the Owner or its respective Agents,

employees, agents, contractors and representatives, and their respective heirs, successors, legal representatives and assigns, from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with (i) the fact that the Transfer Portion is not a separate legal parcel, or (ii) the physical, geological or environmental condition of the Transfer Portion, except to the extent that such condition results from any Work that fails to comply with the terms of this Agreement or otherwise is caused by the release of Hazardous Material in, on, under, above or about the Transfer Portion by the Owner or its Agents or by the C & T Kollerer Family Trust, the previous owner of the Owner Property, or its Agents, or any negligent or willful act by Owner or its Agents (a "Surviving Condition").

In connection with the foregoing release, the City expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

The City acknowledges that, except to the extent arising from a Surviving Condition, the foregoing release includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. The City realizes and acknowledges that it has agreed upon these releases in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Agreement.

ARTICLE 5: CONDITIONS PRECEDENT TO CLOSING

5.1. City's Conditions Precedent. The following are conditions precedent to City's obligations under this Agreement to accept fee interest in the Transfer Portion from the Owner and to enter into the Amended Easement Agreement (each, a "City Condition Precedent", and collectively, the "City's Conditions Precedent"):

(a) No event of default (or event which upon the giving of notice or the passage of time or both shall constitute an event of default) shall exist on the part of the Owner under this Agreement, and each of the Owner's representations and warranties under this Agreement shall be true and correct.

(b) The Owner shall have performed all of the obligations under this Agreement it is required to perform on or before the Closing, including depositing into Escrow any sums required to be paid by Owner under this Agreement.

(c) The Owner shall have substantially completed the Muni Improvements in substantial compliance with the Plans. The City acknowledges that the Owner shall not be obligated to perform the Muni Improvements unless and until the City Approval Condition (as defined in Section 5.1(h)) has been satisfied, and the Owner acknowledges that it shall not commence to perform the Muni Improvements prior to the satisfaction of the City Approval Condition.

(d) The Title Company shall have issued to City (or shall be irrevocably committed to issue on payment by City of all required premiums) a CLTA owner's title insurance policy with such coinsurance or reinsurance and direct access agreements as the City may reasonably request, insuring City's fee title interest in the Transfer Portion in an amount not less than \$110,705 subject only to the Owner Property Permitted Title Exceptions and with any endorsements set forth therein, all at Owner's sole cost and expense.

(e) There shall be no pending or threatened (i) condemnation, environmental or other pending governmental proceedings in respect of Transfer Portion that would materially and adversely affect City's intended use thereof or (ii) litigation affecting the Transfer Portion.

(f) There shall be no material adverse change in the condition of the Transfer Portion from the Agreement Date to the Closing Date.

(f) The Owner shall have removed all of its equipment and personal property from the Transfer Portion.

(g) The Easement Modification shall have been approved by the Board of Directors of the City's Municipal Transportation Agency (the "**MTA Board**").

(h) City's Board of Supervisors shall have passed, and the Mayor shall have approved of, in their sole discretion, an ordinance or resolution (as applicable) approving of the Easement Modification in accordance with and subject to City's Charter, and all applicable appeal periods for the filing of any administrative or judicial challenge of such passage shall have expired without any such challenge having been filed, or if such challenge is filed, such ordinance or resolution shall have been upheld by a final decision in the final such challenge that is timely filed without any adverse effect on such ordinance or such resolution (the "**City Approval Condition**").

(i) The Record Survey shall have been recorded in the Official Records of San Francisco County.

5.2. Failure of City's Conditions Precedent; Cooperation of Owner. Each City Condition Precedent is intended solely for the benefit of City. If any City Condition Precedent is not satisfied by the scheduled date of Closing or by the date otherwise provided above, City may, at its sole election and by written notice to the Owner, extend the date for satisfaction of the condition, waive the condition in whole or part, conditionally waive the condition in whole or in part, or terminate this Agreement. Notwithstanding anything to the contrary in the foregoing, if any such conditional waiver is not acceptable to the Owner in its sole discretion, the Owner may reject such conditional waiver, in which event the original City Condition Precedent shall remain effective, and if not satisfied, shall entitle City to terminate this Agreement. If City elects to so terminate this Agreement, then upon any such termination, neither Party shall have any further rights nor obligations hereunder except for those that expressly survive termination of this Agreement.

The Owner shall cooperate with City and do all acts as may be reasonably requested by City to fulfill any City Condition Precedent, including, without limitation, execution of any documents, applications or permits. Owner's representations and warranties to City shall not be affected or released by City's waiver or fulfillment of any City Condition Precedent.

5.3. Owner Conditions Precedent. The following are conditions precedent to the Owner's obligations under this Agreement to construct the Muni Improvements, to convey the Transfer Portion to City, and to deliver the Amended Easement Agreement (each, a "**Owner Condition Precedent**", and collectively, the "**Owner Conditions Precedent**"):

(a) No event of default (or event which upon the giving of notice or the passage of time or both shall constitute an event of default) shall exist on the part of City under this Agreement and each of City's representations and warranties under this Agreement shall be true and correct.

(b) City shall have performed all of the obligations under this Agreement it is required to perform on or before the Closing.

(c) The City Approval Condition shall have been satisfied.

5.4. Failure of Any Owner Conditions Precedent. Each Owner Condition Precedent is intended solely for the benefit of the Owner. If any Owner Condition Precedent is not satisfied on or before the required completion date specified therefor (or by the date otherwise provided above or as such date may be extended as permitted hereby), the Owner may, at its option and by written notice to City, extend the date for satisfaction of the condition, waive the condition in whole or in part or conditionally waive in whole or in part, in writing the condition precedent or terminate this Agreement. Notwithstanding anything to the contrary in the foregoing, if any such conditional waiver is not acceptable to City in its sole discretion, City may reject such conditional waiver, in which event the original Owner Condition Precedent shall remain effective, and if not satisfied, shall entitle the Owner to terminate this Agreement. If Owner elects to so terminate this Agreement, neither Party shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement.

5.5. Notification Obligation. From and after the Agreement Date through to the Closing Date, the Owner shall promptly deliver written notice to City if the Owner becomes aware of or receives notice of any actual or threatened litigation with respect to the Transfer Portion, any violation of Applicable Law affecting or related to the Transfer Portion, or any other material adverse change in the condition of the Transfer Portion. Such notification shall include all material facts known by the Owner relative to such matter.

ARTICLE 6: CLOSING

6.1. Closing Date. "Closing" shall mean the consummation of the Easement Modification pursuant to the terms and conditions of this Agreement. The date on which the Closing shall occur shall be the forty-fifth 45th day (the "Closing Date") following the later to occur of (a) the satisfaction of the City Approval Condition and (b) the substantial completion of the Muni Improvements. The Closing Date may not be extended without the prior written approval of the Parties, except as otherwise expressly provided in this Agreement. If the Closing does not occur on or before the Closing Date, Title Company shall, unless it is notified by both Parties to the contrary within five (5) days after the Closing Date, return each item deposited in Escrow to the Party that deposited such item. Any such return shall not, however, limit the provisions hereof or otherwise relieve either Party of any liability it may have for its wrongful failure to perform its obligations under this Agreement.

6.2. Deposit of Documents for Closing.

(a) At or before the Closing, City shall deposit the following items into Escrow: (i) an acceptance of the Deed, duly executed by the City; and (ii) the Amended Easement Agreement, duly executed and acknowledged by City.

(b) At or before the Closing, the Owner shall deposit or cause to be deposited the following items into Escrow: (i) the Deed, duly executed and acknowledged by Owner and conveying the Transfer Portion to City subject to the Permitted Title Exceptions; (ii) the Amended Easement Agreement, duly executed and acknowledged by the Owner; (iii) if not previously delivered to City, the final as-built plans for the Muni Improvements; (iv) an assignment of guaranties and warranties in the form attached hereto as Exhibit G, duly executed by the Owner, which shall assign to City the Construction Warranty and any other guaranties or warranties that the Owner obtains with respect to the Muni Improvements; (v) a bill of sale transferring ownership of the Muni Improvements to City in the form attached hereto as Exhibit H, duly executed by the Owner; and (vi) any funds Owner is required to deposit into Escrow in accordance with this Agreement.

(c) City and the Owner shall each deposit such other instruments as are reasonably required by the Title Company or otherwise required to close the Escrow and consummate the

Easement Modification in accordance with the terms hereof, and the Title Company shall issue the title policies as required herein.

(d) As of Closing, the Title Company shall record the Deed and the Amended Easement Agreement in the Official Records of the City and County of San Francisco.

(e) As of Closing, the Title Company shall issue to City, at City's expense, the CLTA Owner's Policy of Title Insurance as set forth in Section 3.1(b).

6.3. Expenses. Any transfer taxes assessed on the conveyance of the Transfer Portion to City pursuant to this Agreement, any fees related to recording the Deed or the Amended Easement Agreement, and any escrow fees or costs with respect to the Easement Modification shall be paid by the Owner. Any real property taxes or assessments for the Transfer Portion shall be prorated as of the Closing Date.

ARTICLE 7: DEFAULT AND REMEDIES

If either Party fails to perform any of its material obligations under this Agreement (except as excused by the other Party's default), the Party claiming default may, at its sole election, make written demand for performance. If the Party receiving such demand for performance fails to comply with such written demand within thirty (30) days after such notice is delivered, the Party claiming default will have the option to (i) waive such default, (ii) demand specific performance or (iii) terminate this Agreement, in each case by delivering written notice thereof to the defaulting Party. If any Party terminates this Agreement pursuant to this Article, such Party shall have the right to seek all legal remedies available to such Party.

ARTICLE 8: GENERAL PROVISIONS

8.1. Notices. Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to be delivered upon (i) personal delivery, or the day the addressee refuses to accept such delivery, (ii) one (1) business day after being deposited with a reliable overnight courier service, subject to verified receipt by the addressee, or (iii) two (2) days after being deposited in the United States mail, registered or certified mail, subject to verified receipt by the addressee, postage prepaid, return receipt required, and addressed as follows:

If to the Owner:

If to City:

Municipal Transportation Agency
1 South Van Ness Avenue, 7th Floor
San Francisco, CA 94103
Attn: Kerstin Magary, Senior Project Manager

With a copy to:

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

and:

Office of the City Attorney
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Carol Wong

For the convenience of the Parties, copies of notice may also be given by facsimile, but a Party may not give official or binding notice by facsimile and the effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a facsimile copy of the notice.

Every notice given to a Party pursuant to this Agreement must state (or must be accompanied by a cover letter that states) substantially the following: (A) the Section of this Agreement under which the notice is given and the action or response required, if any; (B) if applicable, the period of time within which the recipient of the notice must respond thereto; (C) if approval is being requested, shall be clearly marked "Request for Approval"; and (D) if a notice of a disapproval or an objection which requires reasonableness, shall specify with particularity the reasons therefor.

Any mailing address or facsimile 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. If delivery of any notice given pursuant to this Agreement is rejected, such notice shall be deemed to have been made on the attempted delivery date.

8.2. Amendments. Except as otherwise provided in this Agreement, this Agreement may be amended or modified only by a written instrument executed by City and the Owner. The Executive Director/Chief Executive Officer of the City's Municipal Transportation Agency (or any successor City officer as designated by law) shall have the authority to consent to any non-material amendments or other modifications to this Agreement. For purposes hereof, "non-material change" shall mean any change that does not materially reduce the consideration to City under this Agreement or otherwise materially increase the liabilities or obligations of City under this Agreement. Material amendments to this Agreement shall require the approval of the MTA Board and the City's Board of Supervisors and Mayor.

8.3. Severability. If any provision of this Agreement, or its application to any party or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other party or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the fundamental purposes of this Agreement.

8.4. Non-Waiver. Except as expressly set forth herein to the contrary, a Party's delay or failure to exercise any right under this Agreement shall not be deemed a waiver of that or any other right contained in this Agreement.

8.5. Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective successors, heirs, legal representatives, administrators and assigns. Neither Party's rights or obligations hereunder shall be assignable without the prior written consent of the other Party; provided, however, even if the other Party approves any such proposed assignment, in no event shall the assigning Party be released of any of its obligations hereunder. City hereby consents to the Owner's assignment of its rights and obligations hereunder to any party that acquires fee interest in the Owner Property prior to the Closing Date, provided that such party shall assume all of the Owner's obligations hereunder and such assignment shall be pursuant to a writing, a copy of which shall be delivered to City.

8.6. Consents and Approvals. Any approvals or consents of City required under this Agreement may be given by the Executive Director/Chief Executive Officer of the City's Municipal Transportation Agency, unless otherwise provided in the City Charter or applicable City ordinances. Any approvals or consents of the Owner required under this Agreement may be given by _____.

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

8.8. Applicable Laws. "Applicable Laws" shall mean all present and future applicable laws, ordinances, rules, regulations, resolutions, statutes, permits, authorizations, orders and requirements, whether or not in the contemplation of the parties hereto, that may affect or be applicable to the Construction Area or any part (including, without limitation, any subsurface area) or the use thereof. "Applicable Laws" shall include, without limitation, any environmental, earthquake, life safety and disability laws, and all consents or approvals required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, board of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of the subject property. The term "Applicable Law" shall be construed to mean the same as the above in the singular as well as the plural.

8.9. No Brokers or Finders. Each Party warrants to the other Party that no broker or finder was instrumental in arranging or bringing about this transaction and that there are no claims or rights for brokerage commissions or finder's fees in connection with the transactions contemplated by this Agreement. If any party brings a claim for a commission or finder's fee based on any contact, dealings, or communication with Owner or City, then the Party through whom such party makes a claim shall defend the other Party(ies) from such claim, and shall indemnify, protect, defend and hold harmless the indemnified Party from any Losses that the indemnified Party incurs in defending against the claim. The provisions of this Section shall survive the Closing, or, if the conveyance is not consummated for any reason, any termination of this Agreement.

8.10. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

8.11. Interpretation of Agreement. (a) Whenever an "Exhibit" is referenced, it means an attachment to this Agreement unless otherwise specifically identified. All such Exhibits are incorporated herein by reference. (b) Whenever a section, article or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the articles and sections of this Agreement have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Agreement. (c) The use of the term "including," "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter. (d) Wherever reference is made to any provision, term or matter "in this Agreement," "herein" or "hereof" or words of similar import, the reference shall be deemed to refer to any and all provisions of this Agreement reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this Agreement or any specific subdivision thereof. (e) If there is any conflict or inconsistency between the recitals and any of the remaining provisions of this Agreement, the remaining provisions of this Agreement shall prevail. The Recitals in this Agreement are included for convenience of reference only and are not intended to create or imply covenants under this Agreement.

8.12. Entire Agreement. This Agreement (including the exhibits) contains all the representations and the entire agreement between the Parties with respect to the subject matter herein. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded in total by this Agreement (and such other agreements to the extent referenced herein). No prior drafts of this Agreement or changes from

those drafts to the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by either Party or any other party and no court or other body shall consider those drafts in interpreting this Agreement.

8.13. Survival. Any and all other representations, warranties and indemnities of the Parties contained herein (including the Exhibits), shall survive the Closing or termination of this Agreement.

8.14. Parties and Their Agents and Invitees. As used herein, the term "Agents" when used with respect to either Party shall include the agents, employees, officers, contractors and representatives of such Party, and the term "Invitees" shall include the Owner's clients, customers, invitees, guests, licensees, assignees or tenants.

8.15. Attorneys' Fees. If either Party hereto fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all reasonable Attorneys' Fees and Costs incurred by the other Party on account of such default or in enforcing or establishing its rights hereunder, including without limitation, court costs. Any such Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment. For purposes of this Agreement, the reasonable fees of attorneys of the Office of 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 such 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.

8.16. Time of Essence. Time is of the essence with respect to the performance of the Parties' respective obligations contained herein.

8.17. Non-Liability. Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of City shall be personally liable to the Owner or its successors and assigns, if there is any default or breach by City or for any amount which may become due hereunder, or for any obligation of City under this Agreement.

8.18. 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, 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. The Owner agrees that it shall not use any such materials in the Work.

8.19. Sunshine Ordinance. The Owner understands and agrees that under City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (California Government Code Section 6250 *et seq.*), this Agreement and any and all records, information, and materials submitted to City hereunder public records subject to public disclosure. The Owner hereby acknowledges that City may disclose any records, information and materials submitted to City in connection with this Agreement.

8.20. 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.* and to do business with corporations that abide by the

MacBride Principles. The Owner acknowledges that it has read and understands the above statement of City concerning doing business in Northern Ireland.

8.21. Relationship of the Parties. The City is not, and none of the provisions in this Agreement shall be deemed to render City, a partner in the Owner's business or a joint venturer or member in any joint enterprise with the Owner. Neither party shall act as the agent of the other party in any respect hereunder. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

8.22. Prohibition Against Making Contributions to City. The Owner acknowledges that no party that contracts with City for the rendition of personal services, or the furnishing of any material, supplies or equipment to City, or for selling any land or building to City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer or candidate at any time between commencement of negotiations and either the completion of, or the termination of, negotiations for such contract.

8.23. Proprietary Capacity. The Owner understands and acknowledges that City is entering into this Agreement in its proprietary capacity and not as a regulatory agency with certain police powers. Notwithstanding anything to the contrary herein, no approval by City of any plans and specifications or other materials submitted by the Owner to City for City's approval pursuant to this Agreement nor any other approvals by City hereunder shall be deemed to constitute approval of City acting in its regulatory capacity or any governmental or regulatory authority with jurisdiction over the Construction Area. City makes no representations or warranties that City, acting in its regulatory capacity and under its police powers, will ultimately approve of the Plans (or any other draft plans, specifications or other materials with respect to the Work) nor issue any necessary permits.

8.24. Effective Date. This Agreement shall become effective upon the first day ("**Effective Date**") on which each of the following events has occurred: (i) the Parties have duly executed and delivered this Agreement, and (ii) the City Approval Condition has been satisfied. The Parties shall confirm in writing the Effective Date of this Agreement once such date has been established pursuant to this Section; provided, however, the failure of the Parties to confirm such date in writing shall not have any effect on the validity of this Agreement. Where used in this Agreement or in any of its attachments, references to the "Effective Date" will mean the Effective Date as established and confirmed by the Parties pursuant to this Section.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, OWNER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL A RESOLUTION OF CITY'S BOARD OF SUPERVISORS THAT APPROVES OF THIS AGREEMENT AND AUTHORIZES THE TRANSACTIONS CONTEMPLATED HEREBY HAS BEEN DULY ENACTED. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH A RESOLUTION, AND THIS AGREEMENT SHALL BE NULL AND VOID IF CITY'S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THE TRANSACTIONS CONTEMPLATED HEREBY BY ANY EMPLOYEES, DEPARTMENTS OR COMMISSIONS OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

The parties have duly executed this Agreement as of the respective dates written below.

OWNER:

3563 TWENTY FIRST LLC, a California limited liability company

Date: 9-12-08

By: 
Anthony Zeng, Manager

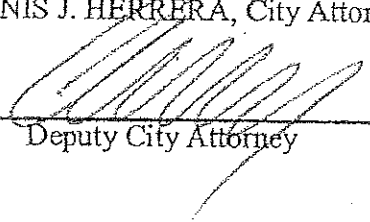
CITY:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation acting by and through the SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

Date: _____

By: _____
Nathaniel P. Ford, Sr.
Executive Director/CEO

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: 

Deputy City Attorney

EXHIBIT A

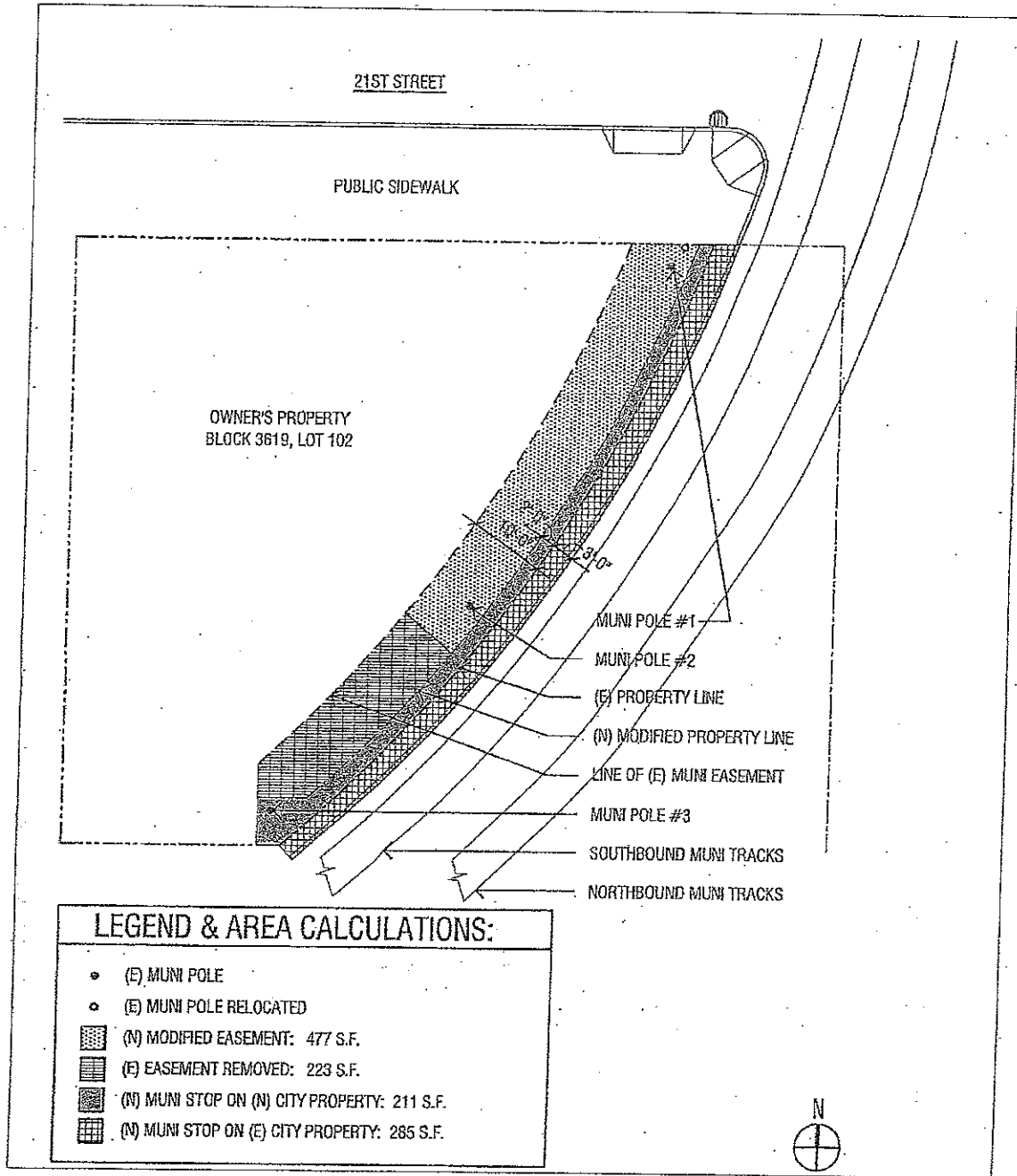
The land referred to is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

Beginning at a point on the Southerly line of 21st Street, distant thereon 150.00 feet Easterly from the Easterly line of Church Street; thence Southerly perpendicular to said Southerly line of 21st Street, 78.00 feet; thence at a right angle Easterly 28.634 feet to a point on the arc of a curve to the left, the center of which bears Northwesterly at an angle of 49° 46' 05" from the preceding line, with the radius of 186.00 feet, said curve being the Westerly right-of-way line of the Church Street Municipal Car Line; thence Northeasterly along said curve to the left, and along said Church Street Municipal Car Line, through a central angle of 29° 38' 34", an arc length of 96.227 feet, to the Southerly line of 21st Street, distant thereon 16.858 feet Westerly from the Westerly line of Chattanooga Street; thence Westerly along said Southerly line of 21st Street 83.142 feet to the point of beginning.

Being a portion of Mission Block No. 89.

Assessor's Lot 102; Block 3619

EXHIBIT B



MUNI Stop Easement Diagram **3563-3567 21st Street** JOB NO: 02039
 SCALE: 1/16" = 1'-0" DATE: 07-11-07

EXHIBIT C

LEGAL DESCRIPTION

"MUNI STOP EASEMENT"

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

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF 21st STREET, DISTANT THEREON N90°00'00"W 16.858 FEET FROM THE WESTERLY LINE OF CHATTANOOGA STREET, SAID POINT OF BEGINNING BEING THE BEGINNING OF A CURVE WHOSE RADIUS POINT BEARS N69°52'29"W 186 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 29°38'34", AN ARC LENGTH OF 96.227 FEET; THENCE N90°00'00"W 3.17 FEET; THENCE N0°00'00"E 6.17 FEET; THENCE S90°00'00"E 7.158 FEET TO THE BEGINNING OF A CURVE WHOSE RADIUS POINT BEARS N42°25'18"W 184 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 27°13'29", AN ARC LENGTH OF 87.428 FEET TO THE SOUTHERLY LINE OF 21st STREET; THENCE ALONG SAID LINE OF 21st STREET S90°00'00"E 2.132 FEET TO THE POINT OF BEGINNING.

THE SOUTHERLY LINE OF 21st STREET IS TAKEN TO BE N90°00'00"W FOR THE PURPOSE OF THIS LEGAL DESCRIPTION.

BEING A PORTION OF LOT A, PARCEL MAP NO. 4606, FILED FOR RECORD ON JULY 22, 2008, IN BOOK 107 OF CONDOMINIUM MAPS AT PAGES 51-52, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO.

ALSO BEING A PORTION OF ASSESSOR'S BLOCK NO. 3619.

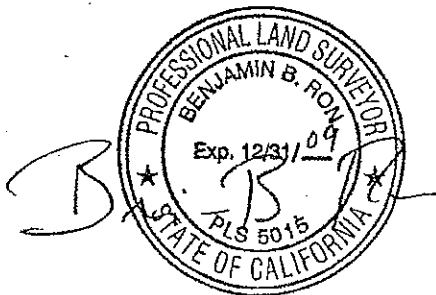


EXHIBIT D

LEGAL DESCRIPTION

"MUNI EASEMENT"

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

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF 21st STREET, DISTANT THEREON N90°00'00"W 18.99 FEET FROM THE WESTERLY LINE OF CHATTANOOGA STREET, THE SOUTHERLY LINE OF 21st STREET TAKEN TO BE N90°00'00"W FOR THE PURPOSE OF THIS LEGAL DESCRIPTION; THENCE N90°00'00"W ALONG SAID LINE OF 21st STREET 8.56 FEET TO THE BEGINNING OF A CURVE WHOSE RADIUS POINT BEARS N68°40'38"W 176 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 18°09'27", AN ARC LENGTH OF 55.775 FEET; THENCE S50°31'11"E 8 FEET TO THE BEGINNING OF A CURVE WHOSE RADIUS POINT BEARS N50°31'11"W 184 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 19°07'36", AN ARC LENGTH OF 61.422 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF ASSESSOR'S BLOCK NO. 3619.

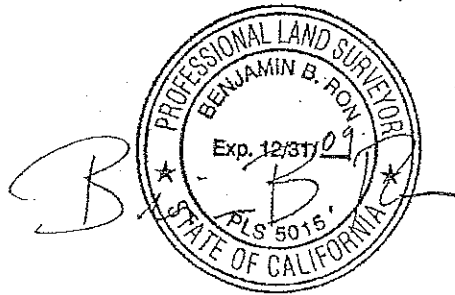


EXHIBIT E

AMENDED EASEMENT AGREEMENT

not attached here

(see enclosure 6)

EXHIBIT F

FORM OF DEED

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Director of Property
Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Documentary Transfer Tax of \$0 based on
full value of the property conveyed

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

GRANT DEED

(Assessor's Parcel No. _____)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, 3563 Twenty First LLC, a California limited liability company ("Grantor"), hereby grants to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the real property located in the City and County of San Francisco, State of California, described on the attached Exhibit A (the "Property").

TOGETHER WITH any and all rights, privileges and easements incidental or appurtenant to the Property, including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances on and under the Property, as well as any and all development rights, air rights, water, water rights, riparian rights and water stock relating to the Property, and any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Property and all of Grantor's right, title and interest in and to any and all roads and alleys adjoining or servicing the Property, and subject to all matters of record or that would otherwise be disclosed by a visual inspection.

Executed as of _____

3563 TWENTY FIRST LLC, a California limited liability company

Dated: _____

By: _____,
_____, Manager

This is to certify that the interest in real property conveyed by this deed dated _____ from 3563 Twenty First LLC, a California limited liability company, to the City and County of San Francisco, is hereby accepted pursuant to Board of Supervisors' Resolution No. 18110 Series of 1939, approved August 7, 1957, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

By: _____
Amy L. Brown, Director of Property

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 G

ASSIGNMENT OF WARRANTIES, GUARANTIES AND OTHER INTANGIBLE PROPERTY

THIS ASSIGNMENT is entered into as of this ____ day of _____, 2008, by and between 3563 Twenty First LLC, a California limited liability company (the "Owner"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), and is made pursuant to that certain Agreement for the Exchange and Conveyance of Real Estate dated as of _____, 200__, between the Owner and City (the "Transfer Agreement").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, effective as of the Effective Date (as defined below), the Owner hereby assigns and transfers to the City's all of the Owner's right, title, claim and interest in and under the following:

A. all warranties and guaranties made by or received from any third party with respect to the Muni Improvements (as defined in the Transfer Agreement, including, but not limited to that certain _____ [describe warranty/guaranties given to Assignor for the Muni improvements].

B. any other any intangible personal property now or hereafter owned by the Owner and reasonably necessary for the ownership, use or operation of the Muni Improvements.

THE OWNER AND CITY FURTHER HEREBY AGREE AND COVENANT AS FOLLOWS:

1. In the event of any litigation between the Owner and City arising out of this Assignment, the losing party shall pay the prevailing party's costs and expenses of such litigation, including, without limitation, attorneys' fees.
2. This Assignment shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.
3. This Assignment shall be governed by and construed in accordance with the laws of the State of California.
4. For purposes of this Assignment, the "Effective Date" shall be the Closing Date (as defined in the Transfer Agreement).
5. This Assignment may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first written above.

OWNER:

3563 TWENTY FIRST LLC, a California limited liability company

By: _____
_____, Manager

CITY:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation acting by and through the SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

By: _____
Nathaniel P. Ford, Sr.
Executive Director/CEO

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

EXHIBIT H

BILL OF SALE

For good and valuable consideration the receipt of which is hereby acknowledged, 3563 TWENTY FIRST LLC, a California limited liability company ("Owner"), does hereby sell, transfer and convey to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), all personal property owned by the Owner and located on or in or used in connection with the Transfer Portion or the Muni Improvements (as such terms are defined in that certain Agreement for the Exchange and Conveyance of Real Estate dated as of _____, 200_, between the Owner and City, including the following items:

[describe Muni stop and its components]

The Owner does hereby represent to City that the Owner is the lawful owner of such personal property, that such personal property is free and clear of all encumbrances, and that the Owner has good right to sell the same as aforesaid and will warrant and defend the title thereto to City, its successors and assigns, against the claims and demands of all persons whomsoever. Except as otherwise expressly set forth herein, the Owner makes no representations or warranties with regard to the construction or condition of such personal property.

DATED this _____ day of _____, 200_.

OWNER:

3563 TWENTY FIRST LLC, a California
limited liability company

By: _____
_____, Manager

Free Recording Requested Pursuant to
Government Code Section 27383

Recording requested by and
when recorded mail to:

City and County of San Francisco
Municipal Transportation Agency
Real Estate Section
1 South Van Ness, 7th Floor
San Francisco, CA 94103
Attn: Kerstin Magary, Senior Project Manager

with a copy to:

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

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

EASEMENT AGREEMENT
(Portion of Assessor's Parcel No. 102, Block 3619)

This Easement Agreement (this "**Agreement**"), by and between the City and County of San Francisco, a municipal corporation ("**City**"), acting by and through the San Francisco Municipal Transportation Agency ("**MTA**"), and 3563 Twenty First LLC, a California limited liability company ("**Owner**"), is executed as of _____, 2008 (the "**Effective Date**").

RECITALS

A. Owner owns that certain real property described on the attached Exhibit A (the "**Encumbered Property**").

B. City reserved an easement (the "**Easement**") over the Encumbered Property at the time that it transferred the Encumbered Property to Charles A. Kollerer and Theresa W. Kollerer, Owner's predecessors in interest, as further set forth in that certain Deed recorded in the Official Records of San Francisco on May 28, 1985, in Book D847, Page 166 (the "**Deed**").

C. Owner wishes to amend, restate and clarify the configuration and terms of the easement to facilitate Owner's development of the Encumbered Property and City agrees to such amendment and clarification subject to the terms of this Agreement, and the terms and conditions of the Easement set forth in the Deed shall accordingly be fully amended and restated by this Agreement.

AGREEMENT

NOW, THEREFORE, Owner and City agree as follows:

1. Revised Easement Area. The description of the Easement area set forth in Deed is hereby replaced with the legal description attached to this Agreement as Exhibit B (the "**Easement Area**"). A general depiction of the revised Easement Area for reference purposes only is

attached to this Agreement as Exhibit C. If there is any conflict between such depiction and such legal description in specifying the Easement Area, the legal description shall control.

2. Easement Uses. City shall have the right to use the Easement Area to access, use, maintain, service, operate, repair and replace the Pole Facilities (defined as follows) and to exercise its rights and obligations under this Agreement (collectively, the "**Permitted Uses**"). The Easement Area shall not be used for any purpose other than the Permitted Uses, nor shall City take any actions in the Easement Area that block access over the Easement Area to the Encumbered Property except to the extent that such actions are temporary, are reasonably necessary for City's exercise of the Permitted Uses, are performed in a manner that reasonably minimizes interference with access to the Easement Area, and occur during customary working hours (except to the extent otherwise necessary to respond to an emergency situation). City shall not leave any City equipment or material that temporarily blocks access to the Easement Area unattended at any time.

The "**Pole Facilities**" shall mean two (2) poles (each, a "**Pole**") used as a part of City's passenger transportation services, each of which may be constructed of any material and improved with lighting structures, and all related foundations, bollards, conduits, wires (including overhead wires and guy wires), electrical fixtures and all appurtenances commonly related to poles used for similar purposes (collectively, the "**Appurtenances**"). The Pole Facilities shall remain City's property at all times and City shall have the right to remove any or all of the Pole Facilities or take all or any portions of the Pole Facilities out of active service at any time and for any length of time.

3. Relocation of Poles. As of the Effective Date, the Pole designated as Pole #1 and the Pole designated as Pole #2 are situated in the general locations depicted on the attached Exhibit C. Except as expressly set forth in this Section, neither party shall have the right to relocate the Poles.

(a) Owner shall have the right to relocate existing Pole #1 ("**Original Pole #1**") to the location depicted on the attached Exhibit C by installing, at its sole cost, a replacement pole ("**Relocated Pole #1**") and related Appurtenances, and dismantling and removing, at its sole cost, Original Pole #1 and its related Appurtenances (collectively, the "**Relocation Work**"), in compliance with Sheets A0.4, A1.0, A2.2, C-4 and C-5, all dated January 2, 2008, and Sheet A7.3, dated January 2, 2008, of the plans and specifications prepared by Baum Thornley Architects LLP for Job No. 02039 (the "**Relocation Plans**"), and the construction requirements specified in Section 4.

Owner shall deliver written notice (the "**Commencement Notice**") to Kerstin Magary, MTA's Senior Project Manager, or any other person designated by MTA in writing ("**City Contact Person**"), once Owner is prepared to commence the Relocation Work pursuant to the Relocation Plans and Owner has reimbursed City for its costs in preparing the Relocation Plans. Owner shall coordinate the schedule for the Relocation Work with the City Contact Person; provided, however, that the Relocation Work shall commence within the thirty (30) calendar day period immediately following City's receipt of the Commencement Notice and shall occur at the times mutually acceptable to Owner and City, each acting in its reasonable discretion. Owner shall transport Relocated Pole #1 and its related Appurtenances from the location specified by the City Contact Person (the "**City's Pole Yard**") to the Amended Easement Area and transport the dismantled and removed Original Pole #1 and its Appurtenances from the Amended Easement Area to City's Pole Yard pursuant to such schedule.

Owner shall deliver written notice (the "**Completion Notice**") to City when Owner completes the Relocation Work and shall certify therein that (i) Relocated Pole #1 and its Appurtenances have been installed, and Original Pole #1 and its Appurtenances have been

dismantled, removed and transported to the City Pole Yard in compliance with the Relocation Plans and this Agreement, (ii) the period for filing any liens related to the Relocation Work has lapsed and no such liens have been filed, and (iii) neither Relocated Pole #1 nor any of its Appurtenances are subject to any liens or third party interests granted or created through Owner's acts or omissions. If City approves of the completed Relocation Work, which approval shall not be unreasonably withheld, conditioned or delayed, City shall provide written notice of such approval to Owner (the "**Pole Approval Notice**"); provided, however, that if City does not deliver the Pole Approval Notice or its written objection to the Completion Notice within the thirty (30) calendar day period immediately following its receipt of the Completion Notice, City shall be deemed to have approved of the Relocation Work. Relocated Pole #1 and its Appurtenances shall remain City property at all times and shall become part of the Pole Facilities as of the date that City delivers the Pole Approval Notice to Owner (or is deemed to have made such approval pursuant to this paragraph), provided that Owner, at City's request, shall deliver to City any documents reasonably requested by City to transfer any existing warranties or guaranties related to the Relocation Work to City.

(b) City shall have the right, at its sole cost and its sole election, to relocate Pole #2 at any time to a new location in the Easement Area that is to the southwest, and within four feet (4'), of the location in which Pole #2 is located as of the Effective Date, as further depicted on the attached Exhibit C. Notwithstanding anything to the contrary in the foregoing, City shall not relocate Pole #2 to any location that is closer to the edge of the residential building to be constructed on the Encumbered Property, as depicted on the attached Exhibit C, as long as such building is actually constructed at such depicted location. Such relocation shall be performed in compliance with the terms of this Agreement and in a lien-free manner. City shall provide plans and specifications for such relocation of Pole #2 to Owner for its review and approval, which shall not be unreasonably withheld, conditioned or delayed.

4. Construction Activities and Uses. Each party shall deliver at least seventy-two (72) hours' prior written notice to the other party before commencing any construction or maintenance activities in the Easement Area, except in the event of any immediate danger to health or property, in which case such party shall verbally notify the other party as soon as reasonably possible. Either party may restrict access within the Easement Area if reasonably necessary for such party's permitted construction or maintenance activities in the Easement Area, provided that such performing party shall take commercially reasonable efforts to minimize interference with the other party's permitted uses of the Easement Area. Each party shall conduct its construction or maintenance activities in compliance with all applicable laws, through sound construction practices and in a lien-free manner, and each party shall diligently pursue its construction or maintenance activities to completion. Except as otherwise expressly set forth in this Agreement, a performing party shall secure and pay for any building and other permits and approvals, government fees, licenses and inspections necessary for the proper performance and completion of its construction or maintenance activities in the Easement Area, including, but not limited to any required City (acting in its regulatory capacity) approvals. In addition to the foregoing obligations, prior to performing any construction work within the Easement Area, Owner shall ensure that any Owner employee or contractor performing such construction work attends the City's required Trackside Safety Class for all contractors working within the general location of City rail rights-of-ways and complies with any other standard requirements City requires of all such contractors.

5. Owner Use of the Easement Area.

(a) Owner shall not take, nor permit any other party to take, any action in, on, under or about the Easement Area that could damage, endanger or interfere with the Pole Facilities or could unreasonably interfere with the Permitted Uses. City agrees and acknowledges that Owner's use of the portions of the Easement Area that are not covered by any Pole Facilities

situated on the surface of the Easement Area (to the extent permitted under this Agreement) as a driveway to service the residential use of the building located on the Encumbered Property shall not be deemed to damage, endanger or interfere with the Pole Facilities or unreasonably interfere with the Pole Facilities, so long as such use complies with the terms of this Agreement and the building has no more than four (4) residential units.

(b) Without limiting the foregoing, except for the Improvements (defined as follows), Owner shall not construct or place any structures or improvements of any kind or character on, or that protrude into, the Easement Area other than the Improvements (defined as follows) without first obtaining the City's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. The "**Improvements**" shall mean the following: (i) a retaining wall and fence (the "**Fence**") along the southeastern boundary of the Easement Area, as depicted on the attached Exhibit C, provided that Owner constructs the retaining wall and Fence in conformity with Sheets A0.4, A1.0, A2.2, A2.3, A3.1, A3.2, S2.1, S3.1, S5.1, C-3, C-4 and C-5 of the plans and specifications prepared by Baum Thornley Architects LLP for Job No. 02039, dated July 26, 2007, and provides sufficient drainage to prevent the flow of water from the Property onto the City property abutting the Easement Area, (ii) a cover surface (the "**Driveway**"), provided that the Driveway can bear a load sufficient to support a 30,000 pound truck and has sufficient drainage that prevents the drainage of surface water from the Driveway onto the City property abutting the Easement Area, and (iii) a gate located within the portion of the Easement Area depicted in the attached Exhibit C, provided that Owner prepares plans and specifications for such gate, obtains City's prior written consent thereto (which shall not be unreasonably withheld, conditioned or delayed), subsequently constructs the gate in conformity with such approved plans and specifications, and provide City with a key or other equipment that allows City to open and close such gate once it is constructed. If City opens such gate to ingress or egress the Easement Area, City shall close the gate after making such ingress or egress.

6. Maintenance and Repair.

(a) City will install, operate, maintain, repair and, at its sole election, replace or remove, the Pole Facilities at its sole cost and in a safe, secure and sanitary condition; provided, however, that if any repair or replacement work arises from the actions of Owner or any Agents (defined as follows) of Owner, Owner shall reimburse City for the cost of such repair or replacement work within thirty (30) days following City's written demand therefor. "**Agents**" shall mean a party's officers, agents, employees, representatives, trustees, managers, members, contractors or invitees. City shall keep the Easement Area free from any liens arising out of any work performed, material furnished, or obligations incurred by or for City therein, and City shall maintain the Pole Facilities in a safe, secure, and sanitary condition.

(b) Owner will install, operate, maintain, repair and, at its sole election, replace or remove, the Improvements at its sole cost; provided, however, that if any repair or replacement work arises from the actions of City or any Agents of City, City shall immediately reimburse Owner for the cost of such repair or replacement work within thirty (30) days following Owner's written demand therefor. Owner shall maintain the Improvements in a safe, secure, and sanitary condition and shall repaint or reface the outer face of the Fence on an annual basis; provided, however, that Owner shall not be responsible for graffiti removal or vandalism to the Fence other than such annual repainting and repair obligation. Notwithstanding anything to the contrary in the foregoing sentence, such limitation on graffiti removal or vandalism repair is made by City hereunder in its proprietary capacity and shall not affect City's right, acting in its regulatory capacity, to require that Owner perform additional graffiti removal or vandalism repair activities.

(c) Each party, at its sole expense, shall comply with all applicable laws, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force with respect to such party's activities in the Easement Area. Each party shall

conduct, or shall cause its Agents to conduct, all activities in the Easement Area in a safe and reasonable manner. After any entry by City in the Easement Area, City shall restore any affected portion of the Easement Area to substantially the same condition it was in immediately prior to such entry (to the extent that such condition complies with the conditions set forth in this Agreement).

7. Hazardous Materials. Neither party shall use, store, locate, handle or cause or permit the dumping or other disposal or release on or about the Easement Area of any Hazardous Material, provided that the parties shall have the right for such activities to the extent the Hazardous Material is reasonably necessary for the Permitted Uses or Owner's use of the Easement Area in compliance with this Agreement, is used in a quantity customarily used for such use and is used in compliance with applicable laws. If there is a leakage or spill of Hazardous Materials on the Easement Area, the responsible party shall bear the cost and expense to clean the contaminated property in compliance with applicable laws.

"**Hazardous Material**" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. "Hazardous Material" includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 *et seq.*, or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Easement Area or are naturally occurring substances in the Easement Area, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "**release**" or "**threatened release**" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Easement Area.

8. Insurance.

(a) Each party shall procure at its expense and keep in effect at all time, in form and from an insurer reasonably accept to the other party, as follows:

(i) Commercial general liability insurance with limits not less than \$1,000,000 each occurrence, combined single limit for bodily injury and property damage, including coverage for contractual liability, personal injury, broad form property damage, products and completed operations. Such policy shall include endorsements for (1) false arrest, detention or imprisonment or malicious prosecution; (2) libel, slander or defamation of character; (3) wrongful entry or eviction or invasion of the right of privacy. Any deductible under such policy shall not exceed \$10,000 for each occurrence.

(ii) Automobile liability insurance with limits not less than \$1,000,000 for each occurrence combined single limit for bodily injury and property damage, including coverage for owned, non-owned and hired automobiles, as applicable. Any deductible under such policy shall not exceed \$10,000 for each occurrence.

(iii) If using any employees to perform work within the Easement Area, or if using any contractors using such employees, Workers' Compensation Insurance, including Employers' Liability, with limits not less than \$1,000,000 for each accident, covering all employees employed in or about the Easement Area to provide statutory benefits as required by the laws of the State of California.

(b) All insurance policies required hereunder shall (i) be written on an occurrence basis, (ii) name the other party, together with its officers, agents and employees, as additional insureds, (iii) specify that such policies are primary insurance to any other insurance available to the additional insureds with respect to any claims arising out of this Agreement and that insurance applies separately to each insured against whom claim is made or suit is brought, (iv) provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, (v) afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period, and (vi) be endorsed to provide thirty (30) days prior written notice of cancellation, non-renewal or reduction in coverage to the other party.

(c) If requested, a party shall deliver to the other party certificates of insurance in form and with insurers satisfactory to the requesting party, evidencing the coverages required hereunder, together with complete copies of the policies at such requesting party's request. If a party fails to procure such insurance or to deliver such policies or certificates, after five (5) business days prior written notice, the other party may procure, at its option, such insurance on such defaulting party's behalf, and the defaulting party shall pay the acting party for the cost thereof within five (5) business days of the acting party's delivery of bills therefor.

(d) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall be double the occurrence or claims limits specified above.

(e) A party's compliance with the provisions of this Section shall in no way relieve or decrease such party's indemnification obligations or other obligations under this Agreement. Each party shall be responsible, at its expense, for separately insuring its personal property.

(f) Notwithstanding anything to the contrary contained herein, each party hereby waives any right of recovery against the other party for any loss or damage sustained by such damaged party with respect to the Easement Area, whether or not such loss is caused by the fault or negligence of the other party, to the extent such loss or damage is covered by insurance that the damaged party is required to purchase under this Agreement (or to self-insure, with respect to the City) or is otherwise actually recovered from valid and collectible insurance covering such damaged party. Each party agrees to obtain a waiver of subrogation endorsement from each insurance carrier issuing policies relative to the Easement Area; provided, however, that failure to do so shall not affect the above waiver.

(g) Owner acknowledges that City maintains a program of self-insurance and agrees that City shall not be required to carry any insurance with respect to this Agreement; provided, however, that if any of City's successors or assigns under this Agreement is not a public entity, such non-public successor or assign shall carry the insurance specified in this Section. City assumes the risk of damage to any of its personal property, except for damage caused by Owner or its Agents.

9. Notices. 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: City and County of San Francisco
Municipal Transportation Agency
Real Estate Section
1 South Van Ness Avenue, 7th Floor
San Francisco, CA 94103
Attn: Senior Project Manager
Fax No.: (415) 701-4341

with a copy to: City and County of San Francisco
Real Estate Division
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property
Fax No.: (415) 552-9216

If to Owner: Nancy Zeng
236 West Portal Avenue, #48
San Francisco, CA 94127
Fax No.: (415) 681-3358

10. Indemnity. City shall indemnify, defend, reimburse and hold harmless Owner from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind arising out of or relating to the activities of City or any City Agent in the Easement Area, except to the extent caused by the intentional acts or negligence of Owner or any Owner Agents.

Owner shall indemnify, defend, reimburse and hold harmless City and City's Agents and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind arising out of or relating to the use of the Easement Area by Owner or any Owner Agents, except to the extent caused by the intentional acts or negligence of City or any City Agents.

The foregoing indemnities shall include, without limitation, reasonable attorneys', experts' and consultants' fees and costs, and shall survive any termination or extinguishment of the Easement or this Agreement.

11. Waiver of Claims. Each party covenants and agrees that the other party shall not be responsible or liable for, and each party hereby waives all rights against the other party and its Agents and releases the other party and its Agents from, any and all claims relating to any injury, accident or death of any person or loss or damage to any property in or about the Easement Area from any cause whatsoever, except as expressly otherwise set forth in this Section. Nothing herein shall relieve either party from liability to the extent caused by the negligence or willful misconduct of such party or its Agents of its obligations hereunder or under law, but such party shall not be liable under any circumstances for any consequential, special or punitive damages. Neither party would be willing to enter into this Agreement without such a waiver of liability for consequential, special or punitive damages due to the acts or omissions of the other party or its Agents, and each party expressly assumes the risk with respect thereto. Accordingly, as a material part of the consideration for this Agreement, each party fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action, and covenants not to sue, the other party or its Agents for any matters arising out of this Agreement or the Easement Area, except to the extent such claims result from the negligence and willful misconduct of such other party or its Agents or such party's breach of its obligations hereunder or under law.

In connection with the foregoing release, each party acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Each party acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Each party realizes and acknowledges that it has agreed to this Agreement in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Agreement.

12. Run with the Land; Exclusive Benefit of Parties. The rights and obligations set forth herein shall run with the land and shall bind and inure to the benefit of the successors and assigns of the parties hereto; provided, however, that if Owner develops a condominium project on the Encumbered Property and a homeowners' association is duly formed and has sole responsibility for maintenance and operation of the Easement Area (an "HOA"), Owner shall have the right to assign to HOA, and HOA shall have the right to assume from Owner, Owner's rights and obligations hereunder pursuant to a written assignment and assumption agreement between Owner and such HOA and, upon delivering fully executed copy of such signed agreement to City, Owner shall be released from the terms and conditions of this Agreement as of such assignment and assumption. This Agreement is for the exclusive benefit of Owner and City 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.

13. Proprietary Capacity. Owner understands and acknowledges that City is entering into this Agreement in its proprietary capacity and not as a regulatory agency with certain police powers. Notwithstanding anything to the contrary herein, no approval by City of any plans and specifications or other materials submitted by Owner to City for City's approval pursuant to this Agreement nor any other approvals by City hereunder shall be deemed to constitute approval of City acting in its regulatory capacity or any governmental or regulatory authority with jurisdiction over the Easement Area. City makes no representations or warranties that City, acting in its regulatory capacity and under its police powers, will ultimately approve of any draft plans, specifications or other materials nor issue any necessary permits.

14. Prevailing Wages. City and Owner agree that the provisions of Section 6.22(E) of the San Francisco Administrative Code, as such provisions may be amended from time to time, shall be incorporated by this reference in this Agreement to the extent applicable. Any person performing labor for the construction of Replacement Pole #1 or its Appurtenances or the dismantling or removal of Original Pole #1 or its Appurtenances shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Each party shall include, in any contract for such work, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Each party shall further require that any contractor performing any of such work shall provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of Replacement Pole #1 or its Appurtenances or in the dismantling or removal of Original Pole #1 or its Appurtenances.

15. MacBride Principles – Northern Ireland. 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 the City concerning doing business in Northern Ireland.

16. Tropical Hardwood and Virgin Redwood Ban. 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.

17. 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 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 hereof, reasonable attorneys' fees shall be based on the fees regularly charged by private attorneys in City with comparable experience, notwithstanding City's or Owner's use of its own attorneys. (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) City's obligations hereunder are contingent upon approval of this instrument by Board of Directors of City's Municipal Transportation Agency and the City's Board of Supervisors and Mayor, each in their respective sole discretion, this Agreement shall be null and void if such approval is not obtained. (h) Time is of the essence of this Agreement and each party's performance of its obligations hereunder. (i) 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 Easement. (j) 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. (k) All section and subsection titles are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

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

OWNER: 3563 TWENTY FIRST LLC, a California limited liability company

By: _____, Manager

Date: _____

CITY: CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: _____
Its: _____

Date: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

EXHIBIT A

The land referred to is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

Beginning at a point on the Southerly line of 21st Street, distant thereon 150.00 feet Easterly from the Easterly line of Church Street; thence Southerly perpendicular to said Southerly line of 21st Street, 78.00 feet; thence at a right angle Easterly 28.634 feet to a point on the arc of a curve to the left, the center of which bears Northwesterly at an angle of 49° 46' 05" from the preceding line, with the radius of 186.00 feet, said curve being the Westerly right-of-way line of the Church Street Municipal Car Line; thence Northeasterly along said curve to the left, and along said Church Street Municipal Car Line, through a central angle of 29° 38' 34", an arc length of 96.227 feet, to the Southerly line of 21st Street, distant thereon 16.858 feet Westerly from the Westerly line of Chattanooga Street; thence Westerly along said Southerly line of 21st Street 83.142 feet to the point of beginning.

Being a portion of Mission Block No. 89.

Assessor's Lot 102; Block 3619

EXHIBIT B

LEGAL DESCRIPTION

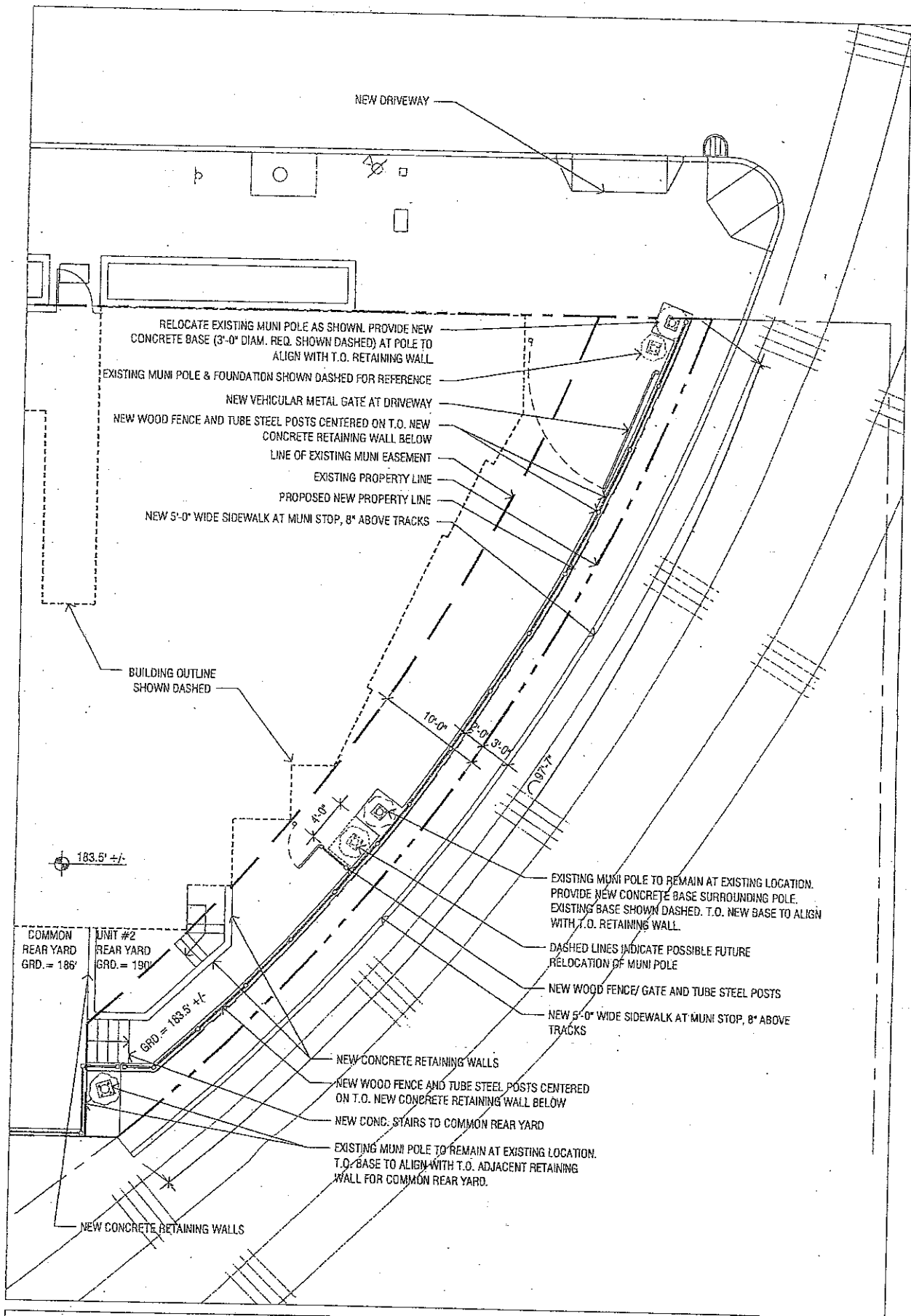
"MUNI EASEMENT"

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

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF 21st STREET, DISTANT THEREON $N90^{\circ}00'00''W$ 18.99 FEET FROM THE WESTERLY LINE OF CHATTANOOGA STREET, THE SOUTHERLY LINE OF 21st STREET TAKEN TO BE $N90^{\circ}00'00''W$ FOR THE PURPOSE OF THIS LEGAL DESCRIPTION; THENCE $N90^{\circ}00'00''W$ ALONG SAID LINE OF 21st STREET 8.56 FEET TO THE BEGINNING OF A CURVE WHOSE RADIUS POINT BEARS $N68^{\circ}40'38''W$ 176 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF $18^{\circ}09'27''$, AN ARC LENGTH OF 55.775 FEET; THENCE $S50^{\circ}31'11''E$ 8 FEET TO THE BEGINNING OF A CURVE WHOSE RADIUS POINT BEARS $N50^{\circ}31'11''W$ 184 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF $19^{\circ}07'36''$, AN ARC LENGTH OF 61.422 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF ASSESSOR'S BLOCK NO. 3619.





Muni Layout
 SCALE: 1/8" = 1'-0"

The Residences at 3563-3567 21st Street

JOB NO: 02039
 DATE: 08-10-07