STEYER LOWENTHAL BOODROOKAS
ALVAREZ & SMITH LLP ATTORNEYS

April 19, 2023

Via E-Filing

Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Surface Transportation Board Finance Docket No. 36660
Supplemental Filing, Part 2 of 3

Dear Board:

Pursuant to the Board's request, 424 Jessie Historic Properties, LLC hereby submits true and correct copies of Volumes 5 through 7 (pages 1181 through 1886) of the Joint Appendix submitted as the record in Visitacion Investment, LLC's appeal pending in Case No. A163550 in California's First District, Division Two, referenced in footnote 1 of 424 Jessie Historic Properties, LLC's reply to Baylands Development, Inc's petition for declaratory order, FD No. 36660.

Very truly yours,



Dana M. Andreoli

Encls.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST DISTRICT – DIVISION 2

Case No. A163550

VISITACION INVESTMENT, LLC, Plaintiff/Cross-Defendant & Appellant

v.

424 JESSIE HISTORIC PROPERTIES, LLC, Defendant/Cross-Complainant & Respondent

San Francisco Superior Court Case No. CGC-19-579667

JOINT APPENDIX

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

VISITACION INVESTMENT, LLC Plaintiff, vs. 424 JESSIE HISTORIC PROPERTIES, LLC, et al. Defendants. AND RELATED CROSS-ACTION	Case No. CGC-19-579667 **VOLUME 1 OF 1 OF EVIDENCE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON COMPLAINT, OR ALTERNATIVELY, SUMMARY ADJUDICATION** Date: June 10, 2021 Time: 9:30 a.m. Dept.: 501 Complaint Filed: October 1, 2019 Trial Date: July 12, 2021

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Dated: May 27, 2021

KATZOFF & RIGGS LLP



STEPHEN G. PREONAS

Attorneys for Plaintiff and Cross-Defendant
VISITACION INVESTMENT LLC

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TAB 1

TO

VOLUME 1 OF 1 OF EVIDENCE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON COMPLAINT, OR ALTERNATIVELY, SUMMARY ADJUDICATION

Visitacion Investment, LLC v. *424 Jessie Historic Properties, LLC., et al.*

San Francisco County Superior Court Case No. CGC-19-579667

Description of Tab:

DECLARATION OF STEPHEN G. PREONAS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON COMPLAINT, OR ALTERNATIVELY, SUMMARY ADJUDICATION AND EXHIBITS A through B.

TAB 1

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

VISITACION INVESTMENT, LLC Plaintiff, vs. 424 JESSIE HISTORIC PROPERTIES, LLC, et al. Defendants. AND RELATED CROSS-ACTION	Case No. CGC-19-579667 **DECLARATION OF STEPHEN G. PREONAS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON COMPLAINT, OR ALTERNATIVELY, SUMMARY ADJUDICATION** Date: June 10, 2021 Time: 9:30 a.m. Dept.: 501 Complaint Filed: October 1, 2019 Trial Date: July 12, 2021

STEPHEN G. PREONAS declares:

1. I am one of counsel of record for plaintiff and cross-defendant Visitacion Investment, LLC ("Plaintiff" or "Visitacion"). I have personal knowledge of the matters set forth in this declaration and can competently testify thereto. I am a custodian of records with respect to documents produced in and relating to this litigation and have received and reviewed such documents.

2. This declaration is being submitted in support of Plaintiff's Opposition to

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the motion for defendant and cross-complainant 424 Jessie Historic Properties, LLC ("Defendant" or "JHP") for Summary Judgment, or Alternatively, Summary Adjudication ("Defendant's MSJ").

3. A true copy of the relevant portions of the deposition of Robert Krantz as the Person Most Knowledgeable for Union Pacific Railroad ("Krantz Depo") taken May 20, 2021 is attached as Exhibit A. Also included in Exhibit A are the following numbered exhibits to the Krantz depo discussed in the transcript, Exhs. No. 70, 71 and 76 attached as Exhibits A-70, A-71 and A-76. Exhibit 76 is the notice of deposition including the subpoena to Union Pacific Railroad. The version of the notice of deposition attached to this declaration removed the deeds attached to the subpoena attached to the notice as exhibits as they are already a part of the Court's records relating to this motion.

4. In connection with this litigation my office discussed the use of property owned by JHP ("the JHP Property") with William Gilmartin III, of Proven Management, Inc. ("Proven"). Gilmartin later provided a sworn declaration regarding Proven's short-term use of the JHP Property and authenticating certain documents regarding this use. A true copy of Gilmartin's declaration and the Exhibits 1 through 7 referenced therein is attached as Exhibit B.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 27, 2021 in Los Angeles, California.



STEPHEN G. PREONAS

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EXHIBIT A

TO

DECLARATION OF STEPHEN G. PREONAS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON COMPLAINT, OR ALTERNATIVELY, SUMMARY ADJUDICATION ("Preonas Opp. Decl.")

Visitacion Investment, LLC v. *424 Jessie Historic Properties, LLC., et al.*

San Francisco County Superior Court Case No. CGC-19-579667

Deposition Transcript of May 20, 2021 Deposition of Robert Krantz as PMK of Union Pacific Railroad ("Krantz Depo")

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

VISITACION INVESTMENT, LLC, a California limited liability company,

Plaintiff,

vs.

Case No. CGC-19-579667

424 JESSIE HISTORIC PROPERTIES, LLC, a California limited liability company, all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the Complaint adverse to Plaintiff's title, or any cloud on Plaintiff's title thereto, and DOES 1 through 50, inclusive,

Defendants.

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

REMOTE DEPOSITION OF ROBERT KRANTZ

May 20, 2021

10:04 a.m.

Scottsdale, Arizona

Karen Aligo, CSR No. 13418
~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

APPEARANCES OF COUNSEL

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ALSO PRESENT:

PATRICK McNERNEY
(Present via videoconference)

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WITNESS: ROBERT KRANTZ

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REMOTE DEPOSITION OF ROBERT KRANTZ

May 20, 2021

ROBERT KRANTZ,

having been first duly sworn, testifies as follows:

EXAMINATION

BY MR. LOWENTHAL:

Q. My name is Jeff Lowenthal. I represent the defendant 424 Jessie Historic Properties. My client acquired, or Patrick McNerney transferred the property shortly after he acquired it to 424 Jessie Historic Properties, so you understand who we are.

Could you please state your name for the record.

A. Yes, it's Robert Krantz.

Q. Can you spell your last name for the court reporter.

A. K-r-a-n-t-z.

Q. And can you give us your address, please?

A. Yes, it's 8270 East Via Del Sol, that's S-o-l, Drive, Scottsdale, Arizona 85255.

Q. Mr. Krantz, have you ever had your deposition taken before?

A. Yes.

A. I went back to Southern Pacific Railroad at the end of September 1988.

Q. And in what department and what role?

A. I was a property manager for approximately a year.

Q. And what does a property manager do?

A. We managed the railroad's real estate leases. I managed a thousand leases.

Q. Okay.

A. With the railroad.

Q. And what type -- just so I have some understanding -- so who were you leasing properties to? Were they excess properties you were leasing to third parties for different uses other than railroad use?

A. That's correct.

Q. Okay. And what did you do after that?

A. I moved into the sales area, became a sales manager.

Q. And what do you do as a sales manager for the Southern Pacific?

A. Sell surplus real estate. Real estate no longer needed for railroad operations.

Q. And what year was that that you started doing that?

A. It was around 1990.

Q. Okay. And how long did you stay in that role?

A. Until around 1993.

Q. Okay. And what did you do then?

A. Then I moved to a subsidiary company called Southern Pacific Real Estate Enterprises. I was the regional manager for -- well, SPREE for short, S-P-R-E-E, and we were the -- planning to be the new development arm of Southern Pacific.

Q. Okay. And how long did you stay in that position?

A. That was for about two and a half years.

Q. Okay. And then what did you do?

A. So --

Q. Actually, let me step back. As a development arm, what was your charge -- what was the SPREE's charge, what were they trying to do?

A. We would take our larger, more valuable properties and try to enhance value through rezoning general plan amendments, purchasing abutting properties to round out ownerships for better access, things like that. So basically looking to take properties through the entitlement process and add value.

Q. Okay. Okay. And you stayed there for a few years, so where are we now, sort of mid-'90s or so?

A. Yes. And eventually SPREE, which was a very small entity, became a larger entity and absorbed all of the Southern Pacific Railroad real estate department, and so SPREE became a much more larger organization.

Long story, had to do with things that Southern Pacific was trying to do to change employment counts, so they moved all the railroad real estate people into a non-railroad entity, which SPREE was.

Q. And you stayed with that company?

A. Yes, I continued with SPREE.

Q. And for how long were you with SPREE?

A. Until the acquisition by Union Pacific Railroad in 1997.

Q. What was your role with SPREE in 1997 before the acquisition?

A. Same thing, enhancing value for our properties and selling properties as well.

Q. And were you an officer of that company, or do you recall your position, the title?

A. Well, it changed when all of the Southern

Pacific folks became part of the SPREE. So I went from regional manager to, I think, a sales manager again. They change people's titles around.

Q. Okay. And you became a sales manager, and then the Union Pacific merger happened, and did you join Union Pacific?

A. Yes.

Q. And that was in 1997?

A. Yes.

Q. And what was your -- what position did you have with Union Pacific?

A. Same as sales manager.

Q. Okay. Still working in selling either enhancing value or selling real estate owned by the railroad?

A. Yes.

Q. And how long did you stay with Union Pacific?

A. Until December 31, 1998.

Q. Okay.

A. Union Pacific is based in Omaha. There were only a few of us left in San Francisco, and they were paring back the folks in the Bay Area, so I was the young guy at that time and took a buyout and left Union Pacific and went off on my own.

Q. And what kind of work did you do when you left Union Pacific?

A. I started my own company called North Pacific Coast Company.

Q. And what was the position at North Pacific -- what did North Pacific Coast Company do?

A. I was a real estate broker. I had my broker's license, and so I did brokerage work and consulting work.

Q. And what type of brokerage were you doing at that time? What were you selling?

A. Basically same kind of thing I was doing at SP and UP, selling surplus real estate and did a lot of work for Union Pacific, actually.

Q. Okay. And then the consulting work, what type of work was that?

A. Also, you know, pertaining to mostly right-of-way type matters. I did work for the Golden Gate Bridge District, North Coast Railroad Authority, different residential developers, building homes.

Q. How long did you stay with North Pacific Coast Company?

A. I did that until around 2008, and then I went to work for the SMART District, Sonoma-Marin

Q. Okay. The 2010 or so?
A. Um-hum.
Q. And what did you do in 2010?
A. I went back out on my own and restarted North Pacific Coast Company.
Q. And did you still work with the sale of surplus real estate for railroads at that time?
A. Yes, I did.
Q. And how many years did you stay with the North Pacific Coast Company? Or how long did you keep it going in that role?
A. Sure. I kept it going until I rejoined Union Pacific. December of 2013 they asked me to come back.
Q. And what role did you have with Union Pacific then?
A. Director of real estate.
Q. And where were you located?
A. Located in San Ramon, California.
Q. Okay. And what was your responsibilities?
A. I had territory in Northern California, covered ten counties and responsible for selling surplus nonoperating railroad real estate.
Q. Okay. And is that the same role you have today?

A. Yes, it is.

Q. Okay. Great. And let me ask you to take a look at Exhibit 76, which is the notice of -- well, it's a notice of deposition, and attached to it, I think the third page, is the deposition subpoena.

(Exhibit 76 marked for identification.)

BY MR. LOWENTHAL:

Q. Have you ever seen that before?

A. Okay. I'm opening it.

Q. It's too many pages, but --

A. Yeah, I have seen this before, uh-huh.

Q. Okay. Are you the person at Union Pacific most qualified to testify concerning the subject of the Schlage Lock property?

A. Yes.

Q. Okay. And when you got this subpoena, did you search for documents that were responsive to the documents requested in the subpoena?

A. Yes, I did.

Q. And can you just describe for us generally what you did?

A. So there's really only one location for the documents related to the sale, and that would be in the sale folder that I created for this specific transaction.

Q. And the railroad had maintained that sales folder to this day? You still have it?
A. Yes, it's back in Omaha.
Q. And did you produce all the documents within that folder but for communications with your attorneys?
A. Yes.
Q. Okay. And you provided that to Ms. Johnson who we presume produced it to us, right?
A. Right, and I worked with our paralegals in Omaha in being responsive to the subpoena.
MS. JOHNSON: Just to be clear, the documents produced were those that were responsive to the categories in the subpoena.
THE WITNESS: Yes, that's correct.
MS. JOHNSON: As opposed to the entirety of the file that I believe had some information unrelated to the specific categories that were requested.
MR. LOWENTHAL: Okay.
THE WITNESS: That's correct.
BY MR. LOWENTHAL:
Q. As far as the categories requested in Exhibit 76, you produced all those documents; is that correct?

A. Yes.

Q. Okay. Were you involved in the 1990 sale of the property of the Schlage Lock -- I don't know why I can't pronounce it -- the Schlage Lock site to Tuntex?

A. Tuntex? Yeah, I was not involved in that transaction.

Q. Okay. And was your first involvement in this property in approximately 2014 when you stepped in to try to sell it?

A. Yes.

Q. Okay. So let's take a look at Exhibit 69, start with those.

A. Okay.

(Exhibit 69 marked for identification.)

BY MR. LOWENTHAL:

Q. Just let us know when you open it up, Mr. Krantz.

A. Okay. It's launching. Okay. It's open.

Q. Okay. So if you start with, like, with all these e-mail crazies, you start -- I think I can start you and lead you through the right order to look at the e-mails.

If you start at the second page which says "UP 63" on it, and at the bottom this looks to be

something to that effect. Is that your understanding of the property that we're talking about, right?

A. Yes.

Q. Above that says "JPB," what's JPB?

A. It's short for Peninsula Corridor Joint Powers Board, and we typically just denote that as JPB short for the longer name I just mentioned.

Q. Okay. And that's the railroad, right, there's an operating rail lines there; is that correct?

A. Correct. So JPB owns the abutting operating railroad corridor. We sold that to JPB, meaning Southern Pacific, in 1991, and we, meaning Union Pacific, have a freight easement within that corridor.

Q. Okay. And that's where -- like if I take Caltrain -- is that where the Caltrain also operates through that corridor?

A. Yes, it is.

Q. And then there's also freight trains that run through there, right?

A. That's correct.

Q. And then we're looking at the legend, I guess, down below the UPRR, that's where you own.

controllers in it, electronic equipment that controls railroad signals, and railroad signals are -- let's say you're to come up to a railroad crossing and the crossing gates come down and the lights and bells start ringing and flashing, those are signals. And so it could -- in that particular instance, I don't know what that signal cabinet actually controlled. It could have controlled also switches.

There are electronic switches that switch tracks. So if a train is coming along and they want to divert it to a spur, then that cabinet would be able to switch a train from a mainline onto a spur track.

Q. That would be cabinet -- that could switch from the JPB train line to the yellow spur that's reflected on page 66?

A. Yes.

Q. Okay. And then there's a blue 20-foot ingress/egress easement that looks like it's just -- again, it's adjacent to the green roadway, but that appears to be a survey saying -- is that as adjunct to the 20-foot roadway as well?

A. I believe so. The way it was colored on this map -- now this is a map that Dave Thatcher had

A. Yes.

Q. And that was -- that wasn't just to use in conjunction with a rail -- any railroad access to this property that was used to get to the property, right?

A. Yes, that's correct. So at the time the property that we sold to Patrick was leased by Schlage Lock, and it needed -- that was the only -- way to access it, was via the access road, otherwise it would be landlocked.

Q. And the nonexclusive easement for the access roadway is separate and apart from any railroad use, correct?

A. Not necessarily. It was used to access the property sold to Patrick, but directly abutting the access road is this rail easement. So that access road would allow, at the time, Southern Pacific forces, meaning employees, to use that nonexclusive access road to maintain the railroad tracks and the abutting easement area.

Q. The intent was also that when you sold to Patrick, for example, that he could use that access easement to access his property whether he was using it for railroad purposes or not?

A. Yes, that's correct.

real estate group.

Q. Okay. And with respect to, for example, for the sale to Patrick, what were you looking for Mr. Feagan to do?

A. So I had a prior aerial sale print, and I wanted him to revise the print to show the buyer named Patrick McNerney and also to revise the print -- let's see -- yeah, so initially that sale print just showed the fee property, the sale area that we sold to Patrick, and I wanted Doug to revise the print to show Patrick as the buyer and to also include the various easements that we had reserved in the 1990 sale to Tuntex on the print as well to sort of mirror the print that Dave Thatcher had prepared.

Q. Because you wanted to make sure that Patrick was getting the same easements that you reserved in the sale to Tuntex; is that correct?

A. Yes.

Q. And you say at bottom here, "These easements will be conveyed along with the property to Patrick McNerney. He will need to have the easements for the benefit for access, et cetera, as he will be negotiating with Universal Paragon, which owns the abutting Schlage Lock property to quitclaim

those easements to them eventually in exchange for better access." Do you see that?

A. Yes.

Q. So the entire purpose of getting Patrick these easements was so that he would have access to the property that he was buying from you, correct?

A. Yes, um-hum. That's correct.

Q. Then if you look at the third page of this exhibit, it's -- and I guess it's the way I printed them. I probably printed them wrong. Maybe make it bigger on your screen. It's UP0227. I just wanted to know what this document was.

A. UP --

Q. It's the third page of Exhibit 71 and --

A. Yeah. So what that is is a -- it's a val map schedule of property. So what this -- schedule property, and you can see it says "Schedule Property for Sheet 6" at the top right. So what this does is record -- or show the grantor grantee information. Again, the instrument, the date of the instrument and the recording information pertaining to the sale of railroad property.

So -- and when I try to blow this thing up, it's not really legible, it's blurred out, but what it illustrates -- and I just -- because I'm familiar

with this particular page and this val map, schedule property, it shows the easements that were reserved in the sale to Tuntex.

Q. And this is part of the records of Southern Pacific originally, and later Union Pacific?

A. Yes.

Q. And what -- and this is something that's kept by the railroad to keep track of what happens to the properties and the easements that it reserves, correct?

A. Yes.

Q. Okay. And what did you call this again, val map --

A. Yeah. So I'll give you the full name and then the -- the abbreviation. So the full name is valuation map, or for short val, v as in Victor, a, l as in Larry, map. So instead of saying valuation map every time, we would say val map. And this particular val map is a schedule of property. So the val maps -- like for instance, that Dave Thatcher print, the one where he colored the easements, that's a portion of one of our valuation maps, our property valuation maps, and then -- so those maps illustrate the actual parcels and -- that we own, and what we still own or what we have sold,

Q. I'll let you do it. Let me just rephrase the question.

As of 2014, had the railroad abandoned the access and other easements that were reserved in the sale to Tuntex?

MR. PREONAS: Same objections.

THE WITNESS: No, we had not.

BY MR. LOWENTHAL:

Q. As of 2014, had the railroad terminated those easements?

MR. PREONAS: Objection. Calls for a legal conclusion.

BY MR. LOWENTHAL:

Q. Let me rephrase it. As of 2014, had the railroad terminated the easements for the benefit of the property that had reserved in the sale to Tuntex?

MR. PREONAS: Objection. Calls for a legal conclusion.

THE WITNESS: No.

BY MR. LOWENTHAL:

Q. Okay. Okay. What's your understanding of what abandonment means, Mr. Krantz?

A. That would mean where the railroad, you know, decides that it doesn't need those easements

anymore, and then would, you know, if -- you know, if somebody came to us and said, Hey, you know, we want you to abandon those easements, we would review it and see if we still needed them and make a decision at that time if, whether we would abandon those and quitclaim those easements. In this particular case, the easements were not abandoned, and, as stated in the e-mails, we would not quitclaim those easements until something was -- there would be a resolution from an access standpoint.

So they were not abandoned, and we don't abandon our easements until we decide what, you know, whether we will relinquish them.

Q. And as of 2014 you had the -- the railroad, Union Pacific, had not decided to relinquish those easements; is that correct?

A. Yes, that's correct.

Q. Okay. If you look at the second page of Exhibit 72, your e-mail to Jonathan copying Mr. Pearce, it says, "Concerning the access easement and other easement rights that inure benefit of UPRR and its property, at some juncture, it may be appropriate to discuss possible quitclaim of these easements. However, consideration of doing so must

of -- I don't know, was it 40 or 50 years or whatever of selling --

A. A long time.

Q. A long time, that you told us about selling excess property to be developed by others, correct?

A. Yes.

Q. Okay. The next paragraph refers to a "lay down area," what's a lay down area?

A. So Universal came to us and they wanted to use our property. What a lay down area is, is basically like a contractor storage yard, you know, where they would, you know, store equipment and materials, whether, you know, whatever it might be, whether it be a generator or piping, you know, concrete pipe, PVC pipe, whatever, you know, rebar, whatever, you know, they might want to store. That's what a lay down area is used for.

Q. They wanted to be able to use your property when they were developing theirs; is that right?

A. Correct.

Q. And that was something that you were willing to entertain if you continued to own it, right?

A. It would be something we would look at and, you know, I have considerations. We don't want them

think he's just referring to the railroad easements, because the roadway doesn't show here as leading to the sale property. I'm looking here at the sale property. It shows EPN 5087-004. There's nothing connecting -- that's what we sold to Patrick, that's the fee parcel. So he's only referring to the railroad easements and the signal case easements.

Q. And so he wasn't -- as far as you understood, he wasn't referring to the crucial access roadway easement that we've been talking about earlier in your deposition?

A. That's correct.

Q. Okay. And if you look at the first page of Exhibit 48, you basically say, as Union Pacific no longer holds an interest in the referenced easements and that these interests were conveyed to Mr. McNerney, please contact him to discuss your interest in having the easement rights quitclaimed to UPC.

A. Yes, I see that.

Q. And I assume you never heard back from Universal Paragon after this, did you?

A. Not that I recollect, no.

Q. Okay. So then I just want to -- and Steve was nice enough -- I just want to make sure that

A. We sold the property and the associated easements.

Q. And you did so -- and the railroad did so pursuant a quitclaim deed?

A. Yes.

Q. Is that a pretty common way for the railroad to dispose of what you called "excess properties" previously?

A. Yes. We usually use quitclaim deeds to convey out our properties.

Q. And so prior to the break, we used the -- we were discussing the term "excess properties," correct?

A. Yes.

Q. And what is your definition of "excess properties"?

A. Properties that aren't used for railroad purposes, operating railroad purposes.

Q. Does it no longer make sense for the railroad to use them financially -- no longer makes financial sense for them to use those properties for railroad purposes?

A. Yeah, I mean, I don't know if it's for financial. Just for, you know, rail operations. We identify properties that aren't used for rail

operations any longer, so then we'll -- but to market them, sell them.

Q. And the property conveyed to Mr. McNerney, just so I don't have to keep saying "the property conveyed to Mr. McNerney," as a shorthand I'm going to call it the "JHP property," which stands for Jessie Historic Properties, which is the now owner of the property. Do you understand that when I refer to it as that?

A. Yes.

Q. Thank you. So would you consider the JHP property that the railroad transferred to Mr. McNerney in 2015 to be an excess property?

A. Yes.

Q. And as a general matter, what's your understanding of what -- once the railroad conveys these excess properties, how are they used?

MS. JOHNSON: Objection. Calls for speculation. Overbroad.

THE WITNESS: Yeah. Could you kind of rephrase what you're trying to --

BY MR. PREONAS:

Q. We'll be more specific. That's fine. What was your expectation when the railroad transferred the JHP property to Mr. McNerney in 2015. What was

your understanding of how it was to be used in the future?

A. At that time I believe Patrick was thinking about a residential project on the property, the fee portion that we sold. But then I don't know, I mean that can change. I don't know what ultimately he was going to use it for.

Q. And in connection with your duties as a representative, an employee of the railroad, you've dealt with other sales of excess properties in and about San Francisco, correct?

A. Yes.

Q. And as a general matter, when you dispose -- when the railroads sold excess properties in San Francisco, have they typically been developed for some use other than a railroad?

A. Yes.

Q. And were you involved with a prior sale of an excess railroad property to Mr. McNerney or one of his entities prior to the sale of the JHP property in 2015?

A. There was a parcel off of Harriet Street, a small triangular parcel, and then prior to that, I didn't recollect at the time, I believe he had purchased another former SP property near --

somewhere around, near 3rd and Townsend Street, but I wasn't -- I don't really remember that one particularly.

Q. But you did understand it was going to be developed by Mr. McNerney for some purpose other than railroad?

A. Yes.

Q. So I would like to clear up one issue that's -- I struggled with a little bit in this case, and that's regarding the deed of transfer, the quitclaim deed in 2015, which I believe is Exhibit 3.

MR. PREONAS: If you wouldn't mind bringing that up, I'm going to work on 2 and 3. So if you could get both of those ready.

MS. JOHNSON: He doesn't have --

THE WITNESS: I don't believe I have those. I have 77 through 84.

BY MR. PREONAS:

Q. Do you have 3 and 5?

A. Yeah. I've got them here. Hold on.

Q. Take your time.

A. So are we going to open both of them, or are we just going to focus on 3 first?

Q. Yeah, do you have 2?

A. Well, you know, yeah, he's not running a mainline railroad, so -- an operating railroad there. So that was the mainline, the Peninsula commute line that Caltran runs on.

Q. So the 2015 grant deed, that's Exhibit 2, did not include a conveyance of any right-of-way along the mainline, correct?

A. That's correct, yeah, it didn't include any mainline right-of-way.

Q. Okay. Continuing down to page 10 of the PDF, Exhibit 2, Bates page V2938. There's also a schedule 2 there entitled, "Drill and spur track easement"?

A. Yes.

Q. And I have the same question regarding parcel 1 not included, do you see where it says, "Parcel 1 not included"?

A. Yes.

Q. Okay. Do you have any understanding as to why parcel 1 Schedule 2 was not included in the 2015 grant deed to Mr. McNerney?

A. You know, again, we would not convey a portion of the mainline operating railroad right-of-way. It was not part of what we were selling him, so it would not be included.

conveyed to them --

MR. LOWENTHAL: Compound. Calls for speculation. Calls for a legal conclusion. Lacks foundation.

BY MR. PREONAS:

Q. You can answer.

Do you have my question in mind, sir?

A. Can you rephrase it differently because I think where you're going is not what's going on here.

Q. I don't want you to think about where I'm going. I just want you to listen to my question and answer. It's a straightforward question, which is: The grant deed in 2015 included a fence covenant because railroad's grantor did not want people accessing the mainline easement from the JHP property, correct?

A. Correct, for the specific purpose that's mentioned in the paragraph.

Q. Okay. What is that purpose?

A. To prevent access to or encroachment on the railroad right-of-way of grantor.

Q. So I would like to ask you about your understanding of how the easements were used historically with respect to JHP property. And

what's your understanding of when the last time they were actually -- there was actually rail in the easements?

A. I don't know.

Q. Do you have any records of when there was last rail in the easements?

A. No.

Q. Have you ever seen any rail in the easements?

A. I don't recollect.

Q. Okay. Do you recollect the first time you ever walked those easements?

A. When I met Howard and Jonathan -- Jonathan Scharfman and Howard Pearce on the property.

Q. Do you have an estimate as to when that was?

A. That would have been in -- I believe -- yeah, 2014.

Q. At that time you didn't see any rail easements?

A. I don't recollect. I don't remember if there was rail there or not.

Q. Did you ever have any discussions with Mr. Scharfman about the use of the easements for railroad purposes?

A. I don't believe so.
Q. Same question as to Mr. Pearce, Howard Pearce.
A. No, they just knew that the easements existed, and they wanted to talk about eventually having railroad quitclaim the easements.
Q. I want you to go back to Exhibit 69, if you wouldn't mind, Mr. Krantz, please.
A. Okay.
Q. Just let me know when you're there.
A. Okay.
Q. So you mentioned that you thought the first time that you visited the property was in 2014, correct?
A. Correct.
Q. And this e-mail attached -- I mean this e-mail dated is -- strike that.
Exhibit 69 is dated March 10th, 2014, correct?
A. Yes.
Q. Okay. Does that refresh your recollection as to whether or not you visited the property before that time or after that time?
A. I believe it was after that time because we just e-mailed each other, and then we met on the

ground subsequent to March 10th of 2014.

Q. So taking a step back from this Exhibit 69, Mr. Krantz, before we took the break, I think I'm going to paraphrase a little bit, but you can tell me if I'm right or not, but my question is: As part of your duties for the railroad as an executive that dealt with the sales of these excess properties, part of your job was to attempt to maximize their value, no?

A. Yes.

Q. Okay. And you did so by doing things like making sure that it had appropriate access, correct?

A. Yes.

Q. And is it fair to say that the type of access that you were concerned about took into consideration the intended use of the excess property in the future?

A. Yes. In this instance we already had access through the reserved easement, and Universal Paragon was talking about providing access from their abutting Schlage development, so that would have been a benefit on the property, and if that took place, then the railroad might consider, you know, relinquishment of its easements, but that never took place.

Q. So I would like to kind of parse that out a little bit, and what I would like to do -- you mentioned access as being important, correct?

A. Yes.

Q. And you said, I think I heard you say, Well, if you could obtain access to the JHP property by way of the redevelopment on the Visitacion property that would be of benefit to the JHP property, correct?

A. Yes.

Q. And so when you say "access," I would like to get your understanding of what you mean by access when you're saying access to the JHP property and being beneficial? What specific kinds of access are you referring to when you say "access"?

A. That would be vehicular and pedestrian access.

Q. But not rail access?

A. No.

Q. So is it fair to say that in or about 2014 subsequent to this March 10th, 2014, e-mail, that's Exhibit 69, that your discussions with Mr. Scharfman and Mr. Pearce were primarily concerned with vehicular and pedestrian access to the JHP property?

A. I'm sorry, repeat that again.

Q. Okay. You said that access was important, and you said --
A. Yes.
Q. -- what type of access, correct?
A. Yes.
Q. And then you said "vehicular" and "pedestrian"?
A. Yes.
Q. And not rail access?
A. Correct.
Q. So my question to you was: When you were having these discussions with Mr. Scharfman and Mr. Pearce in 2014, was your concern regarding access to insure that there was vehicular and pedestrian access to the JHP property?
A. Yes. Already had access. They had broached access from their property to -- well, it's now the JHP property, and then I come to find out about the retaining wall and the large grade differential, which prevented access, so that was a problem, and thus, you know, there was no way we were going to relinquish our access easement.
Q. Okay. And so the deeds of conveyances that relate to the 2015 deed that was Exhibit 2, it contains three easements, correct?

A. You're talking about Exhibit 2 now?
Q. Yes.
A. 2. Okay.
Q. I don't need you to look at it. I'm just trying to get your general understanding of -- when we say "the easements," what specifically, in your mind, does that mean?
A. Well, we conveyed the easement rights that we reserved in the 1990 sale to Patrick, that would be the access easement, and there were two access easements, a railroad easement and a signal box easement.
Q. So you've listed what your understanding of those three easements are, and I appreciate that. I would like --
MS. JOHNSON: I believe he was referring to access easements plural, which would be two.
BY MR. PREONAS:
Q. Let's just take the rail easement, Mr. Krantz. What's your understanding of what that rail easement was used for historically?
A. It was used for railroad purposes and communication purposes. It's part of the reservation -- reserved communication rights in there as well for fiber optic telephone, telegraph.

I don't have the exact --

Q. Do you have any of personal knowledge as to the communication uses of the access easement?

A. No. I don't know if there are communication lines in there.

Q. Did you see any in 2014 when you visited the easements?

A. Well, I don't recollect seeing anything, and if there was anything, it probably would be subterranean.

Q. But you're not aware of any records of the railroad that would indicate the location of subterranean communication lines within the easements?

A. No.

Q. And if you had located them, you would have produced them pursuant to --

A. Yes.

Q. So you looked for them but didn't find them?

A. I looked for and produced whatever was responsive to the subpoena, so...

Q. And same question with respect to actual rail within the easements, you don't have any records of the railroad that you located that relate

to the location of rail within the easements?
A. No. The only thing I can say is that in 1990 -- reserve of railroad easement tracks.
Q. How do you know that?
A. Well, just based on experience.
Q. I believe you said you weren't involved with the 1990 transaction, correct?
A. That's correct. I guess I couldn't speculate, but that would normally be the case for reservation of a railroad easement, is if there were tracks there. I do know that there were tracks at one point, I don't know when they went away, but they crossed Bayshore Boulevard and served a property across the street to the west, so that's what I understand.
Q. Do you have an estimate as to when they were removed?
A. No, I don't.
Q. Do you have any other personal knowledge about the location of rail or fiber optic that we haven't discussed yet?
A. I know there is fiber optic in the mainline right-of-way. I was looking at the valuation or val map and -- or I did see a reference to Sprint, which actually used to be a subsidiary of Southern

there might be. I don't know. It's not part of what I do.

Q. You've never leased property to -- you've never been involved in a lease of Union Pacific property to a telecommunications provider?

A. Personally, no.

Q. But you do do your commercial leases at Union Pacific property in connection with your duties?

A. No, I'm not involved in leasing railroad property. Just strictly selling.

Q. Have you ever been involved in a sale of Union Pacific property to a telecommunications provider?

A. No, but I do know that when we sell UP property, we ascertain whether or not there is fiber optic impacting the sale property, and if there is we reserve an easement for the fiber optic line.

Q. But you didn't do that in the case of the 2015 deed, did you?

MR. LOWENTHAL: Objection. Calls for a legal conclusion.

THE WITNESS: No, I did not. But I do know that the easement had communication rights associated with it.

existing facilities, telephone, telegraph, television" --

A. Are we talking about the same -- you're talking Exhibit 5, page 5 of the PDF?

Q. Yes, sir.

A. Okay. I'm going to count down 1, 2, 3, 4, 5, 6, 7. Starts with the word "removing" or "remove existing"? That's what I'm seeing.

Q. No. I'm sorry, line 9. Pardon me.

A. Okay. Starting with the word "Every."

Q. Yeah. So I believe your testimony earlier was that you were not aware of any fiber optic lines in easements, correct?

A. I know for sure there was one in the mainline. I don't know if there was one in the drill and spur track, but that right is reserved.

Q. I'm not asking about what's reserved. I'm asking about your personal knowledge of what is --

A. Yeah, I don't know if there was one in there or not.

Q. Okay. And when you looked for records, you didn't find any records of them, correct?

A. Yeah, I don't recollect.

Q. You don't recollect looking for records?

A. I don't recollect if there was fiber optics

in there.

Q. Okay. But you didn't produce any records of fiber optics within the easements, correct?

A. That's correct.

Q. Did you locate any records regarding telephone equipment in the easements?

A. No.

Q. Have you ever seen any telephone equipment in the easements?

A. I don't know if there is or not.

Q. But you don't have -- but you weren't able to locate any records regarding telephone equipment?

A. I didn't find any or produce any, no.

Q. But you did look?

A. I looked for what was, you know, responsive to the subpoena.

Q. Subpoena asked for documents relating to easement so that --

A. Right.

Q. -- within the purview of your search, correct?

A. Yes, and I didn't see anything regarding that.

Q. Same question as to telegraph equipment.

A. I'm not aware of any in there.

Q. Didn't locate any records regarding telegraph equipment?
A. No.
Q. Same question as to television equipment.
A. No.
Q. You looked for records of television equipment within the easement and you didn't locate any, correct?
A. No.
Q. Correct? Sorry, I think we -- I think there was a double negative in my question, but you didn't find any records of television equipment?
A. I did not.
Q. Okay. Any equipment -- did you locate any records of -- related equipment?
A. No, I didn't. You know, the language talks about --
Q. Sir, there's no question pending.
A. Pardon me?
Q. There's no question pending.
A. I'm sorry, can you repeat that?
Q. You just have to wait until I ask you a question, sir.
A. Oh, okay. I was just trying to clarify.
Q. It's okay. If I need clarification, I'll

beginning with the words "Upon abandonment or termination."

A. Okay. Yeah, I see it.

Q. Okay. So you presumably in your vast experience with Union Pacific Railroads dealt with the abandonment and termination of easement rights, correct?

A. Yes.

Q. Is this type of language common in other easement grants reserved by -- or granted to Union Pacific that there's a provision for their abandonment?

A. Yeah, so these are perpetual, exclusive easements in favor of railroad. We do not abandon any easements until we determine -- in our sole and absolute discretion whether or not we are willing to terminate the easements. They are not abandoned until we take specific action, meaning a quitclaim.

Q. Under what circumstances has Union Pacific previously abandoned or terminated easements and executed a quitclaim deed in a form satisfactory --

MR. LOWENTHAL: That's actually compound.

MS. JOHNSON: Quite broad.

BY MR. PREONAS:

Q. You can answer.

A. If someone came to us and they wanted an easement quitclaimed, we would look at the specific situation, that we determine that in our sole and absolute discretion whether or not we wanted to quitclaim the easement. Then we would go out internally to different departments to make sure the easement wasn't needed any longer. And if we got feedback from various internal sources that it wasn't and we received appropriate compensation from the party requesting the quitclaim, then we would look to -- and I would get my management's formal approval. I have to go through a very formal extensive process internally to get the release and quitclaim it, any easement that we have, and that means monetary consideration, that means internal feedback from up to 12 different departments at the railroad, and just to make sure that it isn't needed. And then we go from there to work with the requesting party to formalize a -- first we enter into an agreement for release of easement, spells out all of the terms of the release, including proper as-is released and indemnification language to the railroad, and then spelling out the compensation that we're going to be paid. And then once the party executes the agreement, we're

effectively in contract at that point, and then we will execute the release and quitclaim of easement deed.

Q. Thank you.

A. You're welcome.

Q. What are those 12 departments?

A. Oh, gosh. Our operating department, our manager or track maintenance, our engineering department, our property management people, our track maintenance people, our industrial development department. Fiber optics department. Gosh -- there's like 12 different departments that I have to approach, and it's like herding cats to get everybody to respond --

Q. Thank you. I have other cases where I'm asking railroads to do that, so it's a good peek behind the curtain for my personal selfish reasons.

But did you ever do any of that, take this issue to committees like those?

MR. LOWENTHAL: With respect to what? Any easement or --

MR. PREONAS: With respect to these particular easements I'm talking about today.

Q. Is there any internal discussions with Union Pacific regarding releasing the easements

beyond, you know, this e-mail message from David Thatcher saying maybe these two parts of it are no longer necessary?

A. Yes. So I went through a similar process for the sale of the property and conveyance of the easements, and if UP was going to need them for its purposes, so that's why we moved forward with the transaction with Patrick about the releases that I needed internally.

Q. And so all those 12 departments didn't have any further need for the easements that were quitclaimed to Mr. McNerney in 2015?

A. Yes, that's correct.

Q. Because they were no longer necessary to support any of those 12 different departments within Union Pacific?

A. Yeah, I mean, that would be correct, yeah, we -- we didn't need them for our purposes, but, you know, they were -- we conveyed them to Patrick for whatever he would want to use them for.

Q. Everybody internally within Union Pacific signed off on the release of these -- of the quitclaiming of these easements rights to Mr. McNerney?

A. Yeah.

Q. All right. And when we were reviewing this exhibit earlier, I believe you testified that JHP property at that time -- and if I've got it wrong, let me know -- was leased by the Schlage Lock Company at some point.

A. I'm sorry, I was distracted for a second. Could you repeat that, please?

Q. It was a bad question anyway.

At some point when we were discussing Exhibit 70 before lunch, there was a mention that JHP property at one point was leased by the Schlage Lock Company.

A. Yes.

Q. And what's your understanding of what that lease entails and was for?

A. So as you're aware, Schlage Lock had a manufacturing facility directly abutting the property we sold to Patrick. They leased that property, I understand, for a very long period of time, and they had buildings on there associated with their adjoining property, it was part of their manufacturing operation, I believe, or some ancillary use, anyway, related to their lock manufacturing operation.

Q. Do you have any estimate as to the time

frame of that leasing of the JHP property by Schlage for that purpose, to support its manufacturing operations on the adjacent --

A. I believe they leased it for -- you know, I'm just -- leased for 50 years, for a very long time.

Q. So this e-mail describes your discussions with, you know, Visitacion Valley representatives regarding somehow purchasing this property or exchanging this property, correct?

A. Yes.

Q. Okay. And in your e-mail about -- in the second paragraph about halfway through there's a sentence begins with "The two smaller properties they have offered," let me when you have found that.

A. Yes, I see that.

Q. Okay. So I think your testimony was you wanted -- you suggested that UPC purchase this property, and they said, no, we want to do an exchange, correct?

A. That's correct.

Q. And in your sentence says, "The two small properties would less developable." What's your meaning with "less developable"?

A. Again, just from my recollection, the

properties were -- we didn't know anything about the zoning, anything about the environmental history. I don't recollect exactly the configuration of the properties, but definitely what they were proposing to swap with us was not as good as the property that we were looking to sell. And we don't typically -- I've never done a land swap. We don't typically do those in any event. So it just was not of interest.

Q. Do you recall anything specific about what was less attractive about those two properties?

A. No. Again, I don't remember. It's just -- it wasn't something, again, we would really want to entertain in the first place and what -- again, what they were proposing, I felt were -- those parcels were not as good as what we had, and it wouldn't have been a good swap if we were even to consider doing it.

Q. So I'm turning to the second page of Exhibit 70. This would be --

A. Okay.

Q. -- the map. You mentioned, this is a sale print that Southern Pacific prepared. Do you have any background information as to how this was prepared?

A. So our property engineering group within

our real estate department, we had a draftsman who would prepare prints like this related to properties we would sell, and these would be an attachment to a purchase and sale agreement, give a visual representation of the property we were selling, and, you know, in this case, what areas we were reserving back in terms of easements.

Like, if you look at the legend -- and again, this isn't colored, but it says "yellow" on the top, under "Legend," on the left side it says "yellow," that would normally be a yellow highlighter outlining the extent of the sale area, and then the various shaded areas representing the easements that were reserved.

Q. So I would like to ask you about -- there is -- on this document there's an intersection of Sunnydale and Hart Street, do you see where I'm looking?

A. Yes, uh-huh, I see that.

Q. So I guess you would call that the south. And in between -- near that intersection there's a square rectangle depicting a "Prefab metal office building," it looks like. Do you see where I'm looking?

A. Yes.

MR. LOWENTHAL: I don't. Can you just repeat, what was the intersection there?

MR. PREONAS: So, Jeff, Hart runs across the center of this diagram --

MR. LOWENTHAL: Oh, I see. Okay. I'm with you. I'm sorry, I -- it's vacated -- Hart (Vacated) Street. Sunnydale (Vacated), right?

MR. PREONAS: Right.

MR. LOWENTHAL: Okay.

BY MR. PREONAS:

Q. So do you have any personal knowledge as to what that prefab metal office building was?

A. No, I don't.

Q. We just know it's no longer there, correct?

A. No longer there. It says in the legend -- God, this is -- it says "SPT Co Freight Claims Office," that's what this says. So I guess we must have had some of our claims department people housed there at one point.

Q. And is it fair to say that you might have had a freight claims department there because it was adjacent to an existing spur track?

A. Not necessarily. We owned a chunk of land, and they plopped a metal prefab office there, and I don't think it necessarily had anything to do with

And thus -- initially when I was in contact with Howard, it mentions something about providing access to our property from the internal streets that were going to be developed on the Schlage property and -- but due to that grade differential, that would make it, you know, impossible to access our property except via our reserved access easement. So anyway.

As I recollect talking about this -- in talking with Patrick and with Howard, I think there was a thought, anyway. At one point to maybe build a type of development with underground parking or storage in the units above where those units might be at the same grade as the internal streets and, you know, due to the retaining wall the subterranean area could be used for parking or storage.

But, again, that's all up in the air. I don't know what ultimate plans were going to be developed, and what's planned for the property, so I don't know what became of that.

Q. And can you explain to me the issue with accessing the property via Blanken Avenue? What's the impediment there?

A. So Blanken runs across the north end and then connects to Tunnel Avenue, and the portion of

the property that we owned up near Blanken was at a much higher grade level -- I guess at a much higher grade than the rest of the property. There was a sharp drop-off of probably 15, 20 feet, maybe, from the portion that abutted Blanken Avenue down to the balance of the property that made access, really, not feasible from that end of the property.

Q. So you were primarily expressing your concern to Mr. Scharfman about getting vehicular and pedestrian access to the JHP property, correct?

A. Yes, uh-huh.

Q. You weren't concerned about rail access, were you?

A. No, not at that time, no.

Q. Communications cables?

A. I can't speak to that, but those rights ran with the easements.

Q. Look at number 73, please, Mr. Krantz.

A. Okay.

Q. Do you recognize this document?

A. Yes.

Q. And what is it?

A. It's an e-mail to Patrick where I attached various letters, various correspondence with the City of San Francisco about the Schlage Lock

to look at things that haven't been produced and have not been presented to him as an exhibit in this deposition.

BY MR. PREONAS:

Q. Do you recall if there's any contingency in connection with the purchase and sale agreement, Mr. Krantz?

A. He had a feasibility time frame to study the property -- you know, basically a due diligence time frame, if you will -- feasibility time frame to determine if he was willing to go through with the purchase. I don't remember the exact time frame, but typically with -- I know this was a short close of escrow transaction, so typically we look at a 60-day feasibility time frame and close 30 days thereafter. I don't recollect in this specific instance if it was 60 days or slightly longer.

Q. But he was an experienced real estate developer that was going to provide --

A. Yes.

Q. -- for himself --

A. Yes --

(Simultaneous speakers.)

(Reporter clarification.)

THE WITNESS: Sorry.

BY MR. PREONAS:

Q. Yeah, just let me finish my question, Mr. Krantz, and then --

A. Okay.

Q. My question was, Mr. McNerney was an experienced real estate developer that was going to have some form of investigation in connection with the purchase of the property that he entered into with respect to the PSA.

A. Yes.

Q. And ultimately he elected to proceed with the purchase of the property, correct?

A. That's correct.

Q. I would like you to go back to 73 for a minute, Mr. Krantz.

A. Okay.

Q. I would like you to look at the sixth page of this PDF, which is a photograph of...

A. Okay.

Q. Do you recognize this photograph?

A. Yes.

Q. Okay. And what is it?

A. It's a depiction of the fee sale property.

Q. In the legend there's two descriptors there. One says "UPRR right-of-way," do you see

A. An e-mail to Patrick McNerney.
Q. I'll also contend what appear to be some handwritten notes. Do you recognize those notes?
A. Yes, I do.
Q. And that's your handwriting?
A. Yes, it is.
Q. Your initial stamp there?
A. Yes, it is.
Q. What's your middle name?
A. Michael.
MR. LOWENTHAL: Got him. Caught him.
MR. PREONAS: Now I get to address him as Mr. Robert Michael Krantz for the rest of the deposition.
THE WITNESS: So formal.
BY MR. PREONAS:
Q. Mr. Robert Michael Krantz, directing your attention to the second sentence of your handwritten notes. Are you with me?
A. Yes.
Q. Okay. It says, "Not sure last time track easement used." That was your recollection in December of 2014?
A. Again, I don't know if Patrick was asking me that, or if I was just, you know, noting down

that I wasn't sure the last time that the track easement was used.

Q. So you don't know -- your best recollection today, you can't tell me whether -- strike that.

You don't know whether or not -- you're not sure the last time the track easements were used or Mr. McNerney was not sure, correct?

A. Yeah, I would say so.

Q. I think we have covered this previously, but you don't have any personal knowledge as to the last time the track easements were used, do you?

A. No, I don't.

Q. You weren't able to locate any records of such use, correct?

A. No, I wasn't.

Q. Okay. And turning to the second -- or the third sentence of your contemporaneous notes, Mr. Krantz.

A. Yes.

Q. It says you used the access easement from Sunnydale in March 2014, correct?

A. Yes.

Q. Do you recall how you used that access easement?

A. Yeah, I came in off of Bayshore Boulevard

Q. So in that third sentence you described an access easement, correct?
A. Yes.
Q. And what's that referring to?
A. That's referring to the roadway easement that runs from Sunnydale to the sale property or access premises.
Q. Did you ever mention the rail easements for spur and drill and track to Mr. Phillips?
A. In the last sentence I mentioned that UP, a successor to Southern Pacific, is able to convey its interest in the various easements. So that means the roadway, two roadway easements, signal box easements -- rail --
(Reporter clarification.)
THE WITNESS: Okay. I was just saying that Union Pacific as successor to Southern Pacific was able to convey its interest in the various easements reserved in the Tuntex deed, so those easements are the two roadway easements, the signal box easement, and the railroad easement.
Q. What's your understanding of the historical use of the signal box easement?
A. Again, the signal -- like a signal case or a signal box is used -- it houses electronic

components that serve different purposes. It can be used for -- again, I think I described it earlier. If you come up to, like, a railroad crossing, if you're on a street and a train is coming, the cross arms come down and the signal bells go off and the lights flash. Those -- that componentry will be in a signal box, or in cases there might be an electronic switch, so -- with the rail easement -- you know, for that easement to be used for those tracks there could be an electronic switch in there that could switch. So if railcars get spotted on that easement, the equipment to -- you know, for switching that railroad switch could be inside the box and could be thrown to allow the railcar to be -- come off of the mainline and onto the railroad easement, the tracks on that easement.

Q. It's to direct traffic on the rail?

A. To direct traffic, yeah. Or it could be used for, you know, again, other purposes for signalization. You know, if there are trains using the mainline and they need the train to stop to let another train go by, or let's say the Caltrain is coming and, you know, they need to signal a freight -- the freight -- train operator, you know, to stop. It could -- there's various lights on the

railroad, signal lights that control traffic on the -- on the railroad and advise the rail -- train operators what to do, not to do, whether they can proceed or whether they need to stop.

Q. Railroad equipment, essentially?

A. Yeah, it's a railroad-related use, yes.

Q. Signal box is a term of art in railroads, correct?

A. Yeah, it's a railroad-related piece of equipment.

MR. PREONAS: Why don't we take just two minutes, Jeff. I'm going to check my notes, and I'm going to take a bio break, and then finish up.

Is that all right, everybody?

MR. LOWENTHAL: Okay. So we're going to take five minutes now? I have probably ten minutes.

(Recess.)

(Exhibit 83 marked for identification.)

BY MR. PREONAS:

Q. Okay. I have one more exhibit I would like you to look at, Mr. Krantz, and that's Exhibit 83, please.

A. Okay. I have it.

Q. Do you recognize that document?

A. What is it? I don't. This is an SP form

about -- referring to the phrase "excess property." Excess property doesn't necessarily mean that you've abandoned all the easements that are appurtenant to that property, does it?

A. That's correct, yeah. It's surplus property that we can sell, along with any easements that are appurtenant to the property.

Q. Right. Because, for example -- and that's important for an access easement, because without the access easement, you would be selling landlocked property and there wouldn't be a big market for it, right?

A. Right, and you can't sell landlocked property in the state of California.

Q. Can you explain to me as a novice, what's a drill track as opposed to, say, a spur track? What are those -- as opposed to a mainline, can you just tell us what those are?

A. Sure. So a mainline right-of-way is -- something that you might be able to understand or relate to would be, like, the Caltrain line that runs from San Francisco, down to San Jose and south to Gilroy, that's a mainline railroad.

A drill track is a track that comes off of a mainline, and kind of like what it says, it drills

outside of the mainline and drills through a different area like into an industrial park, for instance, and then coming off of the drill track typically we'll -- you know -- and that's if you have an extensive network of rights-of-way that -- so -- well, back up.

So the drill track comes off the mainline, and then you will have spur tracks that come off of the drill track that might go into other properties, like warehouses and things like that. But a drill track is kind of like -- almost like a mainline but it's not -- within a mainline corridor. It's like -- it's like another rail line that comes off, and then you have spur tracks that come off of the drill track. But in this case, with this property, there was just a spur track that came off of the mainline, just one track instead of multiple.

Q. And that was to service the industrial area adjacent to the mainline?

A. Yes.

Q. So, in other words, a user of the property could run trains away from and towards the main -- or cars towards and away from the mainline in order to gain the benefit of the transportation facility provided by the mainline.

the two.

But I would say, though, if there is an alternate that's reasonable between the parties, and, you know, they can strike a deal, and Patrick is satisfied that the new access gives him -- or the new -- the proposed access meets his needs and satisfactory for his use, then, you know, that's between the parties, and then maybe something could be worked out. I don't know. That's just my general thoughts on it.

BY MR. PREONAS:

Q. Okay. Mercy.

A. Sorry for the longwinded explanation.

MR. LOWENTHAL: It was fine. It was fine.

BY MR. PREONAS:

Q. It sounds like you agree there's an alternative for vehicular and pedestrian access, other than outside of the deeded easements?

A. Yeah, I think so. There could be.

MR. PREONAS: Thank you. That's all I've got.

MR. LOWENTHAL: Great. Thank you very much.

THE WITNESS: You're welcome.

MR. LOWENTHAL: And, Karen, you're going to

expedite this for me and get it to me?

THE REPORTER: Yes.

MR. PREONAS: I would like an expedited to us, too, please, Ms. Aligo. Thank you.

(Deposition concluded at 3:12 p.m.)

REPORTER'S CERTIFICATION

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: May 21, 2021

Karen Aligo

_____

KAREN ALIGO
CSR No. 13418

DEPOSITION ERRATA SHEET

Assignment No. J7014299

Case Caption: Visitacion vs. 424 Jessie

The Witness: ROBERT KRANTZ

Date: May 20, 2021

DECLARATION UNDER PENALTY OF PERJURY

I, the undersigned, hereby declare that I am the witness named in the within matter, that I have read the foregoing deposition and know the contents thereof, and I declare that the same is true to my own knowledge except as to those matters which are therein stated upon my information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Signed on the_____day of_____,
20___, at _____, California.

_____
ROBERT KRANTZ

EXHIBIT A-70

TO

DECLARATION OF STEPHEN G. PREONAS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON COMPLAINT, OR ALTERNATIVELY, SUMMARY ADJUDICATION ("Preonas Opp. Decl.")

Visitacion Investment, LLC v. *424 Jessie Historic Properties, LLC., et al.*

San Francisco County Superior Court Case No. CGC-19-579667

Description of Exhibit:

Exh. 70 to Deposition of Robert Krantz as PMK of Union Pacific Railroad –
E-mail from Robert Krantz to Chris Goble of Universal Paragon Corporation dated July 10, 2014 and attached "Sale Plate" Map dated March 20, 1990 prepared in connection with the reservation of the Railroad Easement.

EXHIBIT A-70

Re: LOI's for Former Portion of Southern Pacific Railroad Property (Schlage Lock--Folder 1567-58)--UPDATE

Chris D. Goble to Robert M. Krantz 07/10/2014 08:02 AM

Rob - I am in complete agreement with your assessment. Great work!

Robert M. Krantz Chris, I wanted to give you an update and my th... 07/09/2014 07:05:53 PM

From: Robert M. Krantz/UPC
To: Chris D. Goble/UPC@UP
Date: 07/09/2014 07:05 PM
Subject: LOI's for Former Portion of Southern Pacific Railroad Property (Schlage Lock--Folder 1567-58)--UPDATE

Chris, I wanted to give you an update and my thoughts on moving forward. I have given folks a couple of weeks more and have received a total of three offers for the Schlage Lock property as shown in the table below, inclusive of the one from River West that I mention in my 6/23/14 email. I had contacted a number of parties that would be potentially interested in this site and also posted the Property on Loopnet for the past couple of weeks. The AMG offer came from Loopnet and I have fielded other calls as well. Things have gone quiet now re. possible other interest and those who were kicking the tires have decided not to submit offers for various reasons.

I have given abundant time consideration to Universal Paragon (UPC), the abutting owner, to submit an offer . Their Board met last Friday and have proposed a land swap for two small parcels they own nearby that is part of their "Baylands" project. The Baylands is a 500 acre former SPTCo. yard that we sold to them in 1991 that abuts the Schlage Lock property. I advised UPC that we typically are not interested in such transactions. I met with them in San Francisco yesterday at the Board of Supervisor's meeting where their project was to be approved, and discussed their proposed swap. The property they want to swap, besides being former railroad property (unsure of contamination issues), is made up of two smaller parcels than our one larger Property, and their Baylands project is years away from happening. If we did an exchange, we would be stuck with land with limited development and sale potential in the near term. The two smaller properties they have offered would be less developable and there is no information from them as to the zoning and proposed land use for their parcels. I am recommending that we formally advise UPC that we are not interested in a land swap. I have been asking them to submit an offer for the past two + months. While UPC is the most logical purchaser, they have advised they have too much on their plate with their Schlage redevelopment and Baylands project and seem disinclined to spend the necessary money to acquire our land, thus the land swap proposal. This may potentially change if we tell them we are not interested in the land swap but I believe we have given them an adequate amount of time to put their best foot forward. As information, UPC's Schlage project was continued to next week by the SF Board of Supervisors yesterday, accounting labor disputes re. UPC's project.

I have not received any other offers other than those shown and I am inclined to proceed with Patrick McNerney. His price is the highest and Feasibility and Closing time frames the shortest and he will pay his real estate agent's fee, putting more money in UP's pockets than the other offers. His agent, Chris Harney, who owns HC&M Commercial Real Estate in S.F., is someone I have known for a number of years and is well connected in San Francisco. Chris advised that Mr. McNerney has a $20 million exchange and just closed with Chris on a $7 million property in San Francisco. McNerney develops residential housing in San Francisco and owns Martin Building Company, a large developer there. This is a positive as he has significant development experience in San Francisco and knows his way around. Mr. McNerney is very motivated to close escrow due to his exchange needs. There is a good likelihood he can close the sale this year, not accounting any unforeseen issues. I plan to submit an appraisal request to LLB unless you feel otherwise. I believe the offered price for a quick close, is consistent with what we have been selling our other industrial properties for in San Francisco. An extended closing time frame (for more money to UP) did not seem to be of interest to the three potential buyers.

EXHIBIT 70

UP0061

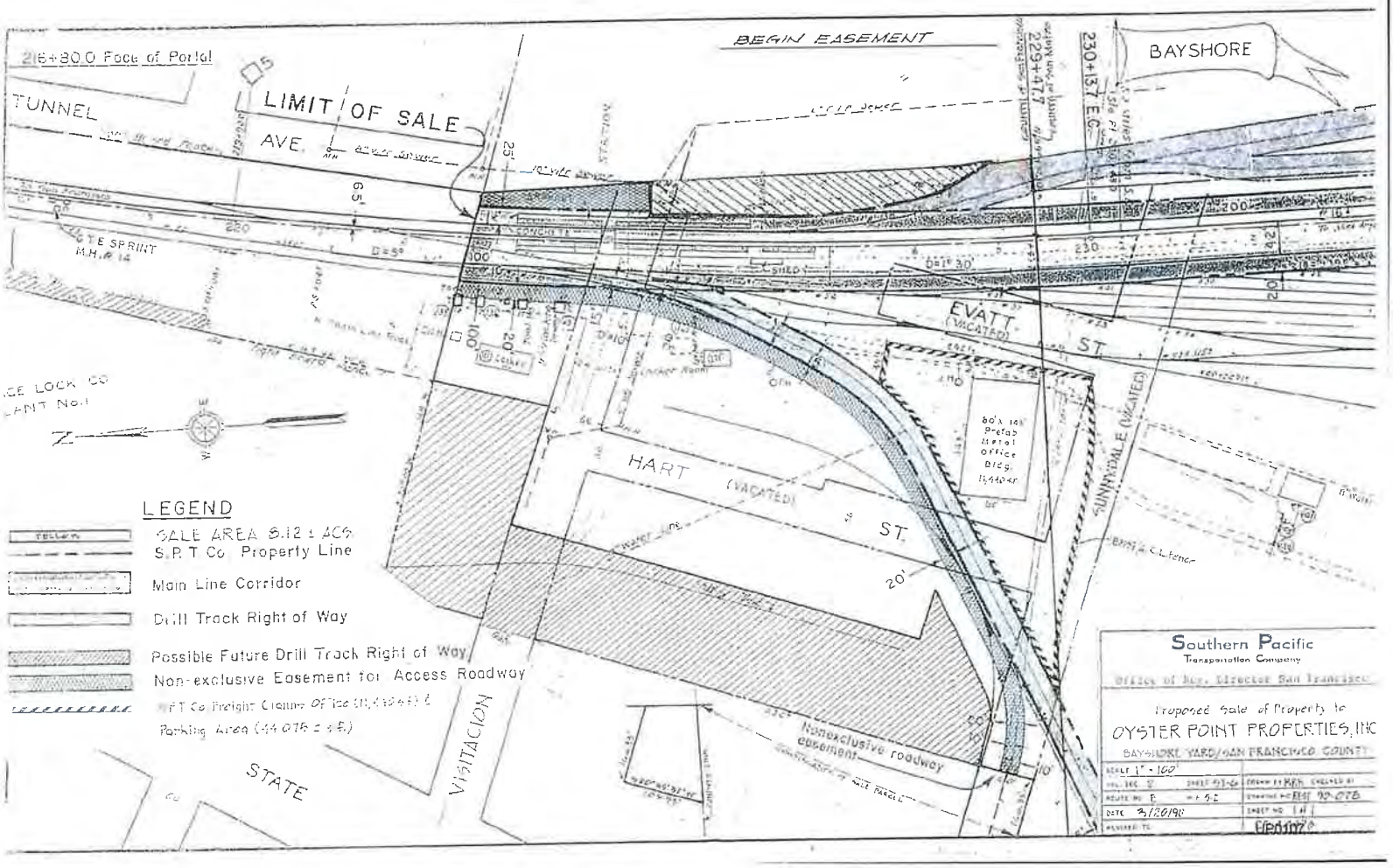

216+80.0 Face of Portal
TUNNEL
LIMIT OF SALE
AVE.
BEGIN EASEMENT
BAYSHORE
230+13.7 E.C.
229+91.7
STATION
EVATT (VACATED) ST.
HART (VACATED) ST.
SUNNYDALE (VACATED)
80'x 16' Prefab Metal Office Bldg. 1,440 sf
Nonexclusive roadway easement
VISITACION
STATE
LEGEND
SALE AREA 5.12 ± ACS
S.P.T. Co. Property Line
Main Line Corridor
Drill Track Right of Way
Possible Future Drill Track Right of Way
Non-exclusive Easement for Access Roadway
Southern Pacific
Transportation Company
Proposed Sale of Property to
OYSTER POINT PROPERTIES, INC
BAYSHORE YARD/SAN FRANCISCO COUNTY
SCALE 1" = 100'
DATE 3/20/98
Exhibit C

EXHIBIT A-71

TO

DECLARATION OF STEPHEN G. PREONAS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON COMPLAINT, OR ALTERNATIVELY, SUMMARY ADJUDICATION ("Preonas Opp. Decl.")

Visitacion Investment, LLC v. *424 Jessie Historic Properties, LLC., et al.*

San Francisco County Superior Court Case No. CGC-19-579667

Description of Exhibit:

Exh. 71 to Deposition of Robert Krantz as PMK of Union Pacific Railroad –
E-mail from Robert Krantz to Douglas Feagan dated October 17, 2014 and attached Map

EXHIBIT A-71

Revised Sale Print for Property in San Francisco--Schlage Lock (Folder No. 1567-58)

Robert M. Krantz to: Douglas K. Feagan 10/17/2014 06:40 PM

Hi Doug. Please see attached aerial sale print dated 6/4/14. I would appreciate having the print revised to show the Buyer name as follows: **Patrick McNerney.**

I have also attached a print that Dave Thatcher had prepared that shows some easements that were reserved in the sale from SPTCo. to Tuntex in 1990. Along with the print is the Schedule of Property from val map SPTCo. CA V-2/6 (I) that illustrates Cust'd No, **67700** highlighted in yellow The Schedule shows the deed from SPTCo. to Tuntex (USA) Inc. and an easement from Tuntex Property Inc. to SPTCo. as filed with the Deed 67700. This deed is what reserved the various easements shown in the DPT print. Also attached are some maps provided by Universal Paragon, the abutting property owner. The two maps as prepared by BKF Engineers, and specifically map C2 show the reserved easements.

Please update the sale print to also show the various easements as reserved in Deed **67700** that benefit the sale property. These easements will be conveyed along with the Property to Patrick McNerney. He will need to have the easements for his benefit for access etc. as he will be negotiating with Universal Paragon, which owns the abutting Schlage Lock property, to quitclaim those easements to them eventually in exchange for better access. The better access is shown in the BKF map (1st page).

Thank you Doug. Please let me know if you have any questions.

Robert M. Krantz, Director-Real Estate
Union Pacific Railroad
2603 Camino Ramon, Suite 200
San Ramon, CA 94583

Direct: 925-242-2100
Fax: 925-248-0301
Email: rmkrantz@up.com

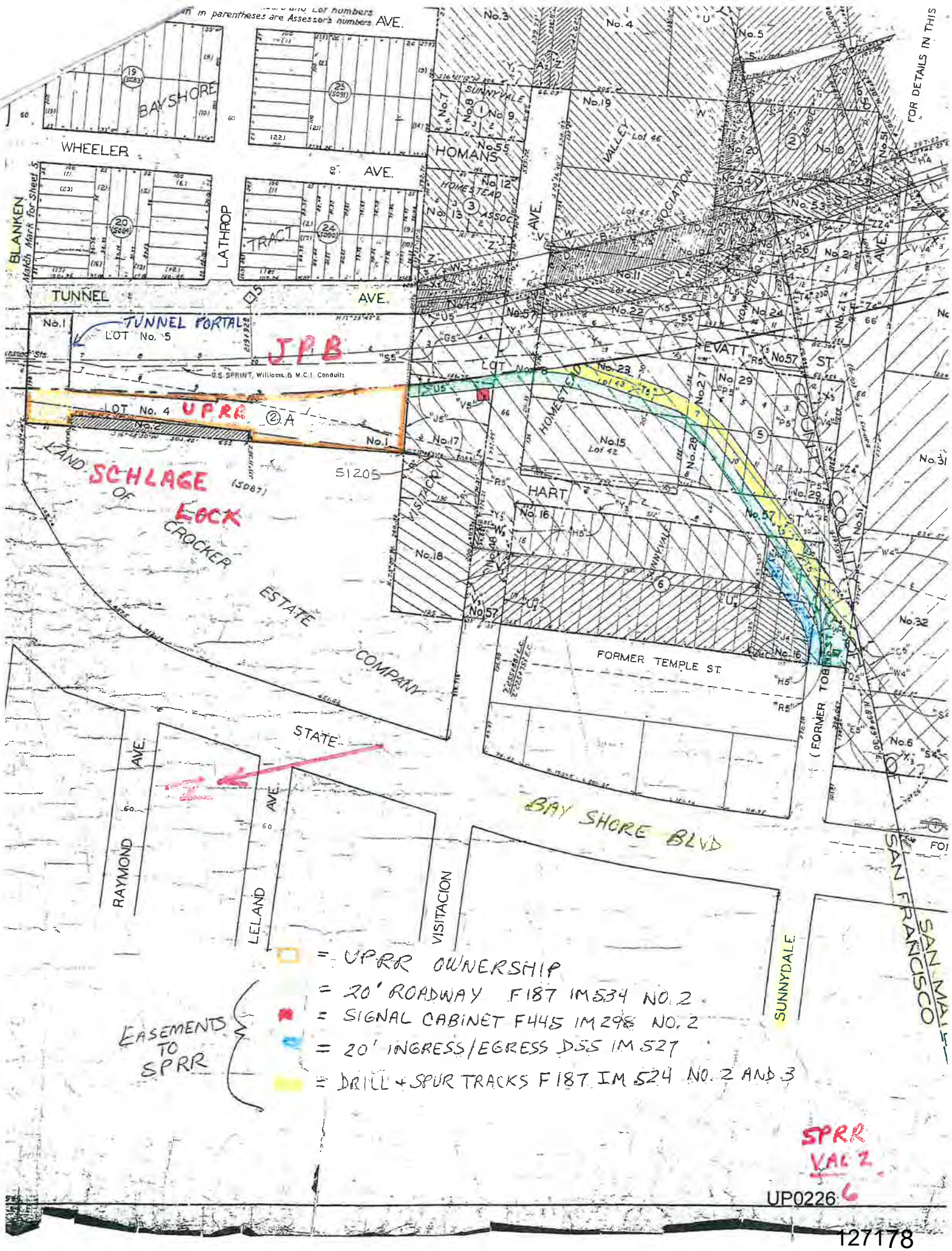
San Francisco Schlage Lock DPT Print with Easements and Val Map Schedule V2 6 and 6 (I).pdf

San Francisco Schlage Lock Aerial Sale Print.pdfSan Francisco Schlage Lock BKF Maps.pdf

EXHIBIT 71

UP0225

127077


BAYSHORE
WHEELER
AVE.
HOMANS
SUNNYVALE
VALLEY
ASSOCIATION
HOMESTEAD
LATHROP
TRACT
BLANKEN
Match Mark for Sheet 5
TUNNEL
TUNNEL PORTAL
LOT No. 5
JPB
U.S. SPRINT, Williams & M.C.I. Conduits
LOT No. 4
UPRR
LAND OF SCHLAGE LOCK
CROCKER ESTATE COMPANY
51205
EVATT
HART
HOMER CT.
VISTACION
FORMER TEMPLE ST.
FORMER TOBIN ST.
STATE
BAY SHORE BLVD
RAYMOND
LELAND
VISITACION
SUNNYDALE
SAN FRANCISCO
= UPRR OWNERSHIP
= 20' ROADWAY F187 IM534 NO. 2
= SIGNAL CABINET F445 IM298 NO. 2
= 20' INGRESS/EGRESS D55 IM527
= DRILL + SPUR TRACKS F187 IM524 NO. 2 AND 3
EASEMENTS TO SPRR
SPRR
VAL 2
UP0226
127178

SCHEDULE OF PROPERTY FOR SHEET 6

NO.	LTR.	GRANTOR	GRANTEE	INST.	DATE	RECORD	CUST. NO.	AREA SQ. FT.	AREA ACRES	A.F.E.	REMARKS
7											
un. var.	24-25	S. P. Tptn. Co.	Dyster Point Prop. Inc.	deed	Dec 28, 1989	O.R. rec 27706, Dec 29, 1989	67699				884.478 acs. disposal of shown hatched as follows: 0.475 acs. in Par 6 (Un."24"), 0.287 acs. being all of Par. 21, 0.146 acs. in Par. 24 (Un."24"), 0.121 acs. in Par. 26 (Un."24"), 0.164 acs. in Par. 29 (Un."24"), 1.235 acs. in Par. 30 (Un."24"), 1.478 acs. being all of Par. 31, 1.289 acs. in Par. 32 (Un."24"), 0.223 acs. being all of Par. 34 & 35, 43.267 acs. in Par. 36 (Un."24"), 2.792 acs. being all of Par. 37 & 38, 0.458 acs. in Par. 39 (Un."24"), 15.443 acs. being all of Par. 40, 41 & 42, 1.047 acs. in Par. 51 (Un."24"), 0.496 acs. being all of Par. 52, 0.048 acs. in Par. 53 (Un."24"), 0.057 acs. being all of Par. 54, 760.178 acs. shown on sheets 7, 7A & 8. Also reserves easements for railroad purposes heretofore described, see easement deed from S.P. to 67699 (Un."24"). Reserves 22.617 acs. easement for right of way railroad purposes (Un."25"), 1.827 acs. for Par. 8, and access purposes (Un."26"), 2.051 acs. for signal case purposes (Un."27"). Also shown on maps 7, 7A & 8.
un. var.	27-28	S. P. Tptn. Co.	Tyrees III S.A.L., Inc.	grant	Aug. 1, 1990	O.R. V-76/620, Aug 10, 1990	67700				2.022 acs. Disposal as shown hatched as follows: 0.135 acs. in Par. 6 (Un. "26"), 0.061 acs. in Par. 7 (Un. "26"), 0.493 acs. in Par. 14 (Un. "26"), 0.885 acs. being all of Par. 15, 1.094 acs. in Par. 16 (Un. "26"), 0.445 acs. in Par. 17 (Un. "26"), 0.348 acs. in Par. 20 (Un. "26"), 1.862 acs. being all of Par. 21, 0.433 acs. in Par. 24 (Un. "26"), 0.061 acs. in Par. 25 (Un. "26"), 0.102 acs. in Par. 26 (Un. "26"), 0.197 acs. being all of Par. 29 & 30, 1.007 acs. in Par. 31 (Un. "26"), 0.140 acs. in Par. 32 (Un. "26"), 1.038 acs. in Par. 37 (Un. "26"), all 50' reserves easements as follows, 1.503 acs. for main line railroad purposes (Un. "26"), 0.615 acs. for spur & ore tracks purposes (Un. "28"), 0.826 acs. for industry tracks purposes (Un. "29"), & 0.012 acs. for signal line purposes (Un. "27").
un. S	29	S. P. Tptn. Co.	Bruce R. Brazil & Rosemarie	Grant	June 5, 1991	O.R. E-93056, June 28, 1991	68095			1-80355-000	0.261 acs. disposal of shown hatched. Mineral rights retained.
un. S	3-5	S. P. Tptn. Co.	Bruce R. Brazil & Rosemarie	Grant	June 5, 1991	O.R. E-93053, June 28, 1991	68096			1-81095-000	0.344 ac. disposal of shown hatched as follows: 0.094 ac. in Par. 1 & 0.424 ac. shown on Sheet 3-7A-8. Mineral rights retained.
un. var.	43-45	Tyrees Prop. Inc.	S. P. Tptn. Co.	Easement	July 30, 1991	O.R. E-96234, July 22, 1991	Inv 67700				Corrects reserved easement in sale deed 67700.
un. var.	19-22	S. P. Tptn. Co.	P.C.J.P.A.	Grant	Oct. 4, 1991	O.R. F-04364, Dec 27, 1991	68484				32.576 acs. disposal of shown hatched as follows: 1.859 acs. in Par. 1 (Un. "25") & 0.038 acs. shown on Maps 7 & 8. Also conveys 34.428 acs. of reserved railroad easement as follows: 2.062 acs. (the map Un. "26") reserved by sale deeds 63832 and 67700 and shown on maps 1 thru 5 and Val. Sec. Col. V-79, maps 1 and 2. Reserves an easement for railroad purposes, by terms of the Southern Pacific Agreement under Doc. No. 174487. Also reserves a five foot wide easement for road purposes (Un. A) 2.366 acs. reserves an 22.566 acs. easement for construction and railroad rights purposes (see M.P. 31, N.P. 53 Un. "26").
un. var.	26-28	S. P. Tptn. Co.	P.C.J.P.A.	Grant	Dec. 4, 1991	O.R. F-07142, Dec. 27, 1991	68496				See Note 31
un. var.	27	S. P. Tptn. Co.	Tyrees Properties	Quitclaim	Nov. 3, 1994	O.R. 94-80680, Nov. 23, 1994	70310			3-04OC-990	Quitclaims all interest in 0.710acs. being a portion of easement conveyed by deed 67699

NO.	LTR.	GRANTOR

NOTES

Note 26 Disposals cont. for Par 24: 0.186 acs by deed 67699 (Un."24"), 0.432 acs by deed 67700 (Un."25")

Note 27 Disposals cont. for Par 24: 0.121 acs. by deed 67699 (Un."24"), 0.405 acs by deed 67700 (Un."25")

Note 28 Disposals cont. for Par 14: 0.493 acs by deed 67700 (Un."25")

Note 29 Disposals cont. for Par 25: 0.001 acs by deed 67700 (Un."26")

Note 30 Disposals cont. for Par 51: 1.047 acs by deed 67699 (Un."24")

Note 31 350.286 acs. disposal of shown hatched on maps 8 thru 13, Col. V-76 maps 1 thru 10 & Col. V-76A, map 8. Also conveys 24.764 acs. of reserved railroad easement as follows: 0.002 acs. (the map Un."26") reserved by deed 67699 and 23.672 acs. shown on maps 7, 8 & 10 and Val. Sec. Col. V-76, maps 1 thru 5, 8 & 9. Reserves an easement for railroad purposes by terms of the Southern Pacific Agreement under Doc. No. 174487. Also reserves a five foot wide easement for road purposes (Un."26").

SPRR
V2
6 (1)
UP0227

EXHIBIT A-76

TO

DECLARATION OF STEPHEN G. PREONAS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON COMPLAINT, OR ALTERNATIVELY, SUMMARY ADJUDICATION ("Preonas Opp. Decl.")

Visitacion Investment, LLC v. *424 Jessie Historic Properties, LLC., et al.*

San Francisco County Superior Court Case No. CGC-19-579667

Description of Exhibit:

Exh. 76 to Deposition of Robert Krantz as PMK of Union Pacific Railroad –
Notice of Deposition and attached Subpoena

EXHIBIT A-76

Jeffrey H. Lowenthal (State Bar No. 111763)
Dana M. Andreoli (State Bar No. 262068)
Stacey C. Quan (State Bar No. 280004)
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Attorneys for Attorneys for Defendant and Cross-Complainant
424 Jessie Historic Properties, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

VISITACION INVESTMENT, LLC, a California limited liability company,

Plaintiff,

v.

424 JESSIE HISTORIC PROPERTIES, LLC, a California limited liability company, all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the Complaint adverse to Plaintiff's title, or any cloud on Plaintiff's title thereto, and DOES 1 through 50, inclusive,

Defendants.

AND RELATED CROSS-ACTION.

Case No. CGC-19-579667

NOTICE OF DEPOSITION OF UNION PACIFIC RAILROAD COMPANY PURSUANT TO SUBPOENA

Date: May 11, 2021
Time: 10:00 a.m.
Place: Zoom

Action Filed: October 1, 2019
Trial Date: July 12, 2021

EXHIBIT 76

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT pursuant to California Code of Civil Procedure Section 2025.010, *et seq*., and pursuant to the Deposition Subpoena for Personal Appearance and Production of Documents and Things attached hereto, defendant and cross-complainant 424 Jessie Historic Properties, LLC ("JHP") will take the deposition of Union Pacific Railroad Company on May 11, 2021, beginning at 10:00 a.m., via remote video conference. Said deposition shall continue day to day thereafter, Sundays and Holidays excepted, until completed. The deposition shall be stenographically recorded and may be recorded by audio, video or cloud-based technology for possible use at trial pursuant to California Code of Civil Procedure Sections 2025.330, *et seq*.

JHP will conduct this deposition by utilizing web-based videoconferencing pursuant to California Code of Civil Procedure Sections 2025.220 and 2025.310, including that the court reporter may conduct the deposition from a remote location. The witness will be required to provide government-issued identification satisfactory to the court reporter, and this identification must be legible on camera.

Dated: April 15, 2021

STEYER LOWENTHAL BOODROOKAS ALVAREZ & SMITH LLP



Jeffrey H. Lowenthal
Dana M. Andreoli
Stacey C. Quan
Attorneys for Defendant and Cross-Complainant
424 Jessie Historic Properties, LLC

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*
Jeffrey H. Lowenthal (SBN 111763); Stacey C. Quan (SBN: 280004)
Steyer Lowenthal Boodrookas Alvarez & Smith LLP
235 Pine Street, 15th Floor
San Francisco, CA 94104
TELEPHONE NO.: (415) 421-3400 FAX NO. *(Optional):* (415) 421-2234
E-MAIL ADDRESS *(Optional):* squan@steyerlaw.com
ATTORNEY FOR *(Name):* Defendant 424 Jessie Historic Properties, LLC

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO
STREET ADDRESS: 400 McAllister Street
MAILING ADDRESS:
CITY AND ZIP CODE: San Francisco, 94102
BRANCH NAME:

PLAINTIFF/PETITIONER: VISITACION INVESTMENT, LLC
DEFENDANT/RESPONDENT: 424 JESSIE HISTORIC PROPERTIES, LLC, et al.

DEPOSITION SUBPOENA
FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS

CASE NUMBER: CGC-19-579667

THE PEOPLE OF THE STATE OF CALIFORNIA, TO *(name, address, and telephone number of deponent, if known)*:
Union Pacific Railroad Company, c/o CT Corporation System, 818 West Seventh Street, Suite 930, Los Angeles, CA, 90017

1. **YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS in this action at the following date, time, and place:**

Date: May 11, 2021 Time: 10:00 a.m. Address: Remote link to be provided

a. [X] As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 4. (Code Civ. Proc., § 2025.230.)
b. [X] You are ordered to produce the documents and things described in item 3.
c. [X] This deponent will be recorded stenographically [ ] through the instant visual display of testimony and by [ ] audiotape [X] videotape.
d. [ ] This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025.620(d).

2. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.

3. The documents and things to be produced and any testing or sampling being sought are described as follows:
See Attachment 3

[X] Continued on Attachment 3.

4. If the witness is a representative of a business or other entity, the matters upon which the witness is to be examined are described as follows:
See Attachment 4

[X] Continued on Attachment 4.

5. **IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, *AND* CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.**

6. *At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically at the deposition; later they are transcribed for possible use at trial. You may read the written record and change any incorrect answers before you sign the deposition. You are entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpoena or at the time of the deposition. Unless the court orders or you agree otherwise, if you are being deposed as an individual, the deposition must take place within 75 miles of your residence or within 150 miles of your residence if the deposition will be taken within the county of the court where the action is pending. The location of the deposition for all deponents is governed by Code of Civil Procedure section 2025.250.*

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF $500 AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: April 15, 2021

(SIGNATURE OF PERSON ISSUING SUBPOENA)

Stacey C. Quan (TYPE OR PRINT NAME)

(Proof of service on reverse)

Attorneys for Defendant (TITLE)

Form Adopted for Mandatory Use
Judicial Council of California
SUBP-020 [Rev. January 1, 2009]

DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS

Code of Civil Procedure §§ 2020.510, 2025.220, 2025.230, 2025.250, 2025.620; Government Code, § 68097.1
www.courtinfo.ca.gov
LexisNexis® Automated California Judicial Council Forms

PLAINTIFF/PETITIONER: VISITACION INVESTMENT, LLC DEFENDANT/RESPONDENT: 424 JESSIE HISTORIC PROPERTIES, LLC, et al.	CASE NUMBER: CGC-19-579667

PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS

1. I served this *Deposition Subpoena for Personal Appearance and Production of Documents and Things* by personally delivering a copy to the person served as follows:
   a. Person served *(name)*:
   b. Address where served:
   c. Date of delivery:
   d. Time of delivery:
   e. Witness fees and mileage both ways *(check one)*:
      (1) ☐ were paid. Amount: . . . . . $ _____
      (2) ☐ were not paid.
      (3) ☐ were tendered to the witness's public entity employer as required by Government Code section 68097.2. The amount tendered was *(specify)*: . . . . . $ _____
   f. Fee for service: . . . . . $ _____
2. I received this subpoena for service on *(date)*:
3. Person serving:
   a. ☐ Not a registered California process server
   b. ☐ California sheriff or marshal
   c. ☐ Registered California process server
   d. ☐ Employee or independent contractor of a registered California process server
   e. ☐ Exempt from registration under Business and Professions Code section 22350(b)
   f. ☐ Registered professional photocopier
   g. ☐ Exempt from registration under Business and Professions Code section 22451
   h. Name, address, telephone number, and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

▶ _____
(SIGNATURE)

(For California sheriff or marshal use only)
I certify that the foregoing is true and correct.

Date:

▶ _____
(SIGNATURE)

DEPOSITION SUBPOENA
FOR TESTIMONY AND PRODUCTION OF DOCUMENTS
TO PERSON MOST KNOWLEDGEABLE, UNION PACIFIC RAILROAD COMPANY

Attachment 3

A. Definitions

1. Reference herein to "DOCUMENTS" shall mean and include all writings as defined by California Evidence Code section 250, and shall include the original and every duplicate of each Document which contains notations and/or marks not found on the original, or which otherwise differs from the original. The term Document specifically includes email, facsimile messages, telecopier messages, telegrams and other written communications regardless of the methods of transmission.

2. The word "CONCERNING" or "CONCERN" includes referring to, alluding to, responding to, relating to, connected with, commenting on, in respect to, about, regarding, discussing, mentioning, reflecting, evidencing, or otherwise pertaining to.

3. The word "COMMUNICATION" means any contact among or between two or more persons and includes, without limitations, written contact by such means as letters, email, text, memoranda, telegrams, Telex, fax, or by any documents, and/or oral contact by such means as face-to-face meetings or telephone conversations.

4. The phrase "GRANT DEED" collectively refers to the Grant Deed from Southern Pacific Transportation Company to Tuntex (USA), Inc. recorded on August 10, 1990 as Document No. E761808 in the Official Records of San Francisco County, attached as Exhibit 1, and the Deed Correcting Description of Rail Easement from Southern Pacific Transportation Company to Tuntex Properties, Inc. (Brisbane) recorded on August 22, 1991 as Document No. E962735, attached as Exhibit 2.

5. The phrase "QUITCLAIM DEED" refers to the Quitclaim Deed from Union Pacific Railroad Company to Patrick McNerney recorded on February 5, 2015 as Document No. 2015-K016863 in the Official Records of San Francisco County, and is attached as Exhibit 3.

6. The word "EASEMENTS" refer to the reserved easements described in the QUITCLAIM DEED as Schedule 1 (Main Line Easement), Schedule 2 (Drill & Spur Track Easement) and Schedule 3 (Access Roadway Easement).

7. The phrase "JHP PROPERTY" refers to the real property commonly known as 2201 Bay Shore Boulevard and 220 Tunnel Avenue, San Francisco, California.

8. The term "JHP" refers to 424 Jessie Historic Properties, LLC.

9. The phrase "VISITACION PROPERTY" refers to the real property commonly known as 2201, 2245, 2500 and 2555 Bay Shore Boulevard, 222 Tunnel Avenue and 289, 290,

292 Sunnydale Avenue, San Francisco, California.

10. The term "VISITACION" refers to Visitacion Investments, LLC.

B. <u>Documents To Be Produced</u>

1. All DOCUMENTS CONCERNING the EASEMENTS, including, but not limited to, creation, use, abandonment, relinquishment and termination of the EASEMENTS.

2. All DOCUMENTS CONCERNING COMMUNICATIONS with JHP or anyone purporting to act on its behalf CONCERNING the EASEMENTS.

3. All DOCUMENTS CONCERNING COMMUNICATIONS with VISITACION or anyone purporting to act on its behalf CONCERNING the EASEMENTS.

4. All DOCUMENTS CONCERNING use of the JHP PROPERTY.

5. All DOCUMENTS CONCERNING use of the VISITACION PROPERTY.

DEPOSITION SUBPOENA
FOR TESTIMONY AND PRODUCTION OF DOCUMENTS
TO PERSON MOST KNOWLEDGEABLE, UNION PACIFIC RAILROAD COMPANY

Attachment 4

A. Deposition Topics

1. The subject matter of the DOCUMENTS requested herein.
2. The EASEMENTS, including, but not limited to, the creation, use, abandonment, termination and relinquishment of the EASEMENTS.
3. COMMUNICATIONS CONCERNING the EASEMENTS.
4. Use of the VISITACION PROPERTY.
5. Use of the JHP PROPERTY.

PROOF OF SERVICE

I declare that I am over the age of eighteen years and that I am not a party to this action. I am an employee of Steyer Lowenthal Boodrookas Alvarez & Smith LLP, and my business address is 235 Pine Street, 15th Floor, San Francisco, CA 94104.

On the date set forth below, I served the following document(s):

NOTICE OF DEPOSITION OF UNION PACIFIC RAILROAD COMPANY PURSUANT TO SUBPOENA

on the interested parties in this action as follows:

Kenneth S. Katzoff
Stephen Preonas
Katzoff & Riggs
1500 Park Avenue, Suite 300
Emeryville, CA 94608
Telephone: 510-597-1990
Email: kkatzoff@katzoffriggs.com
spreonas@katzoffriggs.com

[Attorneys for Plaintiff and Cross-defendant Visitacion Investment, LLC]

☒ **BY FILE & SERVEXPRESS.** I caused such document(s) to be electronically served via File & ServeXpress on all interested parties at the email addresses listed with the Court in this matter.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 15, 2021, at Berkeley, California.

Fred M. Terry

EXHIBIT B

TO

DECLARATION OF STEPHEN G. PREONAS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON COMPLAINT, OR ALTERNATIVELY, SUMMARY ADJUDICATION ("Preonas Opp. Decl.")

Visitacion Investment, LLC v. *424 Jessie Historic Properties, LLC., et al.*

San Francisco County Superior Court Case No. CGC-19-579667

Description of Exhibit:

Declaration of William Gilmartin III of Proven Management Inc. including Exhibits 1 – 7

EXHIBIT B

WILLIAM GILMARTIN declares:

1. I am a current Vice President and Area Manager of Proven Management, Inc. ("Proven") a full service, self-performing general engineering contractor. I have personal knowledge of the matters set forth herein and can competently testify thereto, if called to testify.

2. As a Vice President for Proven my duties include the supervision of various construction projects. One of Proven's projects I supervised was work for the Peninsula Corridor Joint Powers Board ("the JPB"). The JPB owns and operates Caltrain. The JPB consists of representatives from San Francisco, San Mateo and Santa Clara counties. The JPB owns a right of way to operate the Caltrain across the broader Bay Area Peninsula ("the Caltrain Right of Way"). The work Proven performed for JPB was in connection with a broader regional Peninsula Corridor Electrification Project pursued by the JPB to electrify the Caltrain rails across the Peninsula ("the Electrification Project").

3. In connection with my duties as Vice President of Proven I am familiar with the large project to redevelop a former industrial property located in the Visitacion Valley neighborhood owned by Visitacion Investments, LLC for residential use ("the Visitacion Property"). I am also familiar with a narrow tract adjacent to the Caltrain line, known as 2201 Bay Shore Boulevard (APN 5087-004) and 220 Tunnel Avenue (APN 5087-005), that is adjacent to the Visitacion Property and owned by 424 Jessie Historic Properties, LLC ("the JHP Property").

4. Proven's work on the Electrification Project consisted of raising the crown of a tunnel that is located to the north of both the Visitacion Property and the JHP Property in order to accommodate the new catenary wires for the new electrified train system.

5. In connection with the Electrification Project Proven entered into a licensing agreement dated February 18, 2019 with JHP for Proven to use the JHP Property to support Proven's work on the Electrification Project in exchange for payment by Proven of a flat fee of $15,000 ("the JHP License Agreement"). A true copy of JHP License Agreement is attached as Exhibit 1. Pursuant to the JHP License Agreement, Proven used the JHP Property for approximately 90 days.

6. The JHP License Agreement authorized Proven to use the JHP Property "for the purpose of loading and off-loading as well as short term storage of materials." However, during the term of the JHP License Agreement, Proven in fact used the JHP only for parking light vehicles (cars and pickup trucks) that were either owned by Proven or that were the personal vehicles for Proven's workers and subcontractors. Proven did not perform any construction on the JHP Property, whether related to the Electrification Project, or otherwise. During the term of the JHP License Agreement there was no direct access to the Caltrain Right of Way from the JHP Property.

7. During the term of the JHP License Agreement, Proven, its workers and subcontractors accessed the JHP Property to park their vehicles by using an unpaved road across the Visitacion Property. Apart from this ingress and egress, Proven, its workers and subcontractors did not use the Visitacion Property in connection with the JPB Project. Proven, its workers and subcontractors did not use the Visitacion Property to operate, maintain, repair or otherwise use any railroad equipment, spur track, or switching station. Proven's use of the JHP Property to park light vehicles in connection with the Electrification Project did not require Proven to obtain a use permit from the City of San Francisco, and Proven did not seek any permit for this use.

8. To access the JHP Property via the unpaved road on the Visitacion Property to park their light vehicles, Proven's workers and subcontractors entered the Visitacion project via Sunnydale Avenue near its intersection with Bayshore Blvd. just north of the Bay Shore Car War located on the southeast corner of the intersection. This access was convenient given the proximity to the public streets and the existence of the unpaved road across the Visitacion Property. However, Proven's workers and subcontractors could have used another part of the Visitacion Property to access the JHP Property to park their light vehicles. A true and correct satellite image showing the location of the unpaved road used by Proven's workers and subcontractors to cross the Visitacion Property to park their light vehicles on the JHP Property is attached as Exhibit 2.

9. In connection with the Electrification Project, Proven separately entered into another license agreement with Sunquest Properties, Inc. (the "Sunquest License Agreement") for Proven to use an approximately 150,000 sq. ft portion of a property owned by Sunquest approximately one mile south of the tunnel that was the site of the Electrification Project (the "Sunquest Property") in exchange for a monthly payment to Sunquest of $11,111.11. A true copy of the Sunquest License Agreement is attached as Exhibit 3. An image showing the location of the site of the Sunquest Property contained in Exhibit A to the Sunquest License Agreement and used by Proven in connection with the Electrification Project is attached as Exhibit 4.

10. Because the Sunquest Property, unlike the JHP Property, had access to the Caltrain Right of Way, Proven used the Sunquest property to load materials directly on the rail tracks located in the Caltrain Right of Way. During the course of the Electrification Project, Proven did not use either the JHP Property or the Visitacion Property to load any

construction materials onto the Caltrain Right of Way.

11. Proven's use of the Sunquest Property in connection with the JPB Project and pursuant to Sunquest License Agreement was far more substantial than its use of the JHP Property for parking of light vehicles. Accordingly, the City of Brisbane (where the Sunquest Property is located) required Proven to obtain an Interim Use Permit to allow Proven to use the Sunquest Property in connection with the Electrification Project. Proven duly applied for such permit and its application was scheduled for hearing on September 27, 2018 at a meeting of the City of Brisbane Planning Commission. As set forth in the City of Brisbane Planning Commission agenda and minutes on this date, this permit requested that the City of Brisbane approve of Proven's use of the Sunquest Property "for a 1 year period to allow for outdoor staging of construction materials and equipment and assembly of work trains and rail track segments on an approximately 3.5 acre vacant site with an existing rail spur, in support of improvements along the Caltrain rail-line corridor."

12. I appeared at the September 27, 2018 meeting of the Brisbane Planning Commission in support of the Sunquest Interim Use Permit. A true copy of the agenda for the hearing on the Sunquest Interim Use Permit, and the minutes of the Brisbane Planning Commission approving the Sunquest Interim Use Permit, is attached as Exhibit 5.

13. To further support its work on the Electrification Project, Proven entered into a second license agreement with Sunquest on January 1, 2020 that was similar to the prior Sunquest License Agreement but increased the monthly payment from Proven to Sunquest to $37,500 per month ("the 2020 Sunquest License Agreement"). A true copy of the 2020 Sunquest License Agreement is attached as Exhibit 6.

14. As with the use of the Sunquest Property under the prior Sunquest License

Agreement, Proven's work on the Electrification Project under the 2020 Sunquest License Agreement required Proven to apply for and obtain a continuation of the Sunquest Interim Use Permit.

15. Proven duly applied for this continuation of the Sunquest Interim Use Permit. This application was scheduled for hearing on October 24, 2019 at a meeting of the City of Brisbane Planning Commission. As set forth in the City of Brisbane Planning Commission agenda and minutes on this date, this continuation application requested that the City of Brisbane approve of Proven's use of the Sunquest Property "for a 1 year period to allow for outdoor staging of construction materials and equipment and assembly of work trains and rail track segments on an approximately 3.5 acre vacant site with an existing rail spur, in support of improvements along the Caltrain rail-line corridor."

16. Zach Mayes of Proven appeared at the October 24, 2019 meeting of the Brisbane Planning Commission in support of the continuation of the Sunquest Interim Use Permit. A true copy of the agenda for the hearing on the continuation of the Sunquest Interim Use Permit, and the minutes of the Brisbane Planning Commission on this date is attached as Exhibit 7.

17. During the Electrification Project, Proven received delivery of construction materials to the project site via rail on the Caltrain Right of Way. Proven did not store any construction materials for the Electrification Project on the JHP Property, nor did it transport any such materials across the Visitacion Property. Since the construction materials delivered via the Caltrain Right of Way were going to be incorporated into the Electrification Project, which was located in the Caltrain Right of Way, there was no need to further transport or store these materials anywhere. The construction materials delivered

128794

via rail simply stayed on the Caltrain rails.

18. Proven did not use the JHP Property or the Visitacion Property for allowing for outdoor staging of construction materials and equipment, or for assembly of work trains and rail track, as it did the Sunquest Property. Proven used the JHP Property to park light vehicles and used the Visitacion Property solely to provide access to the JHP Property for said light vehicles.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed in Oakland, California on May 5, 2021.

WILLIAM GILMARTIN

EXHIBIT 1

TO

DECLARATION OF WILLIAM GILMARTIN

Visitacion Investment, LLC v. *424 Jessie Historic Properties, LLC., et al.*

San Francisco County Superior Court Case No. CGC-19-579667

Description of Exhibit:

LICENSE AGREEMENT FOR ENTRY AND USE SURFACE OF PROPERTY
Between Proven Management, Inc. and 424 Jessie Historic Properties, LLC dated February 18, 2019

EXHIBIT 1

LICENSE AGREEMENT FOR ENTRY AND USE SURFACE OF PROPERTY

This LICENSE AGREEMENT TO ENTER AND USE SURFACE OF PROPERTY ("Agreement") dated to be effective as of February 18, 2019, is made and entered into by and between 424 Jessie Historic Property, LLC, ("Licensor"), and Proven Management, Inc. ("Licensee").

RECITALS

1. Licensor is the owner or is the authorized agent of the owner of certain premises described as Assessor's Parcel Number Block 5087, Lot 004, situated on or about San Francisco County.

2. Licensee desires permission of Licensor for access to and use of said premises, and Licensor is agreeable to provide access to and use of said premises for the limited purpose and for the limited time as agreed to by the parties herein.

AGREEMENT

Now, therefore, and in consideration of the mutual covenants, promises, and the exchange of consideration described herein, Licensor and Licensee agree as follows:

1. Grant of Right of Entry. Licensor hereby grants the exclusive right ("License") to Licensee and its officers, employees, consultants, contractors, and authorized representatives as well as their respective employees, subcontractors and suppliers, for the purposes and upon the terms and conditions set forth below, to enter upon those certain parcels of real property commonly known and described as Assessor's Parcel Number Block 5087, Lot 004 located to the west of current JPB premises, as depicted as a blue-lined rectangle on the illustration attached hereto as **Exhibit A**, ("Site") or ("Premises"). The license provides Licensee with a non-revocable, temporary, non-possessory and exclusive license to have access to and use of the Site and is not intended to grant any interest in real property of any kind or nature.

2. Permitted Use of Site. Licensee shall have the right to enter and use only the surface of the site for the purpose of loading and off-loading as well as short term storage of materials at the Site, together with necessary rights of ingress and egress to and from the Site depicted by a red arrow as set forth on Exhibit A. Licensee shall not permit any damage or nuisance on the Site, nor permit to be placed any hazardous or explosive material, nor have any right to remove materials or ores within or underlying the Site or its surrounding area.

3. "AS IS" Use. The use permitted by this license is on an "AS IS" basis with all faults of the Site waived or accepted by Licensee. Licensee acknowledges that Licensor has made no representations of any kind in connection with soils, improvements, or physical

condition of the site or the surrounding areas, or bearing on Licensee's use of the Site, whether express or implied.

4. Prior Rights. This License is made subject to all other licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens, and claims of title that may affect the Site that are in effect as of the Effective Date of this license, as well as, by the physical terrain or obstructions that may exist thereon.

5. Term of License. The rights granted to Licensee pursuant to this License shall commence on February 18, 2019, and shall terminate on approximately April 18, 2019, but in no case no later than May 13, 2019 (the ~~"Term"~~ "EXTENSION PERIOD"). Licensor hereby grants Licensee and option to extend the License beyond the Term on a week by week basis from the date the Term expires ("Extension Period"). The License shall be non-revocable during the Term, and if applicable, each Extension Period. Exercise of each Extension Period shall be in writing delivered to Licensor no less than 7 calendar days prior to the expiration of the then existing Term or Extension Period. (THE "TERM")

6. Compensation for Use of Property. The sum of ~~Seven~~ Thousand ~~Five Hundred~~ Dollars (~~$7,500.00~~ FIFTEEN $15,000) shall be paid for the Term of License. In the event that Licensee exercises its option to extend the Term, Licensee shall pay One Thousand Seven Hundred Thirty Dollars ($1,730.00) per week. Such payment shall be due in advance of each Extension Period.

7. Permit from Government Agencies. Licensee shall, at its own cost and expense, secure all permits and other authorizations required by law, whether federal, state, local, or city, for its use of the Site as provided by this Agreement and agrees to fully conform to all laws, ordinances, and regulations pertaining thereto. Either Licensor or Licensee may terminate this Lease if any government body seeks to impose any condition or approval of Licensee's use of the Premises that will adversely affect Licensee's use, Licensor's use, the Site, and/or value.

8. Care and Restoration of Premises. Licensee shall keep the Site, including any improveme4nts located thereon, in safe condition and in good order, condition and repair at all times during the License Term. In the event of damage caused by Licensee, Licensee will restore the Premises at its own expense IMMEDIATELY ~~, and in a timely manner~~. Upon termination of this Agreement, any and all material or property permitted herein belonging to Licensee will be promptly removed and the Site restored to its original condition.

9. Alterations. Licensee shall not make any alterations, additions, or improvements (collectively "Alterations") in, on, or to the Site without the prior written consent of Licensor ~~, which consent shall be unreasonably withheld or delayed.~~

10. Liens. Licensee shall not permit any mechanics' or materialmen's liens, stop orders, or other liens (collectively, "Liens") to be filed against the Site or Licensor's adjacent property by reason of labor or materials furnished at Licensee's instance or request. If any such Liens are filed against the Site or Licensor's adjacent property, Licensee shall cause the same to be discharged of record either by payment of the claim or by posting and recording a bond contemplated by California Civil Code Section 3143, within 20 days after written demand by Licensor. Licensee shall indemnify, hold harmless, and defend Licensor from and against any and all such liens and any sums claimed therein.

11. Indemnification. Licensee shall indemnify and hold h armless Licensor and its respective directors, officers, employees, agents, contractors, any other person acting on Licensor's behalf, and their successors and assignees, as they now or as they may hereafter be constituted, singly, jointly or severally (collectively, "Licensor Indemnitees") from and against any and all liabilities, penalties, losses, damages, costs, loss of rent, expenses, demands, causes of action, claims of judgments (collectively, "Liabilities") arising out of or in connection with (a) the use, maintenance, occupation, alteration, or improvement of the Site by Licensee, (b) any act, omission or neglect of Licensee, and/or (c) any breach or default by Licensee of any of the terms, covenants or conditions of this Agreement.

12. Insurance. Licensee is required to procure and maintain at its sole cost and expense the following insurance coverages subject to all of the requirements set forth below. Such insurance shall remain in full force and effect throughout the term of the License.

MINIMUM TYPES AND SCOPE OF INSURANCE

A. Workers Compensation Insurance

   a. Statutory Limits

   b. Such insurance shall include the following endorsements:

      Waiver of Subrogation

B. Commercial General Liability Insurance

   Commercial General Liability Insurance for bodily injury and property damage coverage of at least $1 million per occurrence or claim and a general aggregate limit of at least $2 million. For any construction and public works projects, the insurance shall not have any exclusions for Explosion, Collapse, and Underground perils, and for construction or demolition work within 50 feet of railroad tracks, the contractual liability exclusions for liability assumed shall be deleted.

   a. This insurance shall include coverage for, but not be limited to:

Premises and operations;
Personal injury.

C. Business Automobile Liability Insurance

Business Automobile Liability Insurance providing bodily injury and property damage coverage of at least $1 million per accident or loss. This insurance shall include coverage for:

All Owned vehicles;
Non-Owned vehicles;
Hired or rental vehicles.

Such insurance shall include the following endorsements:

Additional Insured;
Primary and Non-Contributory wording;
Waiver of Subrogation.

Licensee shall promptly deliver to Licensor a certificate of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required coverage for the term specified herein. Such certificate shall be delivered to Licensor not less than three business days after to the expiration date of any policy.

13. Non-Liability of Licensor. Licensee shall indemnify and hold Licensor harmless from any damage to the Site including compensation for any loss of income and any bodily injury or death resulting from the use of the Site provided, however, Licensee shall not be obligated to indemnify Licensor to the extent any claim arises out of the sole negligence or willful misconduct of Licensor or its Agents.

14. Default. The occurrence of any of the following shall constitute a material breach and default ("Default") of this Agreement by Licensee:

A. Any failure by Licensee to pay when due any of the moneys or charges payable by Licensee;

B. A failure by Licensee to observe or perform any other provision of this Agreement to be observed or performed by Licensee when such failure is not corrected within 10 days after written notice thereof from Licensor; or if such failure cannot be cured within this 10-day period, as determined by Licensor in its reasonable discretion, if such cure is not commenced within 30 days of Licensor's written notice and thereafter diligently pursued to completion;

C. The happening of any of the following events: (a) filing or institution by Licensee of any proceeding under the Bankruptcy Act and any amendment thereto, or any other

federal or state act now or hereafter relating to the subject of bankruptcy, insolvency, arrangement, reorganization, or other form of debtor relief, (b) the institution or filing of any involuntary proceeding against Licensee under any of the aforementioned laws unless such proceeding is dismissed within 30 days thereafter, (c) an adjudication of bankruptcy or a finding or judgment of insolvency of Licensee, (d) an assignment for the benefit of creditors by Licensee, (e) the levy of a writ of execution of the business of Licensee or the assets of Licensee located on the Premises which is not discharged within 10 days after the date of said levy, or (f) the appointment of a receiver to take possession of any property of Licensee.

15. Remedies. In the event of a Default of Licensee, Licensor may, at any time thereafter, terminate Licensee's right to use the Premises by any lawful means, in which case this License shall terminate, and Licensee shall immediately remove all of its property and improvements and surrender its further use or possession of the Premises to Licensor. Licensor may also pursue any other remedy now or hereafter available to Licensor under the law of California.

16. Surrender of the Premises. Upon expiration or earlier termination of this License, Licensee shall leave the Premises in neat and clean condition, and free of all personal property of Licensee. All repairs, alterations, and/or other improvements made by Licensee shall become the property of Licensor, provided that Licensor may, by written notice given to licensee on not less than 10 days prior to the expiration or termination of this Agreement, require Licensee to remove any such Alterations and improvements from the Premises and to restore the Premises to their original condition prior to termination of this Lease.

17. Holding Over. If Licensee, without Licensor's written consent, remains in possession of all or part of the Premises after expiration or earlier termination of this Agreement, such occupancy shall be construed to be a license for week-to-week subject to the terms and conditions of this Agreement.

18. Attorney's Fees. If either party brings any action against the other to enforce any provision of this License or collect any sum due hereunder, the prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees, in addition to any other remedies to which it may be entitled.

19. Notices. Except as otherwise specified herein, any notices given under this Agreement shall be effective only if in writing addressed as follows (or to such other address as either party may from time to time specify in writing to the other):

Licensor: 424 Jessie Historic Property, LLC
c/o Martin Building Company

14 Main Street
Tiburon, CA 94920
Attn: Patrick McNerney

Licensee: Proven Management, Inc.
225 3rd Street
Oakland, CA 94607
Attn: William Gilmartin III

20. Miscellaneous Provisions.

A. Non-Waiver. Licensor's failure to enforce or exercise its rights with respect to any provision hereof shall not be construed as a waiver of such rights or of such provision. Acceptance of use charges or any other sum shall not be a waiver of any preceding beach by Licensee of any provision hereof, regardless of Licensor's knowledge of such preceding breach at the time of acceptance of such payment; nor shall such acceptance be a waiver in any way of Licensor's right to terminate this Agreement pursuant to its provisions.

B. Time of Essence. Time is of the essence of each provision of this License. Any reference to "days" shall mean calendar days except as otherwise expressly provided in this License.

C. Entire Agreement. This License sets forth the entire agreement between the parties with respect to the use of the Premises and supersedes all prior and/or contemporaneous agreements, communications, and representations, oral or written, expressed or implied, since the parties intend that this be an integrated agreement. This License may not be modified except by written and executed agreement of the parties.

D. Successors and Assigns. This License shall bind the heirs, executors, administrators, successors, and assigns of any and all of the parties hereto.

E. Authority. Each individual executing this License on behalf of the party they represent hereby warrants that he or she is duly authorized to executed and deliver this License on behalf of their principal, and that this License is binding upon their principal in accordance with its terms.

F. Governing Law. This License shall be governed by and construed in accordance with the laws of California as applied to contracts that are made and to be performed entirely in California.

G. Captions. All captions and heading in this License are for the purposes of reference and convenience only and shall not limit or expand the provisions of this License.

H. Counterparts. This License may be entered into in counterparts, each of which shall be deemed an original but both of which together shall be deemed a single agreement.

IN WITNESS WHEREOF, the parties hereto have executed, or have caused to be executed, this Lease as of the day and year first above written.

Address of Landlord:
14 Main Street
Tiburon, CA 94920

Address of Tenant:
225 3rd Street
Oakland, CA 94607

LANDLORD:
BY MARTIN MCHERNEY DEVELOPMENT, INC, ITS MANAGER

TENANT:

Patrick McNerney
Its: President

William Gilmartin III
Its: Vice President

EXHIBIT A


Raymond Ave
16 Leland Ave Parking
Bank of America Financial Center
Bayshore Blvd
Mr. EcoWash
Google
Tunnel Ave
Blanken Ave
post office box
Wheeler Ave
Peninsula Ave
Lathrop Ave
Imagery ©2019 Google, Map data ©2019 Google
50 ft

EXHIBIT 2

TO

DECLARATION OF WILLIAM GILMARTIN

Visitacion Investment, LLC v. *424 Jessie Historic Properties, LLC., et al.*

San Francisco County Superior Court Case No. CGC-19-579667

Description of Exhibit:

Aerial Photograph of Subject Properties showing access road used by Proven Management, Inc. employees during term of Temporary License Agreement.

EXHIBIT 2


VISITACION
DIRT ACCESS ROAD
JHP
TUNNEL
CALTRAIN
SUNQUEST
PROPERTY
Bayshore Blvd
Visitacion Ave
Leland Ave
Arleta Ave
San Bruno Ave
Wabash Terrace
Racine Ln
Blanken Ave
Wheeler Ave
Fairfax Ave
Tunnel Ave
Recycle Rd
Peninsula Ave
© 2021 Google
Google Earth
Imagery Date: 9/26/2020 37°42'36.03" N 122°24'07.75" W elev 24 ft eye alt 2495 ft

EXHIBIT 3

TO

DECLARATION OF WILLIAM GILMARTIN

Visitacion Investment, LLC v. *424 Jessie Historic Properties, LLC., et al.*

San Francisco County Superior Court Case No. CGC-19-579667

Description of Exhibit:

License Agreement for Entry and Use of Surface Property dated July 25 2018 between Sunquest Properties, Inc., as Licensor and Proven Management, Inc. as Licensee.

EXHIBIT 3

LICENSE AGREEMENT FOR ENTRY AND USE
SURFACE OF PROPERTY

This LICENSE AGREEMENT TO ENTER AND USE SURFACE OF PROPERTY ('Agreement"), dated to be effective as of July 25, 2018, is made and entered into by and between the Sunquest Properties Inc, ("Licensor"), and Proven Management Inc, ("Licensee").

RECITALS

A. Licensor is the owner or is the authorized agent of the owner of certain premises described as 150.000 square feet of open land situated on or about San Mateo County.

B. Licensee desires permission of Licensor for access to and use of said premises, and Licensor is agreeable to provide access to and use of said premises for the limited purpose and for the limited time as agreed to by the parties herein.

AGREEMENT

Now therefore, and in consideration of the mutual covenants, promises, and the exchange of consideration described herein, Licensor and Licensee agree as follows:

1. Grant of Right of Entry. Licensor hereby grants the non-exclusive right ("License") to Licensee and its officers, employees, consultants, contractors and authorized representatives as well as their respective employees, subcontractors and suppliers, for the purposes and upon the terms and conditions set forth below, to enter upon a portion of those certain parcels of real property commonly known and described as Assessor's Parcel Numbers 005-162-320 and 005-162-330 as depicted as a blue lined rectangle and located to the west of current JBP premises depicted on red line on west on the illustration attached hereto as **Exhibit A,** ("Site" or "Premises"). The license provides Licensee with a non-revocable, temporary, non-possessory and non-exclusive license to have access to and use of the Site and is not intended to grant any interest in real property of any kind or nature.

2. Permitted Use of Site. Licensee shall have the right to enter and use only the surface of the Site for the purpose of loading and off-loading as well as short term storage of construction equipment and materials at the Site, together with necessary rights of ingress and egress to and from the Site depicted by a green boundary line set forth on Exhibit A. Licensee shall not use the Site for any other use or purpose. Licensee shall not permit any damage, nuisance or waste on the Site, nor permit to be placed any gasoline, diesel fuel, oil, other petroleum products, or any hazardous or explosive material, waste or

substance, nor have any right to remove minerals or ores within or underlying the

substance, nor have any right to remove minerals or ores within or underlying the Site or its surrounding area.

3. "AS IS" Use. The use permitted by this license is on an "AS IS" basis with all faults of the Site waived or accepted by Licensee. Licensee acknowledges that Licensor has made no representations of any kind in connection with soils, improvements, or physical condition of the Site or the surrounding areas, or bearing on Licensee's use of the Site, whether express or implied.

4. Prior Rights. This License is made subject to all other licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens, and claims of title that may affect the Site that are in effect as of the Effective Date of this license as well as by the physical terrain or obstructions that may exist thereon.

5. Term of License. The rights granted to Licensee pursuant to this License shall commence on July 25, 2018, and shall terminate on March 25, 2019, (the "Term"). Licensor hereby grants Licensee an Option to extend the License term on a month by month basis for up to three (3) one-month extension periods (each separate month being an "Extension Period") from the date the Term expires. The License shall be non-revocable during the Term and, if applicable, each Extension Period. Exercise of each option shall be in writing delivered to Licensor no less than 15 calendar days prior to the expiration of the then existing Term or Extension Period.

6. Compensation for Use of Property. The sum of Eleven Thousand Eleven Hundred Eleven and Even Cent Dollars ($11,111.11) per month shall be paid for the use (the "Purchase Price"). The Purchase Price is calculated at the rate of approximately $0.074 per square foot per month. In the event that Licensee exercises its option to extend the term, Licensee shall pay the same rate for each Extension Period. Such payment shall be due in advance on the first calendar day of each Extension Period. If the Effective Date of this License is other than the first day of the calendar month, payment will be prorated for the fractional month and the payment for said fractional month, together with the payment for the first full month will be payable in advance upon execution of this License.

7. Permit from Government Agencies. Licensee shall, at its own cost and expense, secure all permits and other authorizations required by law, whether federal, state, local, or city, for its use of the Site as provided by this Agreement and agrees to fully conform to all laws, ordinances, and regulations pertaining thereto. Either Licensor or Licensee may terminate this Lease if any government body seeks to impose any condition or approval of Licensee's use of the Premises that will adversely affect Licensee's use, Licensor's use, the Site, and/or value. after termination of this License, or twat of any other property of Licensor.

8. Care and Restoration of Premises. Licensee shall keep the Site, including any improvements located thereon, in safe condition and in good order, condition and repair at all times during the License Term at Licensee's sole cost and expense. In the event of damage caused by Licensee, Licensee will restore the Premises at its own expense and in a timely manner. Upon termination of this Agreement, any and

all material or property permitted herein belonging to Licensee will be promptly removed and the Site restored to its original condition. If Licensee fails to promptly restore the Site to its condition as of the date hereof, Licensor may undertake such restoration following notice and a reasonable opportunity for Licensee to cure, and if Licensee fails to so cure, Licensee shall reimburse Licensor all costs and expenses caused by such failure.

9. Alterations. Licensee shall not make or suffer to be made any alterations, additions or improvements (collectively "Alterations") in, on, or to the Site without the prior written consent of Licensor, which consent shall not be unreasonably withheld or delayed.

10. Liens. Licensee shall not permit any mechanics' or materialmen's liens, stop orders or other liens (collectively, "Liens") to be filed against the Site or Licensor's adjacent property by reason of labor or materials furnished at Licensee's instance or request. If any such Liens are filed against the Site or Licensor's adjacent property, Licensee shall cause the same to be discharged of record either by payment of the claim or by posting and recording a bond contemplated by California Civil Code Section 3143, within 20 days after written demand by Licensor. Licensee shall indemnify, hold harmless, and defend Licensor from and against any and all such liens and any sums claimed therein.

II. Indemnification. Licensee shall indemnify, defend and hold harmless Licensor and its respective directors, officers, employees, agents, contractors, any other person acting on Licensor's behalf, and their successors and assignees, as they now or as they may hereafter be' constituted, singly, jointly or severally (collectively, "Licensor Indemnitees") front and against any and all liabilities, penalties, losses, damages, costs, loss of rent, expenses, demands, causes of action, claims or judgments (collectively, "Liabilities") arising out of or in connection with (a) the use, maintenance, occupation, alteration, or improvement of the Site by Licensee, (b) any act, omission or neglect of Licensee, Licensee's members, officers, employees, agents, servants, concessionaires, contractors or visitors, and/or (c) any breach or default by Licensee of any of the terms, covenants or conditions of this Agreement. The duty to defend established herein shall include payment of all legal costs and charges, including reasonable attorney's fees as they become due. The provisions of this Section 11 shall survive the expiration or termination of this License.

12. Insurance. Licensee is required to procure and maintain at its sole cost and expense the following insurance coverages subject to all of the requirements set forth below. Such insurance shall remain in full force and effect throughout the term of the License. In the event Licensee procures excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that the Licensee's insurance be primary without any right of contribution from Licensor or its insurers.

a. MINIMUM TYPES AND SCOPE OF INSURANCE

1. Workers Compensation and Employers' Liability Insurance. Workers Compensation with Statutory Limits and/or Federal Employers Liability ("FELA") coverage (whichever is applicable) to its employees, as required by the Federal Employer's Liability Act of 1908, applying to Interstate railroad employees, or, as required by Section 3700 et seq., of the California Labor Code, or Any subsequent amendments or successor acts thereto governing the liability of employers to their employees.

2. If FELA applies, it shall be in accordance with federal statutes and have minimum limits of $10,000,000 per occurrence.

3. If the California Labor Code requiring Workers' Compensation applies, the Lessee shall also maintain Employer's Liability coverage with minimum limits of $2 million.

4. Such insurance shall include the following endorsements:

Waiver of Subrogation;

ii. Commercial General Liability Insurance.

Commercial General Liability insurance for bodily injury and property damage coverage of at least $2 million per occurrence or claim and a general aggregate limit of at least $2 million. For any construction and public works projects, the insurance shall not have any exclusion for Explosion, Collapse and Underground perils (xcu) and for construction or demolition work within 50 feet of railroad tracks, the contractual liability exclusion for liability assumed shall be deleted.

1. This insurance shall include coverage for, but not be limited to: Premises

and operations;
Products and completed operations; Personal injury.

2. Such insurance shall include the following endorsements;

Additional Insured;

Separation o1 insureds Clause;

Primary and Non-Contributory wording; Waiver of

Subrogation.

iii. Business Automobile Liability Insurance.

Business Automobile Liability insurance providing bodily injury and property damage coverage of at least $2 million per accident or loss. This insurance shall include coverage for, but not be limited to:

All Owned vehicles; Non-owned vehicles; Hired or rental vehicles.

Such insurance shall include the following endorsements:

Additional Insured,
Primary and Non-Contributory wording.
Waiver of Subrogation

iv. Property Insurance.

Property insurance with Special Form coverage including theft but excluding earthquake with limits at .1least equal to the replacement cost of the property described below.

a) This insurance shall include coverage for, but not be limited to:

- Licensee's own business personal property and equipment to be used in performance of this Agreement.

b) Such insurance shall include the following endorsement:

Waiver of Subrogation.

b. ENDORSEMENTS

i. Additional Insured.

The referenced policies and any Excess or Umbrella policies shall include as Additional Insureds Licensor and its respective directors, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now. or as they may hereafter be constituted, singly, jointly or severally.

ii. Waiver of Subrogation.

The referenced policies and any Excess or Umbrella policies shall contain a waiver of subrogation in favor of Licensor and its respective directors, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

iii. Primary Insurance.

The referenced policies and any Excess and Umbrella policies shall indicate that they are primary to any other insurance and the insurance company(ies) providing such policies shall be liable thereunder for the full amount of any loss or claim, up to and including the total limit of liability, without right of contribution from

any of the insurance effected or which may be affected by Licensor.

iv. Separation of Insureds.

The referenced policies and any Excess or Umbrella policies shall contain a Separation of Insureds Clause. The purpose of this coverage is to protect Licensor and Licensee in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

Licensee shall promptly deliver to Licensor a certificate of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term specified herein. Such certificate shall be delivered to Licensor not less than three business days after to the expiration date of any policy.

13. Non-Liability of Licensor. Licensee shall indemnify and hold Licensor harmless from any damage to the Site including compensation for any loss of income and any bodily injury or death resulting from the use of the Site provided, however, Licensee shall not be obligated to indemnify Licensor to the extent any claim arises out of the sole negligence or willful misconduct of Licensor or its Agents.

14. Default.

a. Defaults.

The occurrence of any of the following shall constitute a material breach and default ("Default") of this Agreement by Licensee:

i. Any failure by Licensee to pay when due any of the moneys or charges payable by Licensee;

ii. A failure by Licensee to observe or perform any other provision of this Agreement to be observed or performed by Licensee when such failure is not corrected within 10 days after written notice thereof from Licensor; or if such failure cannot be cured within this 10 day period, as determined by Licensor in its reasonable discretion, if such cure is not commenced within 30 days of Licensor's written notice and thereafter diligently pursued to completion;

iii. The happening of any of the following events: (a) the filing or institution by Licensee of any proceeding under the Bankruptcy Act and any amendment thereto, or any other federal or state act now or hereafter relating to the subject of bankruptcy, insolvency, arrangement, reorganization, or other form of debtor relief, (b) the institution or filing of any involuntary proceeding against Licensee under any of the aforementioned laws unless such proceeding is dismissed within 30 days thereafter, (c) an adjudication of bankruptcy or a finding or judgment of insolvency of Licensee, (d) an assignment for the benefit of creditors by Licensee, (e) the levy of a writ of execution of the business of Licensee or the assets of Licensee located on the Premises which is not discharged within 10 days after the date of said levy, or (I) the appointment of a receiver to take possession of any property of Licensee.

15. Remedies. In the event of a Default by Licensee, Licensor may, at any time thereafter, terminate Licensee's right to use the Premises by any lawful means, in which case this License shall terminate, and Licensee shall immediately remove all of its property and improvements and surrender its further use or possession of the Premises to Licensor. Licensor may also pursue any other remedy now or hereafter available to Licensor under the laws of California.

16. Surrender of the Premises. Upon expiration or earlier termination of this License, Licensee shall leave the Premises in a neat and clean condition satisfactory to Licensor and free of all personal property of Licensee. All repairs, Alterations and/or other improvements made by Licensee shall become the property of Licensor, provided that Licensor may, by written notice given to Licensee on not less than 10 days prior to the expiration or termination of this Agreement, require Licensee to remove any such Alterations and improvements from the Premises and to restore the Premises to their original condition prior to termination of this Lease. If Licensee fails to do so, Licensor may perform such removal and restoration work in which case Licensee shall pay Licensor within 30 days after demand therefor (1) an amount equal to the use charge (as in effect immediately before termination) for the period during which such removal is accomplished and (2) the cost of removal of such improvements.

17. Holding Over. If Licensee, without Licensor's written consent, remains in possession of all or part of the Premises after expiration or earlier termination of this Agreement, such occupancy shall be construed to be a license for month-to-month subject to the terms and conditions of this Agreement, except that the use charge shall increase to 200% of the monthly use charge then in effect.

IS. Attorney' Fees. If either party brings any action against the other to enforce any provision of this License or collect any sum due hereunder, the prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees, in addition to any other remedies to which it may be entitled.

19. Notices. Except as otherwise specified herein, any notices given under this Agreement shall be effective only if in writing addressed as follows (or to such other address as either party may from time to time specify in writing to the other):

Licensor: Sunquest Properties, Inc
150 Executive Park Blvd., Suite 4000
San Francisco, CA 94134
Attn: Jonathan Scharfman

Licensee: Proven Management Inc
225 3Rd Street
Oakland CA 94070
Attn: Bill Gilmartin

20. Miscellaneous Provisions.

a. Non-Waiver. Licensor's failure to enforce or exercise its rights with respect to any provision hereof shall not be construed as a waiver of such rights or of such provision. Acceptance of use charges or any other sum shall not be a waiver of any preceding breach by Licensee of any provision hereof, regardless of Licensor's knowledge of such preceding breach at the time of acceptance of such payment; nor shall such acceptance be

a waiver in any way of Licensor's right to terminate this Agreement pursuant to its provisions.

b. Time of Essence. Time is of the essence of each provision of this License. Any reference to "days" shall mean calendar days except as otherwise expressly provided in this License.

c. Entire Agreement. This License sets forth the entire agreement between the parties with respect to the use of the Premises and supersedes all prior and/or contemporaneous agreements, communications, and representations, oral or written, express or implied, since the parties intend that this be an integrated agreement. This License may not be modified except by written and executed agreement of the parties.

d. Successors and Assigns. 'this License shall bind the heirs, executors, administrators, successors and assigns of any and all of the parties hereto.

e. Authority. Each individual executing this License on behalf of the party they represent hereby warrants that he or she is duly authorized to execute and deliver this License on behalf of their principal, and that this License is binding upon their principal in accordance with its terms.

f. Governing Law. This License shall be governed by and construed in accordance with the laws of the State of California as applied to contracts that are made and to be performed entirely in California.

g. Captions. All captions and headings in this License are for the purposes of reference and convenience only and shall not limit or expand the provisions of this License.

h. Counterparts. This License may be entered into in counterparts, each of which shall be deemed an original but both of which together shall be deemed a single agreement.

IN WITNESS WHEREOF, the parties hereto have executed, or have caused to be executed, this Lease as of the day and year first above written.

Address of Landlord:
Sunquest Properties, Inc.
150 Executive Park Blvd., #4000
San Francisco, CA 94134

Address of Tenant:
Proven Management Inc
225 3rd Street
Oakland, CA 4607

LANDLORD:

By: _____
Jonathan Scharfman

Its: General Manager

TENANT:

By: _____

Its: Vice President

EXHIBIT A

PREMISES

Proven Management Inc:

Premises indicated by Green line and located to the west of current Caltrain right-of -way

Approximately 150,000+- SF



Proven Management Inc License 7-25-18

EXHIBIT 4

TO

DECLARATION OF WILLIAM GILMARTIN

Visitacion Investment, LLC v. *424 Jessie Historic Properties, LLC., et al.*

San Francisco County Superior Court Case No. CGC-19-579667

Description of Exhibit:

Map of area used by Proven Management, Inc. in connection with Electrification Project.

EXHIBIT 4


2 Systems
Golden West Specialty Foods
Tunnel Ave
Tunnel Ave
Tunnel Ave
Approx: 150,000 SQFT
Bayshore Blvd
yshore Blvd
Bayshore Blvd
Visitacion Valley
Tunnel Ave
Visitacion Point
Tunnel Ave
BearCom
Google
1312119


Google Maps
< JPB Project Site
JHP Property >
Visitacion Property >
< JBP Right of Way
Sunquest License Agreement Premises >
SUNNYDALE
BAYSHORE HEIGHTS
Crocker Amazon Playground
McLaren Bike Park
Herz Playground
Visitacion Ave
Geneva Ave
7-Eleven
Candlestick Cove - Signature Homes
Odoo, Inc
Elevated San Francisco
Little Hollywood Park
Alpine Inn & Suites
Bay Club South San Francisco
Kelloch & Velasco Mini Park
Grocery Outlet of Visitacion Valley
A. Silvestri Co
Recology San Francisco
Bayshore
Cow Palace Arena & Event Center
Dollar Tree
Bayshore Chevron
Beatty Ave
7 Mile House Sports Bar & Grill
Brisbane Recycling Co., Inc
Baylands Soil Processing
Lazzari Fuel Company
Bayshore Roundhouse
Security Public Storage
Carter St
Guadalupe Canyon Pkwy
Bayshore Blvd
Tunnel Ave
Harney Way
Bayshore Fwy
Brisbane Technology Park
Visitacion Valley
Visitacion Point
Dnata Catering
Frito-Lay Inc
Gander & White Shipping
Room & Board Brisbane Delivery Center
Amazon Fresh
FIREMEX SOLUTIONS, INC
Google
Imagery ©2021 CNES / Airbus, Maxar Technologies, U.S. Geological Survey, USDA Farm Service Agency, Map data ©2021
1000 ft

EXHIBIT 5

TO

DECLARATION OF WILLIAM GILMARTIN

Visitacion Investment, LLC v. *424 Jessie Historic Properties, LLC., et al.*

San Francisco County Superior Court Case No. CGC-19-579667

Description of Exhibit:

Brisbane Planning Commission minutes
for September 27, 2018

EXHIBIT 5

Planning Commission

09/27/2018 - 7:30pm to 10:30pm

BRISBANE CITY HALL
Community Meeting Room
50 Park Place, Brisbane

COMMISSIONERS: Gomez, Gooding, Mackin, Patel, Sayasane

A. CALL TO ORDER

B. ROLL CALL

C. ADOPTION OF AGENDA

D. CONSENT CALENDAR

Please Note: Items listed here as Consent Calendar Items are considered routine and will be acted upon collectively by one motion adopting the Planning Department's recommendation unless a member of the public, the Commission, or its staff asks to remove an item to discuss it. Prior to the motion, the Chairperson will ask if anyone wishes to remove an item from the Consent Calendar.

1. APPROVAL OF DRAFT ACTION MINUTES

i. **Regular meeting of July 24, 2018 (384kb)**

ii. **Regular meeting of August 9, 2018 (403kb)**

E. ORAL COMMUNICATIONS (limit to a total of 15 minutes)

F. WRITTEN COMMUNICATIONS

G. NEW BUSINESS

1. PUBLIC HEARING: Use Permit UP-5-18; 101 South Hill Drive; TC-1 Crocker Park Trade Commercial District; Use Permit to establish a delivery-only retail, light manufacturing, distribution, and warehousing cannabis business within an existing 18,800 square foot office/warehouse building; Larry Thacker, Caliva, applicant; 101 111 South Hill Drive LLC, owner.

Agenda Report and Attachments (11.8mb)

2. PUBLIC HEARING: Interim Use Permit UP-4-18; Baylands, East of Bayshore Boulevard, between Icehouse Hill and the Caltrain rail lines; C-1 Commercial Mixed Use District; Interim Use Permit for a 1 year period to allow for outdoor staging of construction materials and equipment and assembly of work trains and rail track segments on an approximately 3.5 acre vacant site with an existing rail spur, in support of improvements along the Caltrain rail-line corridor; William Gilmartin III, applicant; Universal Paragon Corp., owner; Assessor's Parcel Numbers 005-162-320 & 330.

Agenda Report and Attachments (2.21mb)

H. WORKSHOP

1. Inclusionary Zoning and Density Bonus Ordinance

Memorandum and Attachments (1.28mb)

I. ITEMS INITIATED BY STAFF

J. ITEMS INITIATED BY THE COMMISSION

K. ADJOURNMENT to the next Regular Meeting of Thursday, October 11, 2018 at 7:30 p.m.

TO ADDRESS THE COMMISSION
Please fill in a "Notice of Request to Address Brisbane Planning Commission" and give to the secretary so that your name can be accurately included in the minutes. When recognized, please come up to the microphone, and begin by stating your name and address. When an item you're concerned about appears on the agenda, you may address the Commission at that time. Otherwise, you may address the Commission under Oral Communications. The maximum time allowed for all speakers under this communication is fifteen minutes. Conciseness is appreciated. Please contact the Community Development Department at 415-508-2120 at least 24 hours in advance to make arrangements for any PowerPoint presentations to the Commission. Any attendee who wishes accommodation for a

disability should contact the Community Development Department at least forty-eight hours prior to the meeting.

APPEALS PROCESS

Anyone may appeal the action of the Planning Commission to the City Council. An appeal to a Planning Commission action on a use permit shall be filed with the City Clerk not later than six (6) calendar days following the action. An application form and fee is required to make a formal appeal. For additional information, please contact the City Clerk at 415-508-2110.

INTERNET & OTHER ACCESS

Agendas and adopted minutes for meetings of the Planning Commission are posted on the Internet at: www.brisbaneca.org. Email may be sent to the Community Development Department at: planning@brisbaneca.org. Meetings are broadcast live on Comcast Channel 27 and by streaming video, via a link from the City's homepage. Rebroadcasts are during weeks following the meetings, on Fridays at 5 pm and Sundays at 1 pm; see the link http://www.brisbaneca.org/live-streaming for further details on Comcast's schedule. For a DVD copy, please contact the Community Development Department.

Agenda_09-27-18.pdf

2018-09-27PCMinutes.pdf

BRISBANE PLANNING COMMISSION
Action Minutes of September 27, 2018
Regular Meeting

A. CALL TO ORDER

Chairperson Mackin called the meeting to order at 7:30 p.m.

B. ROLL CALL

Present: Commissioners Gomez, Gooding, Mackin, Patel, and Sayasane.
Absent: None.
Staff Present: Community Development Director Swiecki, Senior Planner Johnson, Associate Planner Ayres.

C. ADOPTION OF AGENDA

Commissioner Gomez moved adoption of the agenda. Commissioner Gooding seconded the motion and it was approved 5-0.

D. CONSENT CALENDAR

Commissioner Patel moved adoption of the consent calendar. Commissioner Gomez seconded the motion and it was approved 5-0.

E. ORAL COMMUNICATIONS

There were none.

F. WRITTEN COMMUNICATIONS

Commissioner Mackin acknowledged written communications from the Housing Leadership Council and the City Attorney.

G. NEW BUSINESS

1. **PUBLIC HEARING: Use Permit UP-5-18; 101 South Hill Drive; TC-1 Crocker Park Trade Commercial District;** Use Permit to establish a delivery-only retail, light manufacturing, distribution, and warehousing cannabis business within an existing 18,800 square foot office/warehouse building; Larry Thacker, Caliva, applicant; 101 111 South Hill Drive LLC, owner.

Associate Planner Ayres presented the staff report.

Chairperson Mackin opened the public hearing.

Larry Thacker, applicant, spoke in favor of the project and answered Commissioner questions regarding odor management, cash management for retail delivery, advertising, vehicle trips, operating hours, and security protocols.

Rand Martin spoke in favor of the project.

Commissioner Gooding moved to close the public hearing. Commissioner Gomez seconded the motion and it was approved 5-0.

Commissioner Sayasane moved approval of Use Permit UP-5-18 by adopting Resolution UP-5-18. Commissioner Gooding seconded the motion and it was approved 5-0.

2. **PUBLIC HEARING: Interim Use Permit UP-4-18; Baylands, East of Bayshore Boulevard, between Icehouse Hill and the Caltrain rail lines; C-1 Commercial Mixed Use District;** Interim Use Permit for a 1 year period to allow for outdoor staging of construction materials and equipment and assembly of work trains and rail track segments on an approximately 3.5 acre vacant site with an existing rail spur, in support of improvements along the Caltrain rail-line corridor; William Gilmartin III**,** applicant; Universal Paragon Corp., owner; Assessor's Parcel Numbers 005-162-320 & 330.

Senior Planner Johnson gave the staff report and answered Commissioner questions regarding delivery vehicle access routes, hazardous waste protocol, and noise.

Chairperson Mackin opened the public hearing.

Bill Gilmartin III, applicant, answered Commission questions regarding the planned work schedule, staging activities and timelines, contaminated and hazardous material management protocols, other staging areas along the Caltrain line, and noise-generating activities.

Commissioner Patel moved to close the public hearing. Commissioner Gomez seconded the motion and it was approved 5-0.

After deliberation, Commissioner Gooding moved to approve Use Permit UP-4-18 by adopting Resolution UP-4-18, with a modified condition of approval on the permitted hours of operation, to reflect the applicant's statement that there would not be site activities occurring overnight from Monday evening to Thursday morning of each week, and to limit noise generating activities to between 7 am and 7 pm Mondays through Fridays and 9 am to 7 pm on Saturdays and Sundays. Commissioner Gomez seconded the motion and it was approved 5-0.

Chairperson Mackin read the appeals process.

H. WORKSHOP

1. Inclusionary Zoning and Density Bonus Ordinance

At the consensus of the Commission, this item was continued to the October 11 meeting.

I. ITEMS INITIATED BY STAFF

Director Swiecki stated the November 22 meeting would be cancelled. The Commission agreed to schedule a special meeting on November 29.

J. ITEMS INITIATED BY THE COMMISSION

There were none.

K. ADJOURNMENT

Commissioner Gooding moved adjournment to the next regular meeting of October 11, 2018. Commissioner Patel seconded the motion and the meeting adjourned at 9:25 p.m.

Attest:



John A. Swiecki, Community Development Director
NOTE: A full video record of this meeting can be found on DVD at City Hall and the City's website at www.brisbaneca.org.

EXHIBIT 6

TO

DECLARATION OF WILLIAM GILMARTIN

Visitacion Investment, LLC v. *424 Jessie Historic Properties, LLC., et al.*

San Francisco County Superior Court Case No. CGC-19-579667

Description of Exhibit:

License Agreement for Entry and Use of Surface Property between Sunquest Properties, Inc., as Licensor, and Proven Management, Inc. as Licensee
Dated January 1, 2020

EXHIBIT 6

LICENSE AGREEMENT FOR ENTRY AND USE
SURFACE OF PROPERTY

This LICENSE AGREEMENT TO ENTER AND USE SURFACE OF PROPERTY ('Agreement"), dated to be effective as of **January 01, 2020**, is made and entered into by and between the **Sunquest Properties Inc**, ("Licensor"), and **Proven Management Inc**, ("Licensee").

RECITALS

A. Licensor is the owner or is the authorized agent of the owner of certain premises described as **150.000 square feet** of open land situated on or about San Mateo County.

B. Licensee desires permission of Licensor for access to and use of said premises, and Licensor is agreeable to provide access to and use of said premises for the limited purpose and for the limited time as agreed to by the parties herein.

AGREEMENT

Now therefore, and in consideration of the mutual covenants, promises, and the exchange of consideration described herein, Licensor and Licensee agree as follows:

1. Grant of Right of Entry. Licensor hereby grants the non-exclusive right ("License") to Licensee and its officers, employees, consultants, contractors and authorized representatives as well as their respective employees, subcontractors and suppliers, for the purposes and upon the terms and conditions set forth below, to enter upon a portion of those certain parcels of real property commonly known and described as Assessor's Parcel Numbers 005-162-320 and 005-162-330 as depicted as a blue lined rectangle and located to the west of current JBP premises depicted on red line on west on the illustration attached hereto as **Exhibit A,** ("Site" or "Premises"). The license provides Licensee with a non-revocable, temporary, non-possessory and non-exclusive license to have access to and use of the Site and is not intended to grant any interest in real property of any kind or nature.

2. Permitted Use of Site. Licensee shall have the right to enter and use only the surface of the Site for the purpose of loading and off-loading as well as short term storage of construction equipment and materials at the Site, together with necessary rights of ingress and egress to and from the Site depicted by a green boundary line set forth on Exhibit A. Licensee shall not use the Site for any other use or purpose. Licensee shall not permit any damage, nuisance or waste on the Site, nor permit to be placed any gasoline, diesel fuel, oil, other petroleum products, or any hazardous or explosive material, waste or substance, nor have any right to remove minerals or ores within or underlying the Site or its surrounding area.

3. "AS IS" Use. The use permitted by this license is on an "AS IS" basis with all faults of the Site waived or accepted by Licensee. Licensee acknowledges that Licensor has made no representations of any kind in connection with soils, improvements, or physical condition of the Site or the surrounding areas, or bearing on Licensee's use of the Site, whether express or implied.

4. Prior Rights. This License is made subject to all other licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens, and claims of title that may affect the Site that are in effect as of the Effective Date of this license as well as by the physical terrain or obstructions that may exist thereon.

5. Term of License. The rights granted to Licensee pursuant to this License shall commence on **January 01, 2020, and continue on a month to month basis,** (the "Term"). The License shall be non-revocable during the Term. A minim 30 days 'notice in writing is required before vacating the premises.

6. Compensation for Use of Property. The sum of Thirty-Seven Thousand Five Hundred Dollars **($37,500) per month** shall be paid for the use (the "Purchase Price"). The Purchase Price is calculated at the rate of **approximately $0.25 per square** foot per month.

7. Permit from Government Agencies. Licensee shall, at its own cost and expense, secure all permits and other authorizations required by law, whether federal, state, local, or city, for its use of the Site as provided by this Agreement and agrees to fully conform to all laws, ordinances, and regulations pertaining thereto. Either Licensor or Licensee may terminate this Lease if any government body seeks to impose any condition or approval of Licensee's use of the Premises that will adversely affect Licensee's use, Licensor's use, the Site, and/or value. after termination of this License, or twat of any other property of Licensor.

8. Care and Restoration of Premises. Licensee shall keep the Site, including any improvements located thereon, in safe condition and in good order, condition and repair at all times during the License Term at Licensee's sole cost and expense. In the event of damage caused by Licensee, Licensee will restore the Premises at its own expense and in a timely manner. Upon termination of this Agreement, any and all material or property permitted herein belonging to Licensee will be promptly removed and the Site restored to its original condition. If Licensee fails to promptly restore the Site to its condition as of the date hereof, Licensor may undertake such restoration following notice and a reasonable opportunity for Licensee to cure, and if Licensee fails to so cure, Licensee shall reimburse Licensor all costs and expenses caused by such failure.

9. Alterations. Licensee shall not make or suffer to be made any alterations, additions or improvements (collectively "Alterations") in, on, or to the Site without the prior written consent of Licensor, which consent shall not be unreasonably withheld or delayed.

10. Liens. Licensee shall not permit any mechanics' or materialmen's liens, stop orders or other liens (collectively, "Liens") to be filed against the Site or Licensor's adjacent property by reason of labor or materials furnished at Licensee's instance or request. If any such Liens are filed against the Site or Licensor's adjacent property, Licensee shall cause the same to be discharged of record either by payment of the claim or by posting and recording a bond contemplated by California Civil Code Section 3143, within 20 days after written demand by Licensor. Licensee shall indemnify, hold harmless, and defend Licensor from and against any and all such liens and any sums claimed therein.

II. Indemnification. Licensee shall indemnify, defend and hold harmless Licensor and its respective directors, officers, employees, agents, contractors, any other person acting on

Licensor's behalf, and their successors and assignees, as they now or as they may hereafter be' constituted, singly, jointly or severally (collectively, "Licensor Indemnitees") front and against any and all liabilities, penalties, losses, damages, costs, loss of rent, expenses, demands, causes of action, claims or judgments (collectively, "Liabilities") arising out of or in connection with (a) the use, maintenance, occupation, alteration, or improvement of the Site by Licensee, (b) any act, omission or neglect of Licensee, Licensee's members, officers, employees, agents, servants, concessionaires, contractors or visitors, and/or (c) any breach or default by Licensee of any of the terms, covenants or conditions of this Agreement. The duty to defend established herein shall include payment of all legal costs and charges, including reasonable attorney's fees as they become due. The provisions of this Section 11 shall survive the expiration or termination of this License.

12. Insurance. Licensee is required to procure and maintain at its sole cost and expense the following insurance coverages subject to all of the requirements set forth below. Such insurance shall remain in full force and effect throughout the term of the License. In the event Licensee procures excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that the Licensee's insurance be primary without any right of contribution from Licensor or its insurers.

a. MINIMUM TYPES AND SCOPE OF INSURANCE

1. Workers Compensation and Employers' Liability Insurance. Workers Compensation with Statutory Limits and/or Federal Employers Liability ("FELA") coverage (whichever is applicable) to its employees, as required by the Federal Employer's Liability Act of 1908, applying to Interstate railroad employees, or, as required by Section 3700 et seq., of the California Labor Code, or Any subsequent amendments or successor acts thereto governing the liability of employers to their employees.

2. If FELA applies, it shall be in accordance with federal statutes and have minimum limits of $10,000,000 per occurrence.

3. If the California Labor Code requiring Workers' Compensation applies, the Lessee shall also maintain Employer's Liability coverage with minimum limits of $2 million.

4. Such insurance shall include the following endorsements:

Waiver of Subrogation;

ii. Commercial General Liability Insurance.

Commercial General Liability insurance for bodily injury and property damage coverage of at least $2 million per occurrence or claim and a general aggregate limit of at least $2 million. For any construction and public works projects, the insurance shall not have any exclusion for Explosion, Collapse and Underground perils (xcu) and for construction or demolition work within 50 feet of railroad tracks, the contractual liability exclusion for liability assumed shall be deleted.

1. This insurance shall include coverage for, but not be limited to: Premises

and operations;
Products and completed operations; Personal injury.

2. Such insurance shall include the following endorsements;

Additional Insured;

Separation o1 insureds Clause;

Primary and Non-Contributory wording; Waiver of

Subrogation.

iii. Business Automobile Liability Insurance.

Business Automobile Liability insurance providing bodily injury and property damage coverage of at least $2 million per accident or loss. This insurance shall include coverage for, but not be limited to:

All Owned vehicles; Non-
owned vehicles; Hired or rental
vehicles.

Such insurance shall include the following endorsements:

Additional Insured,
Primary and Non-Contributory wording.
Waiver of Subrogation

iv. Property Insurance.

Property insurance with Special Form coverage including theft but excluding earthquake with limits at .1east equal to the replacement cost of the property described below.

a) This insurance shall include coverage for, but not be limited to:

- Licensee's own business personal property and equipment to be used in performance of this Agreement.

b) Such insurance shall include the following endorsement:

Waiver of Subrogation.

b. ENDORSEMENTS

i. Additional Insured.

The referenced policies and any Excess or Umbrella policies shall include as Additional Insureds Licensor and its respective directors, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now. or as they may hereafter be constituted, singly, jointly or severally.

ii. Waiver of Subrogation.

The referenced policies and any Excess or Umbrella policies shall contain a waiver of subrogation in favor of Licensor and its respective directors, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

iii. Primary Insurance.

The referenced policies and any Excess and Umbrella policies shall indicate that they are primary to any other insurance and the insurance company(ies) providing such policies shall be liable thereunder for the full amount of any loss or claim, up to and including the total limit of liability, without right of contribution from any of the insurance effected or which may be affected by Licensor.

iv. Separation of Insureds.

The referenced policies and any Excess or Umbrella policies shall contain a Separation of Insureds Clause. The purpose of this coverage is to protect Licensor and Licensee in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

Licensee shall promptly deliver to Licensor a certificate of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term specified herein. Such certificate shall be delivered to Licensor not less than three business days after to the expiration date of any policy.

13. Non-Liability of Licensor. Licensee shall indemnify and hold Licensor harmless from any damage to the Site including compensation for any loss of income and any bodily injury or death resulting from the use of the Site provided, however, Licensee shall not be obligated to indemnify Licensor to the extent any claim arises out of the sole negligence or willful misconduct of Licensor or its Agents.

14. Default.

a. Defaults.

The occurrence of any of the following shall constitute a material breach and default ("Default") of this Agreement by Licensee:

i. Any failure by Licensee to pay when due any of the moneys or charges payable by Licensee;

ii. A failure by Licensee to observe or perform any other provision of this Agreement to be observed or performed by Licensee when such failure is not corrected within 10 days after written notice thereof from Licensor; or if such failure cannot be cured within this 10 day period, as determined by Licensor in its reasonable discretion, if such cure is not commenced within 30 days of Licensor's written notice and thereafter diligently pursued to completion;

iii. The happening of any of the following events: (a) the filing or institution by Licensee of any proceeding under the Bankruptcy Act and any amendment thereto, or any other federal or state act now or hereafter

relating to the subject of bankruptcy, insolvency, arrangement, reorganization, or other form of debtor relief, (b) the institution or filing of any involuntary proceeding against Licensee under any of the aforementioned laws unless such proceeding is dismissed within 30 days thereafter, (c) an adjudication of bankruptcy or a finding or judgment of insolvency of Licensee, (d) an assignment for the benefit of creditors by Licensee, (e) the levy of a writ of execution of the

business of Licensee or the assets of Licensee located on the Premises which is not discharged within 10 days after the date of said levy, or (I) the appointment of a receiver to take possession of any property of Licensee.

15. Remedies. In the event of a Default by Licensee, Licensor may, at any time thereafter, terminate Licensee's right to use the Premises by any lawful means, in which case this License shall terminate, and Licensee shall immediately remove all of its property and improvements and surrender its further use or possession of the Premises to Licensor. Licensor may also pursue any other remedy now or hereafter available to Licensor under the laws of California.

16. Surrender of the Premises. Upon expiration or earlier termination of this License, Licensee shall leave the Premises in a neat and clean condition satisfactory to Licensor and free of all personal property of Licensee. All repairs, Alterations and/or other improvements made by Licensee shall become the property of Licensor, provided that Licensor may, by written notice given to Licensee on not less than 10 days prior to the expiration or termination of this Agreement, require Licensee to remove any such Alterations and improvements from the Premises and to restore the Premises to their original condition prior to termination of this Lease. If Licensee fails to do so, Licensor may perform such removal and restoration work in which case Licensee shall pay Licensor within 30 days after demand therefor (1) an amount equal to the use charge (as in effect immediately before termination) for the period during which such removal is accomplished and (2) the cost of removal of such improvements.

17. Holding Over. If Licensee, without Licensor's written consent, remains in possession of all or part of the Premises after expiration or earlier termination of this Agreement, such occupancy shall be construed to be a license for month-to-month subject to the terms and conditions of this Agreement, except that the use charge shall increase to 200% of the monthly use charge then in effect.

IS. Attorney' Fees. If either party brings any action against the other to enforce any provision of this License or collect any sum due hereunder, the prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees, in addition to any other remedies to which it may be entitled.

18. Notices. Except as otherwise specified herein, any notices given under this Agreement shall be effective only if in writing addressed as follows (or to such other address as either party may from time to time specify in writing to the other):

Licensor: Sunquest Properties, Inc
150 Executive Park Blvd., Suite 4000
San Francisco, CA 94134
Attn: Sam Khodja

Licensee: Proven Management Inc
225 3Rd Street
Oakland CA 94070
Attn: Bill Gilmartin

19. Miscellaneous Provisions.

a. Non-Waiver. Licensor's failure to enforce or exercise its rights with respect to any provision hereof shall not be construed as a waiver of such rights or of such provision. Acceptance of use charges or any other sum shall not be a waiver of any preceding breach by Licensee of any provision hereof, regardless of Licensor's knowledge of such preceding breach at the time of acceptance of such payment; nor shall such acceptance be a waiver in any way of Licensor's right to terminate this Agreement pursuant to its provisions.

b. Time of Essence. Time is of the essence of each provision of this License. Any reference to "days" shall mean calendar days except as otherwise expressly provided in this License.

c. Entire Agreement. This License sets forth the entire agreement between the parties with respect to the use of the Premises and supersedes all prior and/or contemporaneous agreements, communications, and representations, oral or written, express or implied, since the parties intend that this be an integrated agreement. This License may not be modified except by written and executed agreement of the parties.

d. Successors and Assigns. 'this License shall bind the heirs, executors, administrators, successors and assigns of any and all of the parties hereto.

e. Authority. Each individual executing this License on behalf of the party they represent hereby warrants that he or she is duly authorized to execute and deliver this License on behalf of their principal, and that this License is binding upon their principal in accordance with its terms.

f. Governing Law. This License shall be governed by and construed in accordance with the laws of the State of California as applied to contracts that are made and to be performed entirely in California.

g. Captions. All captions and headings in this License are for the purposes of reference and convenience only and shall not limit or expand the provisions of this License.

h. Counterparts. This License may be entered into in counterparts, each of which shall be deemed an original but both of which together shall be deemed a single agreement.

IN WITNESS WHEREOF, the parties hereto have executed, or have caused to be executed, this Lease as of the day and year first above written.

Address of Landlord:
Sunquest Properties, Inc.
150 Executive Park Blvd., #4000
San Francisco, CA 94134

Address of Tenant:
Proven Management Inc
225 3rd Street
Oakland, CA 4607

LANDLORD:

By: _____
Michael Qiao 12/23/2019

Its: Chief Operation Officer

TENANT:

By: _____

Its:

EXHIBIT A

PREMISES

Proven Management Inc:

Premises indicated by Green line and located to the west of current Caltrain right-of -way

Approximately 150,000+- SF



Proven Management Inc License 01-01-2020

EXHIBIT 7

TO

DECLARATION OF WILLIAM GILMARTIN

Visitacion Investment, LLC v. *424 Jessie Historic Properties, LLC., et al.*

San Francisco County Superior Court Case No. CGC-19-579667

Description of Exhibit:

Brisbane Planning Commission minutes
for October 24, 2019

EXHIBIT 7

REGULAR MEETING
BRISBANE PLANNING COMMISSION
Thursday, October 24th, 2019
7:30 p.m.
BRISBANE CITY HALL
50 Park Place, Brisbane

COMMISSIONERS: Gomez, Gooding, Mackin, Patel, Sayasane

A. CLOSED SESSION (7:20 P.M. in the Large Conference Room)

1. Approval of the Closed Session Agenda

2. Public Comment.

Members of the public may address the Commission on any item on the closed session agenda

3. Adjournment into Closed Session

4. Threat to Public Services or Facilities

Consultation with Randy Breault, Security Operations Manager, and/or Lisa Macias, Police Chief, under Government Code, Section 54957 (a).

B. CALL TO ORDER (7:30 P.M. in the Community Meeting Room)

C. ROLL CALL

D. ADOPTION OF AGENDA

E. CONSENT CALENDAR

Please Note: Items listed here as Consent Calendar Items are considered routine and will be acted upon collectively by one motion adopting the Planning Department's recommendation unless a member of the public, the Commission, or its staff asks to remove an item to discuss it. Prior to the motion, the Chairperson will ask if anyone wishes to remove an item from the Consent Calendar.

1. APPROVAL OF DRAFT ACTION MINUTES

i. Regular meeting of September 12, 2019

F. ORAL COMMUNICATIONS (limit to a total of 15 minutes)

G. WRITTEN COMMUNICATIONS

H. NEW BUSINESS

1. PUBLIC HEARING: Interim Use Permit UP-7-19 (Continuation of UP-4-18); Baylands, East of Bayshore Boulevard, between Icehouse Hill and the Caltrain rail lines; C-1 Commercial Mixed Use District; Interim Use Permit to allow the previously approved interim use to continue through

December 2020, to allow outdoor staging of construction materials and equipment and assembly of work trains and rail track segments on an approximately 3.5-acre vacant site with an existing rail spur, to support improvements along the Caltrain rail-line corridor; Zach Mayes, applicant; Universal Paragon Corp., owner; Assessor's Parcel Numbers 005-162-320 & 330.

Agenda Report and Attachments

2. PUBLIC HEARING: Interim Use Permit UP-4-19/Grading Review EX-3-19; 600 Tunnel Avenue, in the Baylands subarea, a vacant site south of the Golden State Lumber storage yard, between Tunnel Avenue and the Caltrain rail lines; C-1 Commercial Mixed Use District; Interim Use Permit to allow staging of up to 90 Google commuter buses to serve Peninsula Google employees on an approximately 3-acre vacant site for up to 5 years, including preparatory site grubbing and approximately 4,500 cubic yards of grading with base rock; Eric Aronsohn, applicant; Oyster Point Properties Inc. (Universal Paragon Corp.), owner; Assessor's Parcel Numbers 005-340-040 & 005-350-080.

Agenda Report and Attachments

I. STUDY SESSION

1. Storefront retail cannabis regulations.

J. ITEMS INITIATED BY STAFF

K. ITEMS INITIATED BY THE COMMISSION

L. ADJOURNMENT to the Regular Meeting of Thursday, November 14, 2019 at 7:30 p.m.

TO ADDRESS THE COMMISSION

Please fill in a "Notice of Request to Address Brisbane Planning Commission" and give to the secretary so that your name can be accurately included in the minutes. When recognized, please come up to the microphone, and begin by stating your name and address. When an item you're concerned about appears on the agenda, you may address the Commission at that time. Otherwise, you may address the Commission under Oral Communications. The maximum time allowed for all speakers under this communication is fifteen minutes. Conciseness is appreciated. Please contact the Community Development Department at 415-508-2120 at least 24 hours in advance to make arrangements for any PowerPoint presentations to the Commission. Any attendee who wishes accommodation for a disability should contact the Community Development Department at least forty-eight hours prior to the meeting.

APPEALS PROCESS

Anyone may appeal the action of the Planning Commission to the City Council. Appeals shall be filed with the City Clerk within 6 calendar days of the Planning Commission's action for use permit

applications. An application form and fee is required to make a formal appeal. For additional information, please contact the City Clerk at 415-508-2110.

INTERNET & OTHER ACCESS

Agendas and adopted minutes for meetings of the Planning Commission are posted on the Internet at: www.brisbaneca.org. Email may be sent to the Community Development Department at: planning@brisbaneca.org. Meetings are broadcast live on Comcast Channel 27 and by streaming video, via a link from the City's homepage. Rebroadcasts are during weeks following the meetings, on Fridays at 5 pm and Sundays at 1 pm; see the link http://www.brisbaneca.org/live-streaming for further details on Comcast's schedule. For a DVD copy, please contact the Community Development Department.

NOTICE OF DISCLOSURE

Written information or comments that may include a person's name, address, email address, etc. submitted to the City, Planning Commission, and/or City staff are public records under the California Public Records Act, are subject to disclosure and may appear on the City's website.

Agenda_10-24-19.pdf

BRISBANE PLANNING COMMISSION
Action Minutes of October 24, 2019
Regular Meeting

A. CLOSED SESSION (7:20 P.M. in the Large Conference Room)

1. Approval of the Closed Session Agenda

Commissioner Gooding moved approval of the closed session agenda. Commissioner Mackin seconded the motion and it was adopted 5-0.

2. Public Comment.

There was none.

3. Adjournment into Closed Session

Commissioner Gooding moved adjournment into closed session. Commissioner Mackin seconded the motion and it was adopted 5-0.

4. Threat to Public Services or Facilities

Security Operations Manager Breault gave the presentation.

B. CALL TO ORDER (7:30 PM in the Community Meeting Room)

Chairperson Sayasane called the meeting to order at 7:30 p.m.

C. ROLL CALL

Present: Commissioners Gomez Gooding, Mackin, Patel, and Sayasane.
Absent: None.
Staff Present: Senior Planners Johnson and Ayres

D. ADOPTION OF AGENDA

Commissioner Gomez moved adoption of the agenda. Commissioner Gooding seconded the motion and it was approved 5-0.

E. CONSENT CALENDAR

Commissioner Patel moved approval of the consent calendar. Commissioner Gooding seconded the motion and it was approved 5-0.

F. ORAL COMMUNICATIONS

There were none.

G. WRITTEN COMMUNICATIONS

There were none.

H. NEW BUSINESS

1. **PUBLIC HEARING: Interim Use Permit UP-7-19 (Continuation of UP-4-18); Baylands, East of Bayshore Boulevard, between Icehouse Hill and the Caltrain rail lines; C-1 Commercial Mixed Use District;** Interim Use Permit to allow the previously approved interim use to continue through December 2020, to allow outdoor staging of construction materials and equipment and assembly of work trains and rail track segments on an approximately 3.5-acre vacant site with an existing rail spur, to support improvements along the Caltrain rail-line corridor; Zach Mayes, applicant; Universal Paragon Corp., owner.

Senior Planner Johnson gave the staff presentation and answered Commissioner questions regarding metering of the temporary water connection and the lack of noise complaints.

Chairperson Sayasane opened the public hearing.

Zach Mayes, applicant, addressed the Commission in support of the application.

Seeing no others wishing to speak, Commissioner Mackin moved and Commissioner Gomez seconded to close the public hearing. The motion was approved 5-0.

Commissioner Mackin moved to adopt resolution UP-7-19. The motion was seconded by Commissioner Patel and approved 5-0.

2. **PUBLIC HEARING: Interim Use Permit UP-4-19/Grading Review EX-3-19; 600 Tunnel Avenue, in the Baylands subarea, a vacant site south of the Golden State Lumber storage yard, between Tunnel Avenue and the Caltrain rail lines; C-1 Commercial Mixed Use District;** Interim Use Permit to allow staging of up to 90 Google commuter buses to serve Peninsula Google employees on an approximately 3-acre vacant site for up to 5 years, including preparatory site grubbing and approximately 4,500 cubic yards of grading with base rock; Eric Aronsohn, applicant; Oyster Point Properties Inc. (Universal Paragon Corp.), owner.

Senior Planner Johnson gave the staff presentation and answered Commissioner questions regarding proposed on and off-site circulation, potential impacts to the capped landfill and adjacent wetland habitat, truck travel patterns of other businesses in the area, lighting, dust control, and stormwater management.

Chairperson Sayasane opened the public hearing.

Eric Aronsohn, representing owner Universal Paragon Corp, and Ross Benson, representing proposed tenant Google, addressed the Commission in support of the application.

Mary Rogers, Brisbane resident, addressed the Commission in opposition to the application.

Tamara, employee of Golden Gate Lumber, addressed the Commission regarding the timing of lumber yard operations within the vicinity of the proposed parking lot.

Seeing no others wishing to speak, Commissioner Patel moved and Commissioner Gooding seconded to close the public hearing. The motion was approved 5-0.

After deliberation, Commissioner Gooding moved to adopt resolution UP-4-19/EX-3-19, modified to reduce the term of the interim use permit to two years and to require that routing of vehicles be to the north to connect to U.S. 101. It was also advised that any application to extend the use permit beyond 2 years should include traffic circulation and trip count data. The motion was seconded by Commissioner Gomez and approved 4-1 (Mackin).

I. STUDY SESSION

1. Storefront retail cannabis regulations

Senior Planner Ayres and Commander Garcia gave the staff presentation.

Chairperson Sayasane welcomed comments from the audience.

Michelle Dzitser addressed the Commission in support of regulations with fewer impediments to businesses due to existing challenges in State licensing and in the local leasing market.

Sean Kelly Rai addressed the Commission in support of regulations with a scoring provision.

Edesa Bitbadal addressed the Commission in support of regulations with either two-tiered or one-tier permitting procedures.

At the conclusion of the study session, the Commissioners generally indicated support to consider a one-tiered use permit process for storefront retail cannabis regulations.

J. ITEMS INITIATED BY STAFF

Senior Planner Johnson reminded the Commission of an upcoming Commissioner training sponsored by 21 Elements.

K. ITEMS INITIATED BY THE COMMISSION

There were none.

L. ADJOURNMENT

Commissioner Gomez moved to adjourn to the regular meeting of Thursday, November 14th, 2019. Commissioner Gooding seconded the motion and it was approved 5-0. The meeting adjourned at 10:26 p.m.

Attest:

John Swiecki
John A. Swiecki, Community Development Director
NOTE: A full video record of this meeting can be found on DVD at City Hall and the City's website at www.brisbaneca.org.

TAB 2

TO

VOLUME 1 OF 1 OF EVIDENCE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON COMPLAINT, OR ALTERNATIVELY, SUMMARY ADJUDICATION

Visitacion Investment, LLC v. *424 Jessie Historic Properties, LLC., et al.*

San Francisco County Superior Court Case No. CGC-19-579667

Description of Tab:

DECLARATION OF HOWARD PEARCE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON COMPLAINT, OR ALTERNATIVELY, SUMMARY ADJUDICATION AND EXHIBIT A

TAB 2

KENNETH S. KATZOFF (SBN 103490)
STEPHEN G. PREONAS (SBN 245334)
Katzoff & Riggs LLP
1500 Park Avenue, Suite 300
Emeryville, CA 94608
Telephone 510-597-1990

Attorneys for Plaintiff and Cross-Defendant
VISITACION INVESTMENT, LLC

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

VISITACION INVESTMENT, LLC Plaintiff, vs. 424 JESSIE HISTORIC PROPERTIES, LLC, et al. Defendants. AND RELATED CROSS-ACTION	Case No. CGC-19-579667 **DECLARATION OF HOWARD PEARCE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON COMPLAINT, OR ALTERNATIVELY, SUMMARY ADJUDICATION** Date: June 10, 2021 Time: 9:30 a.m. Dept.: 501 Reservation No. Complaint Filed: October 1, 2019 Trial Date: July 12, 2021

HOWARD PEARCE declares:

1. I am the Director of Infrastructure/Environmental & Civil for Universal Paragon Corporation ("UPC"), formerly known as Tuntex (U.S.A.) Inc. ("Tuntex"). Plaintiff Visitacion Investment, LLC ("Visitacion") is an affiliate of UPC. I have held this position since 2008. As a Director, I help manage Visitacion's real estate development. I have personal knowledge of the matters set forth in this declaration and

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can competently testify thereto.

2. This declaration is being submitted in support of Visitacion's opposition to the motion for summary judgment and/or summary adjudication against of defendant 424 Jessie Historic Properties, LLC ("JHP").

3. Visitacion owns 10 contiguous parcels of real property located in the Visitacion Valley neighborhood in the southeast corner of the City and County of San Francisco and commonly known as 2201, 2245, 2500 and 2555 Bay Shore Boulevard, 222 Tunnel Avenue and 289, 290 and 292 Sunnydale Avenue, San Francisco, CA ("the Visitacion Property").

4. The Visitacion Property includes: (1) the former Schlage Lock Factory ("the Schlage Property"); (2) certain parcels adjacent to the Schlage Property formerly owned by Southern Pacific Railroad ("SP") which later merged with Union Pacific Railroad ("RR" or "UP") and the "Former RR Property"); and (3) a certain parcel conveyed by the RR referred to as Parcel A below.

5. When UP transferred the Visitacion Property to Tuntex it retained two parcels adjacent to the Former RR Property (referred to for convenience as "Parcel A" and "Parcel B" and both collectively). UP reserved in itself certain easements over the Former RR Property set forth in Exhibit B to the grant deed granting the Former RR Property to Tuntex ("the Easements"). The reservation of the Easements by UP was set forth in the Grant Deed from Southern Pacific, as Grantor to Tuntex (U.S.A.), Inc. as Grantee dated August 1, 1990, that is attached as Exhibit 1 to Visitacion's complaint in this action.

6. The Visitacion Property is adjacent to certain real property owned by

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defendant 424 Jessie Historic Properties, LLC ("JHP") known as 2201 Bay Shore Boulevard and 220 Tunnel Avenue, San Francisco, Assessor's Parcel Numbers 5087-004 and 5087-005 ("the JHP Property" or Parcel B and with the Visitacion Property both collectively "the Properties").

7. UP transferred the JHP Property pursuant to a Quitclaim Deed from Union Pacific Railroad Company to Patrick McNerney dated January 21, 2015. A true copy of this quitclaim deed is attached as Exhibit 3 to Visitacion's compliant in this action. This quitclaim deed specifically excluded the following portions of the Easements initially reserved by UP in 1990:

- Schedule 1, Parcel 1 – This is the current main line right-of-way operated by the Peninsula Corridor Joint Powers Board ("JPB")
- Schedule 2 Parcel 1 – This is an existing active spur that UP uses for freight delivery; and
- Schedule 3 Parcel 1 – This roadway access provides access to the Bayshore Station on the east side of the main line right-of-way.

I plotted the location of these portions of the Easements that were not conveyed in the 2015 Grant Deed on a map of the properties. A true copy of this map is attached as Exhibit A.

8. As set forth in Exhibit A, Schedule 1, Parcel 2 contains a small signal cabinet area to support railroad operations. Neither JHP, not its predecessor in interest in the JHP Property, Patrick McNerney, have used this signal cabinet area for any purpose.

9. I am aware that on or about March 2, 2016, Visitacion entered into a

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Temporary License Agreement with Patrick McNerney, the former owner of the JHP Property ("the License"). In entering the License Visitacion did not intend to alter the rights of the parties regarding the Easements, including the right of Visitacion to seek to quiet title in them. Section 1 of the License explicitly states that the License "does not amend or waive any rights of the parties under the RR Easements" including the right of Visitacion to seek to quiet title in them based upon their non-use.

10. The purpose of the License was to permit Visitacion to construct a retaining wall along the property line of the Properties. At the time of the License both Visitacion and McNerney were discussing the joint development of their respective properties. McNerney was considering developing buildings on the JHP Property that would provide access to the JHP Property by way of a new street to be constructed along the retaining wall on the eastern boundary of the JHP Property (Street A.) This is still a viable option for access to the JHP Property and one that Visitacion has consistently offered to JHP to support its development goals on the JHP Property.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 25, 2021 in San Francisco, California.



HOWARD PEARCE

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EXHIBIT A

TO

DECLARATION OF HOWARD PEARCE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON COMPLAINT, OR ALTERNATIVELY, SUMMARY ADJUDICATION

Visitacion Investment, LLC v. *424 Jessie Historic Properties, LLC., et al.*

San Francisco County Superior Court Case No. CGC-19-579667

Description of Exhibit:

Map plotting location of portions of the Railroad Easement that were not conveyed in the 2015 Quitclaim Deed

EXHIBIT A

EXHIBIT A

FINAL MAP NO. 7182

A 13 LOT SUBDIVISION FOR CONDOMINIUM PURPOSES FOR
1679 RESIDENTIAL UNITS AND 20 COMMERCIAL UNITS

A MERGER AND SUBDIVISION OF THAT REAL PROPERTY DESCRIBED IN THOSE CERTAIN GRANT DEEDS RECORDED ON OCTOBER 3, 2008, AS DOCUMENT NUMBERS 2008-I661575-00 AND 2008-I661576-00 OFFICIAL RECORDS OF CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO STATE OF CALIFORNIA

SCALE 1"=50' AUGUST 2016

BkF ENGINEERS / SURVEYORS / PLANNERS

BKF ENGINEERS AND SURVEYORS
255 SHORELINE DRIVE, #200
REDWOOD CITY, CA 94065
PHONE: (650) 482-6300

GRAPHIC SCALE
50' 0 50' 100'

LEGEND

CALC	CALCULATED
CL	CENTERLINE
DN	DOCUMENT NUMBER
FD	FOUND
IP	IRON PIPE
M	MAPS
NRF	NO REFERENCE FOUND
O.R.	OFFICIAL RECORDS
PAE	PUBLIC ACCESS EASEMENT
PM	PARCEL MAP
RR	RAILROAD
W/	WITH
R	RADIAL BEARING
( )	RECORD DATA
BOUNDARY LINE	
LOT LINE	
MONUMENT LINE	
EASEMENT LINE	
ADJACENT LOT LINE	

VISITACION AVENUE

APPROXIMATE LOCATION OF SIDEWALK ENCROACHMENT AGREEMENT (488 OR 308)

SOUTHERLY LIMIT OF ENVIRONMENTAL RESTRICTION LINE (DN. 2014-J901967)

NORTHERLY LIMIT OF ENVIRONMENTAL RESTRICTION LINE (DN. 2014-J901966)

DN. 2008-I661575-00 (LOT 14, 11 PM 23) APN LOT 014, BLOCK 5099

DN. 2008-I661575-00 (LOT 10, 11 PM 23) APN LOT 010, BLOCK 5100

DN. 2008-I661575-00 APN LOT 3, BLOCK 5100

DN. 2008-I661576-00 (LOT 6, 16 PM 40) APN LOT 006, BLOCK 5101

DN. 2008-I661576-00 (LOT 8, 16 PM 40) APN LOT 009, BLOCK 5102

DN. 2008-I661575-00 (LOT 7, 16 PM 40) APN LOT 007, BLOCK 5101

DN. 2008-I661576-00 APN LOT 001, BLOCK 5107

SCHEDULE 1 PARCEL 2 501.5SF 0.01Ac

INGRESS / EGRESS AREA 15,382SF = 0.35Ac

16 PM 40 AMENDMENT MENTIONED IN (1) UP DEED

SCHEDULE 2 PARCEL 3 3,590.6SF 0.08 Ac

SCHEDULE 2 PARCEL 2 22,611.3 SF 0.52Ac

SCHEDULE 2 PARCEL 1 22,348.5SF 0.51Ac

RR EASEMENT FOR ACCESS ROADWAY (DN. E761808 - F187 OR I534) (DN. E962735 - F445 OR 298)

RR EASEMENT FOR MAIN LINE (DN. E761808 - F187 OR I534) (DN. E962735 - F445 OR 298)

APPROXIMATE CENTERLINE OF 5 FOOT FIBER OPTIC EASEMENT (G881 OR 0220)

RR EASEMENT FOR DRILL & SPUR TRACT (DN. E761808 - F187 OR I534) (DN. E962735 - F445 OR 298)

RESTRICTED USE OF PROPERTY (G529 OR 0207)

RR EASEMENT FOR DRILL & SPUR TRACT (DN. E761808 F187 OR I534) (DN. E962735 - F445 OR 298)

RESTRICTED USE OF PROPERTY (G529 OR 0207)

APPROXIMATE CENTERLINE OF 5 FOOT FIBER OPTIC EASEMENT (G881 OR 0220)

100' WIDE RR EASEMENT FOR MAINLINE (DN. E761808 - F187 OR I534) (DN. E962735 - F445 OR 298)

SCHEDULE 1 PARCEL 1 NOT INCLUDED

SCHEDULE 2 PARCEL 1 NOT INCLUDED

RR EASEMENT FOR DRILL & SPUR TRACT (DN. E761808 - F187 OR I534) (DN. E962735 - F445 OR 298)

RESTRICTED USE OF PROPERTY (G529 OR 0207)

RESTRICTED USE OF PROPERTY (G529 OR 0207)

SEWER TUNNEL EASEMENT (DN. 2010-J052542-00)

RESTRICTED USE OF PROPERTY (G529 OR 0207)

(FORMERLY TOBIN STREET) SUNNYDALE AVENUE (66' WIDE)

RR EASEMENT FOR ACCESS ROADWAY (DN. E761808 - F187 OR I534) (DN. E962735 - F445 OR 298)

APPROXIMATE LOCATION OF 29.00' WIDE SEWER TUNNEL EASEMENT (K233 OR 0705)

RESTRICTED USE OF PROPERTY (G529 OR 0207)

RESTRICTED USE OF PROPERTY (G529 OR 0207)

DN. 2008-I661576-00

APPROXIMATE LOCATION OF 20.00' WIDE SANITARY SEWER EASEMENT (A456 OR 516)

RESTRICTED USE OF PROPERTY (G529 OR 0207)

29.00'

20.00'

TUNNEL AVENUE (60' WIDE)

GRANTED TO STATE OF CALIFORNIA BY DEED RECORDED IN BOOK 3857 PAGE 591

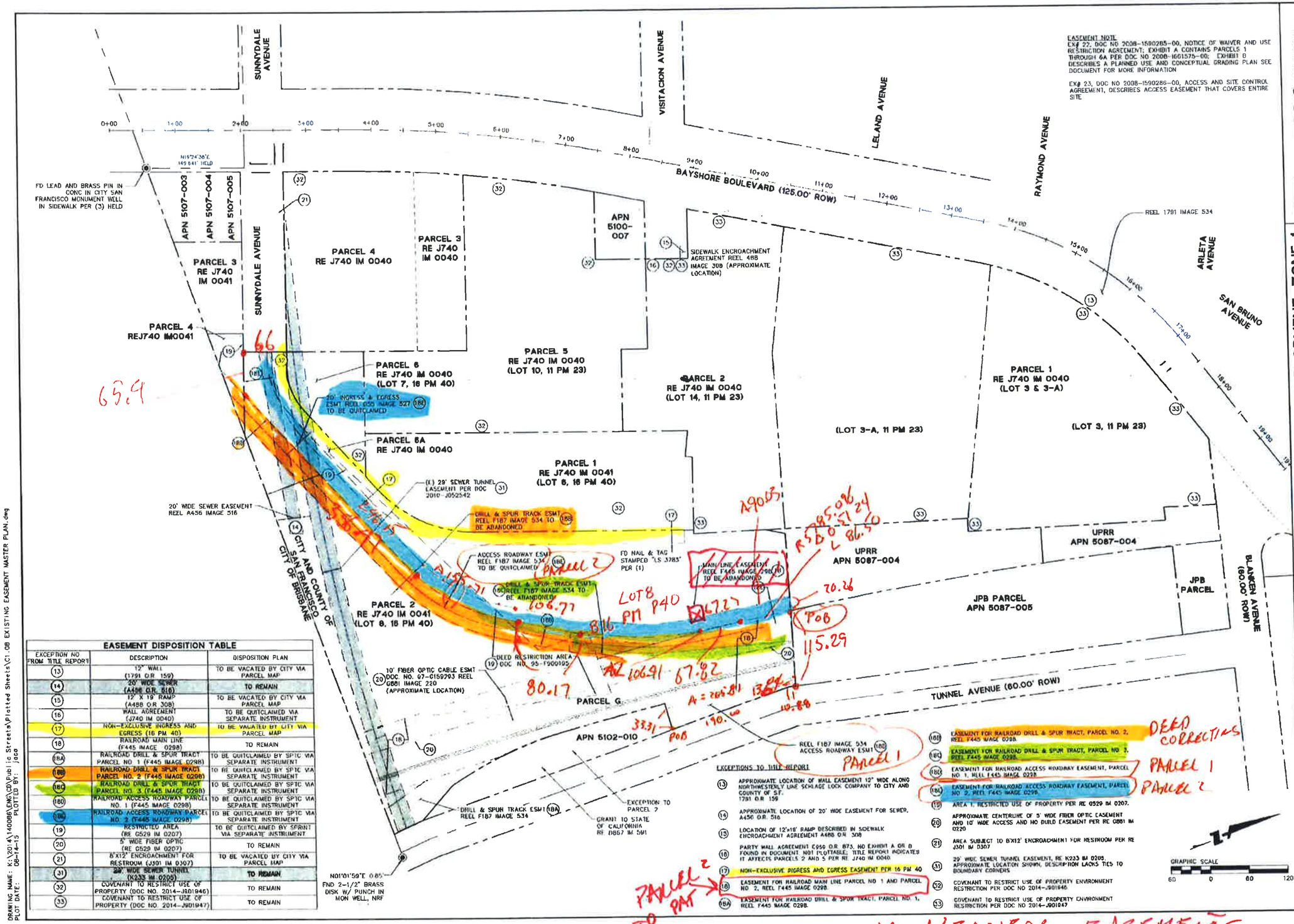
CALTRAIN STATION

SHEET SIX OF SIX SHEETS

UPRR DEED → McMURRAY EASEMENTS

MAP CHECK SUBMITTAL

© BKF Engineers



EASEMENT DISPOSITION TABLE

EXCEPTION NO FROM TITLE REPORT	DESCRIPTION	DISPOSITION PLAN
(13)	12" WALL (1791 O.R. 159)	TO BE VACATED BY CITY VIA PARCEL MAP
(14)	20' WIDE SEWER (A456 O.R. 516)	TO REMAIN
(15)	12' X 19' RAMP (A488 O.R. 308)	TO BE VACATED BY CITY VIA PARCEL MAP
(16)	WALL AGREEMENT (J740 IM 0040)	TO BE QUITCLAIMED VIA SEPARATE INSTRUMENT
(17)	NON-EXCLUSIVE INGRESS AND EGRESS (16 PM 40)	TO BE VACATED BY CITY VIA PARCEL MAP
(18)	RAILROAD MAIN LINE (F445 IMAGE 0298)	TO REMAIN
(18A)	RAILROAD DRILL & SPUR TRACT PARCEL NO 1 (F445 IMAGE 0298)	TO BE QUITCLAIMED BY SPTC VIA SEPARATE INSTRUMENT
(18B)	RAILROAD DRILL & SPUR TRACT PARCEL NO. 2 (F445 IMAGE 0298)	TO BE QUITCLAIMED BY SPTC VIA SEPARATE INSTRUMENT
(18C)	RAILROAD DRILL & SPUR TRACT PARCEL NO. 3 (F445 IMAGE 0298)	TO BE QUITCLAIMED BY SPTC VIA SEPARATE INSTRUMENT
(18D)	RAILROAD ACCESS ROADWAY PARCEL NO. 1 (F445 IMAGE 0298)	TO BE QUITCLAIMED BY SPTC VIA SEPARATE INSTRUMENT
(18E)	RAILROAD ACCESS ROADWAY PARCEL NO. 2 (F445 IMAGE 0298)	TO BE QUITCLAIMED BY SPTC VIA SEPARATE INSTRUMENT
(19)	RESTRICTED AREA (RE G529 IM 0207)	TO BE QUITCLAIMED BY SPRINT VIA SEPARATE INSTRUMENT
(20)	5' WIDE FIBER OPTIC (RE G529 IM 0207)	TO REMAIN
(21)	8'X12' ENCROACHMENT FOR RESTROOM (J301 IM 0307)	TO BE VACATED BY CITY VIA PARCEL MAP
(31)	29' WIDE SEWER TUNNEL (K933 IM 0205)	TO REMAIN
(32)	COVENANT TO RESTRICT USE OF PROPERTY (DOC NO. 2014-J901946)	TO REMAIN
(33)	COVENANT TO RESTRICT USE OF PROPERTY (DOC NO. 2014-J901947)	TO REMAIN

DRAWING NAME: K:\2014\140086\ENG\CD\Public Streets\Plotted Sheets\C1.08 EXISTING EASEMENT MASTER PLAN.dwg
PLOT DATE: 08-14-15
PLOTTED BY: jdco

BKF 100 YEARS ENGINEERS / SURVEYORS / PLANNERS
150 CALIFORNIA ST SUITE 600 SAN FRANCISCO, CA 94111 (415) 930-7900

VISITACION VALLEY REDEVELOPMENT, ZONE 1
IMPROVEMENT PLANS
EXISTING EASEMENT MASTER PLAN
CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA

Revisions
Date 8/17/2015
Scale 1" = 60'
Design JCW
Drawn JMJ
Approved MAD
Job No. 20140086
Drawing Number: C1.08
8 OF 129

65% SUBMITTAL – NOT FOR CONSTRUCTION

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Cross-Defendant VISITACION
INVESTMENT, LLC

SUPERIOR COURT OF CALIFORNIA – UNLIMITED CIVIL JURISDICTION

CITY AND COUNTY OF SAN FRANCISCO

VISITACION INVESTMENT, LLC Plaintiff, vs. 424 JESSIE HISTORIC PROPERTIES, LLC, et al., Defendants. _____ AND RELATED CROSS-ACTION _____	Case No. CGC-19-579667 **PLAINTIFF'S OBJECTIONS TO EVIDENCE RE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON COMPLAINT, OR ALTERNATIVELY, SUMMARY ADJUDICATION** Date: June 10, 2021 Time: 9:30 a.m. Dept: 501 Complaint Filed: Oct. 1, 2019 Trial Date: July 12, 2021

INTRODUCTION

Defendant 424 Jessie Historic Properties, LLC ("Defendant") is required to support its Motion for Summary Judgment on Complaint, or Alternatively, Summary Adjudication ("Defendant's MSJ") with admissible evidence. Code of Civil Procedure §437c(d) requires any declaration in support or opposition to a motion for summary

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judgment or adjudication "set forth admissible evidence" and "show affirmatively that the affiant is competent to testify to the matters stated in the affidavits or declaration."

On such basis, plaintiff Visitacion Investment, LLC ("Plaintiff") hereby objects to certain improper and inadmissible evidence submitted in the support of Defendant's MSJ consisting of the declarations of Stacey C. Quan and Patrick McNerney (collectively "Defendant's Evidence").

ARGUMENT

A. Defendant's Evidence Improperly States General Allegations and Legal Conclusions and Fails to State Evidentiary Facts, Is Subject to Hearsay Objections and/or Is Not Relevant.

Much of the Defendant's Evidence consists of conclusions, opinions, and allegations, not evidentiary facts. In many instances, Defendant's Evidence reads like a pleading. Defendant is required to state evidentiary facts, not conclusions. Such statements that might be sufficient for pleading purposes, so-called "ultimate facts" to state a cause of action or defense, are not sufficient as evidence. (*Snider* v. *Snider* (1962) 200 Cal.App.2d 741, 751*; Tuchscher Develop. Enterprises, Inc*. v. *San Diego Unified Port Dist*. (2003) 106 Cal.App.4th 1219, 1240.)

Defendant improperly attempts to testify as to the "ultimate facts" of the potential use of Defendant's property for railroad purposes. Defendant has confused averments with admissible evidence. Such assertions are not sufficient to oppose a motion for summary adjudication as they fail to meet the requirement of CCP § 437c as to summary judgment motions. (*Reeves* v. *Safeway Stores, Inc*. (2004) 121 Cal.App.4th 95, 105-106 ("perceptions of witnesses are simply not 'material facts' as that term is used in the

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summary judgment statute").) Whether the subject Railroad Easement has in fact been abandoned or terminate is an "ultimate" fact at issue and legal conclusions as to such ultimate facts are not legally sufficient for summary judgment and must be disregarded. (*Hayman* v. *Block* (1986) 176 Cal.App.3d 629, 638-639.) Defendant cannot support the instant motion with such unsupported, inadmissible allegations.

Plaintiff's specific objections are as follows:

OBJECTIONS

A. Objections to Declaration of Patrick McNerney in Support of 424 Jessie Historic Properties, LLC Motion for Summary Judgment on Complaint and Cross-Complaint or, Alternatively, Summary Adjudication

Statements Objected to:	Grounds for Objection:
Objection No. 1. ¶ 2 – "At the time that Union Pacific conveyed the JHP Property to me, Union Pacific represented that the property abutting the easterly boundary line of the JHP Property is dedicated and used for railroad purposes."	**Objection No. 1.** (1) Hearsay. Union Pacific's alleged representation to McNerney regarding the prior use of property abutting the easterly boundary of the JHP Property constitutes hearsay. (2) This statement lacks foundation. Testimony of a witness concerning a particular matter is inadmissible unless the witness has personal knowledge of the matter. The statement as to what Union Pacific represented provides no basis for who made this alleged representation or how it was made. (Ev.C. § 702.)\

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Objection No. 2. ¶ 4 – "and has a potential use as an adjunct to these existing rail lines, including railroad electrification, shipping and receiving, and loading and unloading of rail cars, which would require the use of the Easements."	**Objection No. 2.** (1) Evidentiary facts are required to support the Motion. Conclusions of fact or law are not sufficient. Allegations that might be sufficient for pleading purposes (so-called "ultimate facts" to state a cause of action or defense) are not sufficient as evidence. (*Snider* v. *Snider* (1962) 200 Cal.App.2d 741.) Whether the JHP Property has potential use an adjunct to existing rail lines that requires use of the Easements is a disputed issue of Defendant's MSJ. Legal conclusions or opinions as to these issues do not constitute evidentiary facts. The very Quitclaim Deed transferring the JHP Property from Union Pacific to contained an explicit "Fence Covenant" **that required the Grantee to maintain fencing or other barriers to prevent access to the existing rail lines. or encroachment on the railroad right-of-way.**

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Objection No. 3. ¶ 8 – "Neither JHP nor I have relinquished, abandoned or terminated the Easements."	**Objection No. 3.** (1) Evidentiary facts are required to support the Motion. Conclusions of fact or law are not sufficient. Allegations that might be sufficient for pleading purposes (so-called "ultimate facts" to state a cause of action or defense) are not sufficient as evidence. (*Snider* v. *Snider* (1962) 200 Cal.App.2d 741.) Whether JHP or McNerney relinquished, abandoned or terminated the Easements is a disputed issue of Defendant's MSJ. Legal conclusions or opinions as to these issues do not constitute evidentiary facts.
Objection No. 4. ¶ 9 – "The Easements, including the easement for communication lines and facilities, will be necessary to any and all of these potential uses of the JHP Property."	**Objection No. 4.** (1) Evidentiary facts are required to support the Motion. Conclusions of fact or law are not sufficient. Allegations that might be sufficient for pleading purposes (so-called "ultimate facts" to state a cause of action or defense) are not sufficient as evidence. (*Snider* v. *Snider* (1962) 200 Cal.App.2d 741.) Whether plain language granting the Easements, including their description as a "Form of Railroad Easement" and providing for their

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	"abandonment or termination" limits their scope to railroad purposes and does not allow for any conceivable use that also requires "communications lines and facilities" as Defendant alleges and whether use of the Easements "will be necessary" for such hypothetical non-railroad use is a disputed issue of Defendant's MSJ. Legal conclusions or opinions as to these issues do not constitute evidentiary facts.
Objection No. 5. ¶ 11 – "wherein Plaintiff confirmed the Easements burdening Plaintiff's Property in favor of the JHP Property."	**Objection No. 5.** (1) Evidentiary facts are required to support the Motion. Conclusions of fact or law are not sufficient. Allegations that might be sufficient for pleading purposes (so-called "ultimate facts" to state a cause of action or defense) are not sufficient as evidence. (*Snider* v. *Snider* (1962) 200 Cal.App.2d 741.) The legal effect of the March 2, 2016 Temporary License Agreement and whether it "confirmed The Easements" is a disputed issue of Defendant's MSJ. Legal conclusions or opinions as to these issues do not

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	constitute evidentiary facts. (2) Hearsay. The self-serving statements of McNerney regarding the content of the Temporary License Agreement constitute hearsay.
Objection No. 6. ¶ 11 – "noting that the Easements had been conveyed to me."	**Objection No. 6.** (1) Evidentiary facts are required to support the Motion. Conclusions of fact or law are not sufficient. Allegations that might be sufficient for pleading purposes (so-called "ultimate facts" to state a cause of action or defense) are not sufficient as evidence. (*Snider* v. *Snider* (1962) 200 Cal.App.2d 741.) The legal effect of the March 2, 2016 Temporary License Agreement and whether it "confirmed The Easements" is a disputed issue of Defendant's MSJ. Legal conclusions or opinions as to these issues do not constitute evidentiary facts. (2) Hearsay. The self-serving statements of McNerney regarding the content of the Temporary License Agreement constitute hearsay.

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Dated: May 27, 2021

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424 Jessie Historic Properties, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

VISITACION INVESTMENT, LLC, a California limited liability company,

Plaintiff,

v.

424 JESSIE HISTORIC PROPERTIES, LLC, a California limited liability company, all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the Complaint adverse to Plaintiff's title, or any cloud on Plaintiff's title thereto, and DOES 1 through 50, inclusive,

Defendants.

AND RELATED CROSS-ACTION.

Case No. CGC-19-579667

424 JESSIE HISTORIC PROPERTIES, LLC'S OPPOSITION TO VISITACION INVESTMENT, LLC'S MOTION FOR SUMMARY JUDGMENT OR, ALTERNATIVELY, SUMMARY ADJUDICATION

Date: June 10, 2021
Time: 9:30 a.m.
Dept: 501

Action Filed: October 1, 2019
Trial Date: July 12, 2021

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Defendant and cross-complainant 424 Jessie Historic Properties, LLC ("JHP") hereby submits the following memorandum of points and authorities in opposition to plaintiff and cross-defendant Visitacion Investment, LLC's ("Plaintiff") motion for summary judgment, or, alternatively, for summary adjudication.

I. INTRODUCTION

The Court should reject Plaintiff's claims and affirm the existence of the three express recorded easements for, among other things, "an access roadway," "communication lines and facilities of every kind and nature," and "railroad equipment and facilities" ("Easements") in favor of JHP that encumber Plaintiff's Visitacion Valley property, for the same reason the Court should grant JHP's motion for summary judgment; because the undisputed evidence shows that neither JHP nor its predecessor owners relinquished, abandoned, or terminated the Easements, but rather the recorded Easements were expressly reserved, granted, and used to access JHP's property, and because the prospective use of JHP's property will certainly require access and communication lines, and may require railroad related facilities, as JHP's property is adjacent to existing and fully operational passenger and freight train rail lines.

Plaintiff's narrow reading of the Easements is plainly incorrect. The language of the Easements provide for multiple easements and are expressly ***not*** limited to railroad use:

> A perpetual, exclusive easement in, on, under, over and through the locations described in Schedule 1 (Railroad Main Line ***Easement***), Schedule 2 (Drill & Spur Track ***Easement***), and Schedule 3 (***Access Roadway Easement***) attached hereto, in which areas Grantor (and its lessees, sublessees, licensees, successors or assigns) ***shall have the right to own, operate, maintain, repair, lease, license, and/or remove existing and/or future railroad, rail and railroad related equipment and facilities and communications lines and facilities of every kind and nature including but not limited to all existing facilities, telephone, telegraph, television and fiber optic lines and related equipment.***

Quan Decl., ¶2, Ex. 7 at ¶¶14-15, Exs. 1-2 (emphases added).

In any event, Plaintiff cannot as a matter of law establish the requisite clear, decisive and unequivocal evidence of the intent to abandon the Easements by JHP or its predecessors. To the contrary, JHP's predecessor owner Union Pacific Railroad Company ("Union Pacific"), which merged with Southern Pacific Transportation Company ("Southern Pacific") in 1996 following

Southern Pacific's express reservation of the Easements in 1990, used the Easements for necessary access to JHP's property and held them as assets benefiting JHP's property before selling JHP's property and the Easements to JHP's predecessor and principal. In fact, Plaintiff acknowledged the reservation and existence of the Easements in communications with Union Pacific in the years prior to Union Pacific's sale of JHP's property in 2015, and Plaintiff never contended that Union Pacific or Southern Pacific had abandoned or relinquished the Easements, but rather unsuccessfully tried to persuade Union Pacific to terminate the Easements in exchange for the promise of later alternative access.

Finally, California law does not hold, as Plaintiff contends, that once a railroad stops operations all of its easements are abandoned and terminated as a matter of law. Rather, the determination is fact specific but in any event inapplicable here where the Easements are not restricted to then existing or historical use, but are also expressly reserved for "***future*** railroad, rail and railroad related equipment and facilities and ***communication lines and facilities of every kind and nature*** . . . ." Accordingly, Plaintiff's motion for summary judgment or adjudication should be denied in its entirety.

II. SUMMARY OF RELEVANT FACTS

A. PLAINTIFF'S PROPERTY

Plaintiff owns certain of the real property commonly known as 2201, 2245, 2500, 2555 Bayshore Boulevard, 222 Tunnel Avenue, and 289, 290, 292 Sunnyvale Avenue, San Francisco ("Plaintiff's Property") encumbered by the Easements. Declaration of Patrick McNerney ("McNerney Decl."), ¶2, Ex. 6, Ex. 20; Declaration of Stacey C. Quan ("Quan Decl."), ¶2, Ex. 7 at ¶1. The northern and eastern boundary of Plaintiff's Property adjoins a portion of the southern and western boundary of JHP's property. McNerney Decl., ¶2, Ex. 6; Quan Decl., ¶2, Ex. 7 at ¶8.

B. THE EASEMENTS

Southern Pacific expressly reserved for itself and its successors and assigns the Easements for, among other things, existing and future access, communication lines and facilities of every kind and nature, and railroad equipment and facilities, when it conveyed certain of its real property (the "Servient Estate") by Grant Deed recorded on August 10, 1990 to Plaintiff's predecessor in

title and interest, Tuntex (USA), Inc. ("1990 Deed"), as follows:

> A perpetual, exclusive easement in, on, under, over and through the locations described in Schedule 1 (Railroad Main Line Easement), Schedule 2 (Drill & Spur Track Easement), and Schedule 3 (Access Roadway Easement) attached hereto, in which areas Grantor (and its lessees, sublessees, licensees, successors or assigns) ***shall have the right to own, operate, maintain, repair, lease, license, and/or remove existing and/or future railroad, rail and railroad related equipment and facilities and communications lines and facilities of every kind and nature including but not limited to all existing facilities, telephone, telegraph, television and fiber optic lines and related equipment.*** All improvements presently existing on or hereafter constructed on the easement area, if owned by Grantor, shall remain the personal property of the Grantor and its successors and assigns. Upon abandonment or termination of the easement, or any portion thereof, Grantor shall be obligated to execute and deliver to Grantee or its successors and assigns an instrument in form and substance satisfactory to Grantee, or its successors and assigns, relinquishing the easement described in this paragraph. Grantor shall defend, indemnify and hold Grantee, its successors and assignees, harmless from and against any liability, damage, cost or expense arising from or in connection with Grantor's use of the property covered by the easement reserved herein.

Quan Decl., ¶2, Ex. 7 at ¶¶14-15, Ex. 1 (emphases added); see also McNerney Decl., ¶2, Ex. 20. The legal description of the Easements was later corrected by a Deed Correcting Description of Rail Easement recorded on August 22, 1991 ("1991 Deed"). Quan Decl., Ex. 2. As depicted in a survey of the Easements, Plaintiff's Property includes the Servient Estate that is burdened by the Easements. Quan Decl., ¶2, Ex.7 at ¶¶9-15, Exs. 1-2; McNerney Decl., ¶2, Ex. 6.

As reflected in the 1990 Deed, in Southern Pacific's March 20, 1990 sale print identifying Plaintiff's Property sold to Tuntex, and in Southern Pacific's Valuation Map Schedule of Property, the Easements reserved for the benefit of Southern Pacific and its predecessors in that transaction include distinct easements for the Main Line for railroad purposes, for drill and spur tracks, for an access roadway to the JHP Property, and signal bay purposes. Quan Decl., ¶¶6-8, Exs. 12, 13, 14; McNerney Decl., ¶2, Ex. 20. The reservation of the Easements further granted to Southern Pacific and its successors the right to install communication lines and facilities "of every kind and nature" in the areas of the Easements separate and apart from any railroad purpose. Quan Decl., ¶6, Ex. 12 at 70:17-71:12, 72:4-24, 101:23-102:18.

C. PLAINTIFF'S ACKNOWLEDGMENT OF THE EASEMENTS IN FAVOR OF THE JHP PROPERTY AND UNION PACIFIC'S RETENTION OF THE EASEMENTS

In 2010 and again in 2014, Union Pacific attempted to sell a portion of 2201 Bayshore Boulevard and a portion of 220 Tunnel Avenue, San Francisco (the "JHP Property"), together with the Easements, to Plaintiff. Quan Decl., ¶6, Ex. 12 at 23:2-25:7, 25:16-24, 29:12-30:7; Quan Decl., ¶9, Ex. 15. On April 13, 2010, David Thatcher of Union Pacific wrote to Plaintiff's Project Manager Howard Pearce enclosing a color-coded map showing the Easements encumbering Plaintiff's Property stating:

> As to the easements, note that the green 20' wide roadway provides the access to both our land from Sunnyvale Ave. AND a RR signal cabinet (red) which aerial photos indicate is still in place and presumably needed by JPB [the then owner of the Main Line]. The yellow spur track corridor easements plus the blue roadway easement no longer appear necessary but I do not see how we could release the green roadway easement while we own the orange area. Any release of the signal cabinet easement appears to need JPB input.
>
> Subject to approval by our management, I'd therefore like to discuss with you SALE of the Union Pacific tract to Universal Paragon [Plaintiff] which would be part of a "package" including easement releases.

Quan Decl., ¶9, Ex. 15 at UP0065-66. Although the reasons are unclear, and despite Plaintiff's evident need to clear the Easements for its development of Plaintiff's Property, a sale of the JHP Property to Plaintiff was not consummated in 2010. Quan Decl., ¶9, Ex. 15 at UP0062.

On March 10, 2014, in response to Plaintiff's request for Union Pacific to relinquish its "current easements" encumbering Plaintiff's Property in exchange for alternative easements for access to the JHP Property in conjunction with Plaintiff's planned development, Union Pacific's Director of Real Estate Robert Krantz (and the person most qualified designated to testify on behalf of Union Pacific (Quan Decl., ¶6, Ex. 12 at 143:5-19, 146:11-22)) re-engaged Mr. Pearce concerning the sale of the JHP Property and the Easements stating:

> Before the release of any retained UP easement areas as shown in Dave's print and on the map (sheet C2) you provided can be considered, we would need to be sure that none of the retained easement areas would still be needed and that our property can definitively be served by the streets in your development.
>
> As Dave suggests in his 4/13/10 email, subject to UP management

> approval, a purchase of our property by Universal Paragon (with attendant easement releases) makes a lot of sense, particularly if there is no interest by the City of San Francisco to acquire this property now. l would think that development of our property in conjunction with the rest of your development would make for a better and more cohesive project. If this is of interest, we should discuss this further. Alternatively, if there is no interest by Universal Paragon or the City in purchasing our property, I will market it for sale to third parties that might have an interest in development of our property in conjunction with your project.

Quan Decl., ¶9, Ex. 15 at UP0062-63. In ensuing discussions, Mr. Krantz made clear to Plaintiff (and to the City) that the Easements "had to be retained" because they provided access and without them the JHP Property would be effectively landlocked due to the grade differential between the JHP Property and adjacent land, that Union Pacific had no intention to "either quitclaim or abandon" the Easements, and that the Easements were in fact not abandoned or terminated. Quan Decl., ¶6, Ex. 12 at 46:3-48:18, 49:8-15, 54:12-25; Quan Decl., ¶10, Ex. 16 at UP0026-27; Quan Decl., ¶11, Ex. 17 at UP0211-13. Contrary to Plaintiff's claims today, in these discussions, Plaintiff never contended that the Easements had been abandoned or terminated. Quan Decl., ¶6, Ex. 12 at 30:21-31:3, 63:18-64:12. In fact, Plaintiff acknowledged their existence and was seeking to trade access over a different portion of Plaintiff's Property for Union Pacific's agreement to relinquish the Easements. Quan Decl., ¶6, Ex. 12 at 31:4-7, 64:13-16.

Ultimately, Plaintiff declined to purchase the JHP Property and the Easements because it had too much on its plate with development of Plaintiff's Property. Quan Decl., ¶6, Ex. 12 at 36:7-20. Thereafter, Union Pacific offered the JHP Property for sale to third parties and came to terms with JHP's predecessor and principal Patrick McNerney. Quan Decl., ¶ 7, Ex. 13.

D. MR. MCNERNEY'S AND JHP'S ACQUISITION OF THE JHP PROPERTY AND THE EASEMENTS

On February 5, 2015, Union Pacific sold to Mr. McNerney the JHP Property together with the same Easements reserved in the 1990 Deed from Southern Pacific's sale to Plaintiff's predecessor Tuntex, as depicted on the Valuation Map and Schedule of Property (as corrected by the 1991 Deed). Quan Decl., ¶2, Ex. 7 at ¶18, Ex. 3; Quan Decl., ¶6, Ex. 12 at 41:2-42:7; Quan Decl., ¶7, Ex. 13; Quan Decl., ¶8, Ex. 14; McNerney Decl., ¶¶1, 2, Exs. 1, 20.

On September 14, 2016, Mr. McNerney, as the Chief Executive Officer of Martin McNerney Development, Inc., the manager of JHP, conveyed the same to JHP. Quan Decl., ¶2, Ex. 7 at ¶18, Ex. 4; McNerney Decl., ¶¶1, 2, 3, Exs. 2, 20.

E. USE OF THE EASEMENTS AND THE JHP PROPERTY

At the time that Union Pacific conveyed the JHP Property to McNerney, Union Pacific represented, and Mr. McNerney understood, that the property abutting the easterly boundary line of the JHP Property is owned by the Peninsula Corridor Joint Powers Board ("JPB") and is dedicated and used for railroad purposes. McNerney Decl., ¶2, Ex. 1.

The JHP Property is zoned M-1 and currently undeveloped. McNerney Decl., ¶¶5, 6. The JHP Property is adjacent to JPB's property on which at all times relevant existed fully operational Cal Train passenger rail lines and freight train rail lines. McNerney Decl., ¶4. Accordingly, the JHP Property can be used as an adjunct to these existing rail lines, including railroad electrification, shipping and receiving, and loading and unloading of rail cars, which requires use of the Easements. McNerney Decl., ¶¶1, 4, 7, Ex. 21; Quan Decl., ¶6, Ex. 12 at 26:6-23, 151:23-153:13. The fact that the JHP Property is currently fenced from rail lines for safety and security reasons does not prevent current and future access and use of the Easements for railroad, rail and railroad related equipment and facilities. McNerney Decl., ¶4; Quan Decl., ¶6, Ex. 12 at 64:21-65:8, 89:14-21. Rather, the fence can be gated to permit access to the Main Line to be used in conjunction with spur tracks. Quan Decl., ¶6, Ex. 12 at 149:10-25; McNerney Decl., ¶4. Indeed, the JHP Property was recently licensed to a railroad maintenance and construction contractor to support its work on the Peninsula Corridor Electrification Project for Caltrain. McNerney Decl., ¶7, Ex. 3. The JHP Property's current zoning allows for redevelopment as either residential or commercial use, as well as heavy manufacturing, storage yards, truck terminals, internet service exchange (e.g., a data center) and/or wireless telecommunication facilities, among other uses, all of which would require use of the Easements, including the easement for communication lines and facilities. McNerney Decl., ¶¶2, 5, Ex. 21; Quan Decl., ¶5, Ex. 11.

F. NEITHER SOUTHERN PACIFIC, UNION PACIFIC, MR. MCNERNEY NOR JHP EVER RELINQUISHED, ABANDONED OR TERMINATED THE EASEMENTS

Neither Southern Pacific nor its successor Union Pacific relinquished, abandoned or terminated the Easements. The evidence is undisputed that Southern Pacific expressly reserved the Easements in its sale to Plaintiff's predecessor in the 1990 Deed and affirmed in the 1991 Deed; Union Pacific expressly deeded the Easements to McNerney; Union Pacific did not relinquish the Easements as Union Pacific would have been required to do had the Easements been abandoned or terminated; there is no evidence of Southern Pacific's or Union Pacific's intent to relinquish or abandon the Easements; and, in fact, the reservation of the Easements indicates that Southern Pacific in fact utilized the Easements for access, railroad purposes and communication purposes, and the Easements were used by Union Pacific (and likely its long term tenant Schlage Lock Company) for access to the JHP Property in the years leading up to Union Pacific's sale of the JHP Property to Mr. McNerney, including in 2014. McNerney Decl., ¶¶2, 12, Exs. 1, 5; Quan Decl., ¶2, Ex. 7 at ¶¶14-15, 18, Exs. 1-3; Quan Decl., ¶6, Ex. 12 at 38:23-39:20, 61:17-23, 91:11-14, 96:20-25, 97:23-98:15, 98:19-99:1, 121:10-122:6, 136:20-137:8.

Indeed, any "abandonment" of the Easements by Union Pacific would have required extensive internal review, resolution of and grant of satisfactory alternative access to the JHP Property, monetary consideration paid to Union Pacific, and affirmative action by Union Pacific to relinquish them, none of which occurred. Quan Decl., ¶6, Ex. 12 at 47:14-48:11, 59:24-60:16, 116:13-18 ("We do not abandon any easements until we determine -- in our sole and absolute discretion whether or not we are willing to terminate the easements. They are not abandoned until we take specific action, meaning a quitclaim."), 116:19-118:3. Notwithstanding that Union Pacific may not have needed the Easements for railroad purposes in 2014, Mr. Krantz further confirmed that did not equate to Union Pacific's abandonment of the Easements as the Easements themselves were granted for both existing and ***future*** uses. Quan Decl., ¶6, Ex. 12 at 150:3-14, 151:7-20. Union Pacific stated on multiple occasions to Plaintiff before its conveyance of the JHP Property and the Easements to McNerney that the Easements had not been abandoned, terminated, or relinquished. Quan Decl., ¶6, Ex. 12 at 61:17-20; Quan Decl., ¶12, Ex. 18; Quan Decl., ¶13, Ex. 19.

Neither Mr. McNerney nor JHP has relinquished, abandoned or terminated the Easements. McNerney Decl., ¶¶3, 7- 12, Exs. 2-5. Although JHP has not committed to any particular or singular use of the JHP Property, it has evaluated the JHP Property for future development for residential use, including, without limitation, apartment, condominiums, single family homes, and live work spaces, for commercial use, independently and as an adjunct to the existing rail lines, and for industrial use, including, without limitation, shipping and receiving, heavy manufacturing, storage yards, truck terminals, loading and unloading of rail cars, train electrification, and internet service exchange (*e.g.*, a data center). McNerney Decl., ¶9. The Easements, including the easement for communication lines and facilities will be necessary to any and all of these potential uses of the JHP Property. McNerney Decl., ¶¶9, 10; Quan Decl., ¶6, Ex. 12 at 32:12-23; 49:8-15. In fact, Gregory Vilkin, the acting CEO of Plaintiff's manager designated as the person most qualified to testify on behalf of Plaintiff in this case, confirmed that properties adjacent to the JHP Property are being used for train electrification, that the JHP Property could be used for shipping and receiving, including loading and unloading of railway cars as well as other industrial, commercial and residential uses, all of which potential uses Mr. Vilkin admitted JHP should reserve to keep all development options available, and all of which would require communications lines and facilities. Quan Decl., ¶4, Ex. 10 at 82:4-17, 83:14-85:12; McNerney Decl., ¶¶9, 10. Indeed, in licensing a portion of the JHP Property from Mr. McNerney ***in May 2016, Plaintiff confirmed the Easements in favor of the JHP Property***. McNerney Decl., ¶11, Ex. 4.

III. ARGUMENT

A. THE SCOPE OF THE EASEMENTS ARE GREATER THAN RAILROAD USE

1. Rules of Construction Applicable to Easements

An instrument creating an easement is subject to the same rules of construction applicable to deeds and is interpreted in the same manner as a contract. See Civ. Code §§806, 1066. The instrument is interpreted in the first instance by the language of the document. City of Manhattan Beach v. Superior Court (1996) 13 Cal.4th 232, 243. The language of a grant of an easement determines the scope of the easement. County of Sacramento v. Pacific Gas & Elec. Co. (1987) 193 Cal.App.3d 300, 313. The court need not resort to the technical rules of construction if the intent

of the parties can be derived from the plain meaning of the words used in the deed. Machado v. Southern Pacific Transportation Co. (1991) 233 Cal.App.3d 347, 352-53. Neither parol evidence nor surrounding facts and circumstances will be considered if the language of a deed is plain, certain and unambiguous. Laux v. Freed (1960) 53 Cal.2d 512, 523 (holding deed unambiguously granted right of way to reach southerly parcel for hunting purposes).

If there is an ambiguity in a reservation, it is construed in favor of the grantor. Civ. Code §1069; see also Civ. Code §1636 (contract must be interpreted to effectuate the mutual intention of the contracting parties); Civ. Code §1647 (contract may be explained by reference to the circumstances under which it was made); Code Civ. Proc. §1856 (terms of a contract may be explained by consistent extrinsic evidence). Therefore, when a grant of an easement contains an express reservation of use by the grantor, the grantee only receives that which is conveyed; all rights that are not inconsistent with the grant, and that do not unreasonably interfere with the use of the easement by the grantee, are reserved to the grantor. City of Los Angeles v. Ingersoll-Rand Co. (1976) 57 Cal.App.3d 889, 894.

2. The Easements Are Not Limited to Solely Railroad Related Uses

Plaintiff's argument that the Easements are a ***single*** easement for railroad uses is baseless. The express language of the Easements clearly grants ***three*** easements: 1) the "Main Line Easement"; 2) the "Drill & Spur Track Easement"; and 3) the "Access Roadway Easement". Southern Pacific's contemporaneous records confirm that the Access Roadway Easement was reserved and conveyed to be used to access the JHP Property regardless of whether it was used for railroad purposes. Quan Decl., ¶6, Ex. 12 at 39:21-40:3. Moreover, ***in addition to*** access and the then existing and future railroad related uses, the Easements may be used for communication lines and facilities of every kind and nature:

> …shall have the right to own, operate, maintain, repair, lease, license, and/or remove existing and/or future railroad, rail and railroad related equipment and facilities and communications lines and facilities of every kind and nature including but not limited to all existing facilities, telephone, telegraph, television and fiber optic lines and related equipment.

Quan Decl., ¶2, Ex. 7 at ¶¶ 14-15, Exs. 1-2. The Easements give the holder the rights to

"communications lines and facilities ***of every kind and nature***" that are unaffiliated with railroad, rail and railroad related equipment. Quan Decl., ¶6, Ex. 12 at 102:15-18 (The rights to use the Easements for communication lines and facilities "aren't associated with a railroad use. ***It's for any commercial use***."). Had the Easements been restricted to railroad use only, as Plaintiff posits, then the language "facilities of ***every kind and nature***" would be duplicative and superfluous after the phrase "railroad, rail and railroad related equipment and facilities". See City of Manhattan Beach, supra, 13 Cal.4th at 243. The Easements further contemplate non-railroad use of the Easements when it lists "telephone, telegraph, television and fiber optic lines and related equipment". Restricting the Easements to railroad purposes only is utterly inconsistent with the plain and unambiguous language of the Easements, and applying such a narrow interpretation to the Easements is nonsensical. Moreover, if there was an ambiguity, though there is none, the Easements must be construed in favor of the grantor, Southern Pacific, and its successors, Union Pacific, Mr. McNerney and JHP.

Indeed, in 1990, Southern Pacific was in the telephone and data communications and fiber optics business and, thus, not surprisingly, reserved the rights to have fiber optics lines within the reserved Easements apart from railroad use to support its separate business interests. Quan Decl., ¶6, Ex. 12 at 70:17-71:12; 72:4-24. In fact, in 1990, GTE Sprint conduit was located immediately adjacent to the JHP Property. Quan Decl., ¶6, Ex. 12 at 144:5-15; Quan Decl., ¶7, Ex. 13 at p.2; Quan Decl., ¶8, Ex. 14 at UP0226.

Plaintiff's claim that there currently are no communication lines lacks foundation and is in any event irrelevant as the Easements expressly grant ***future*** rights to communication lines and facilities. See Quan Decl., ¶6, Ex. 12 at 70:21-71:7, 97:2-10 (Southern Pacific laid fiber optics lines in the railroad right of way of the Easements and other communications lines in the access easement may be subterranean).

Plaintiff's bare attempt to contradict the express language of the Easements is further belied by Plaintiff's own admissions in its verified Complaint that Southern Pacific expressly reserved three easements and references the "Easement***s***" – plural - throughout the Complaint. Quan Decl., ¶2, Ex. 7 at ¶¶13-16, 18, 19, 23-25, 27-29, 31, 33, 34, 36, 37, and Prayer ¶¶1-3; Bucur v. Ahmad

(2016) 244 Cal.App.4th 175, 187 (facts alleged in a complaint are judicial admissions and conclusive of the truth of said facts against the complaining party). Plaintiff also refers to the "Easement**s**" - plural - throughout its Separate Statement. Plaintiff's Separate Statement, Issues 1-5, Undisputed Material Facts Nos. 9, 13.

Accordingly, the Easements are not limited to railroad uses and JHP has the right to use the Servient Estate for, among other things, "roadway access" and "communications lines and facilities of every kind and nature."

3. The Easements Benefit the JHP Property's Railroad Related Uses

Plaintiff's argument that the Easements were necessarily abandoned based on its artificially narrow interpretation of the Easements to permit only railroad uses and the alleged removal of railroad lines on the JHP Property also fails under the express language of the Easements. The Easements unambiguously grant the holder the "right to own, operate, maintain, repair, lease, license and/or ***remove existing and/or future*** railroad, rail and railroad related equipment and facilities…" Quan Decl., ¶2, Ex. 7 at ¶¶ 14-15, Exs. 1-2 (emphasis added). Because the Easements expressly grant to the dominant owner the right of ***removal*** of existing ***and/or future*** railroad, rail and railroad related equipment and facilities, any removal of existing railroad tracks was simply the exercise of the dominant owner's rights expressly provided for in the Easements themselves. As explained by JHP and acknowledged by Plaintiff and confirmed by Union Pacific, use of the JHP Property is uncertain and may include future railroad related facilities such as railroad electrification, shipping and receiving, and loading and unloading of rail cars. McNerney Decl., ¶¶4, 9, 10; Quan Decl., ¶4, Ex. 10 at 82:4-17, 83:14-85:12; Quan Decl., ¶6, Ex. 12 at 152:11-153:13 ("private tracks may be constructed on the JHP Property and access the Main Line through an Industrial Track Agreement"). All of these uses must be reserved in order to keep JHP's options available for the development of the JHP Property. McNerney Decl., ¶10. In fact, the JHP Property has in fact been recently used to support railroad related activities. McNerney Decl., ¶7, Ex. 3.

B. THE EASEMENTS WERE NEVER RELINQUISHED, ABANDONED OR TERMINATED

Black letter California law plainly states that an easement acquired by an express grant

cannot be abandoned by mere nonuse. Cottonwood Duplexes, LLC v. Barlow (2012) 210 Cal.App.4th 1501, 1509. Equally settled, an easement does not terminate unless there is evidence of a clear, decisive, and unequivocal intent to abandon by the owner of the easement. Gerhard v. Stephens (1968) 68 Cal.2d 864, 889-90. To find extinguishment of an easement by abandonment, the critical question is "whether [the easement owner] had performed or authorized an act which permanently and materially interfered with [*the easement owner's*] continued use of the easement." Reichardt v. Hoffman (1997) 52 Cal.App.4th 754, 768. The fact that an easement has not been used for a long period of time is not conclusive of an intention to abandon it. Faus v. City of Los Angeles (1967) 67 Cal.2d 350, 363.[1] The court of appeal in Ocean Shore Railroad Co. v. Spring Valley Water Co. (1927) 87 Cal.App.188, held there can be no abandonment without such intent, stating:

> The real question to be determined is the intention of the owner of the right. The evidence in this case clearly shows that the railroad company always considered the right of way as an asset. An option was granted by it, and was outstanding some time before the suit was begun and was still outstanding at the time of the trial, for the sale of the right of way. Negotiations were had with the highway commission for granting a crossing over the said right of way on condition of the state providing a local clearance over the railroad. The liquidation of the plaintiff had been held up pending disposition of this right of way….The intention to abandon is not to be inferred from the outward and public acts of the owner only, but also from its dealings with relation to its title.

Id. at 191-92.

Here, Southern Pacific's and its successors Union Pacific's, Mr. McNerney's and JHP's intent are undisputed – the Easements were never abandoned or terminated. Quan Decl., ¶6, Ex. 12 at 46:21-48:18; McNerney Decl., ¶¶2-9, Exs. 1-4. In fact, the Easements are necessary for access the JHP Property. Quan Decl., ¶6, Ex. 12 at 46:3-48:18, 49:8-15, 54:12-25; Quan Decl., ¶10, Ex. 16 at UP0026-27; Quan Decl., ¶11, Ex. 17 at UP0211-13.

Further, none of the grounds relied upon by Plaintiff to claim abandonment of the Easements are supported by *any*, let alone clear, decisive, and unequivocal evidence that JHP or its

[1] Nor is statutory abandonment under Code of Civil Procedure Section 887.010 available as the Easements have been expressly conveyed within the last twenty years. Code Civ. Proc. §887.050(a)(3) ; McNerney Decl., ¶¶2, 3 Exs.1-2.

predecessors intended to abandon the Easements. There is no evidence that JHP and its predecessors performed or authorized any act that permanently and materially interfered with their use of the Easements. To the contrary, all owners of the Easements expressly granted them in each deed conveying the JHP Property. Quan Decl., ¶2, Ex. 6, ¶18, Exs. 3-4; McNerney Decl., ¶¶2, 3, Exs. 1-2. As in Spring Valley, Union Pacific treated the Easements as assets when it conveyed them to Mr. McNerney, repeatedly rejecting Plaintiff's efforts to persuade Union Pacific to take the position that the Easements had been abandoned. Quan Decl., ¶6, Ex. 12 at 66:11:67-10, 68:8-23; McNerney Decl., ¶12, Ex. 5. And Plaintiff itself expressly recognized in 2010 and 2014 the existence of the Easements encumbering Plaintiff's Property and in March 2016 further recognized Mr. McNerney's rights to use the Easements. McNerney Decl., ¶11, Ex. 4; Quan Decl., ¶6, Ex. 12 at 30:21-31:7, 63:18-64:16. Moreover, JHP has made some use of the Easements and they are necessary for both access and communications lines in the development of the JHP Property separate and apart from railroad use. McNerney Decl., ¶¶7, 9, 13, Ex. 3.

Plaintiff's reliance on a Preliminary Project Assessment application for a proposed residential real estate development is erroneous as it does not show an intention to abandon or terminate the Easements. Submission of a preliminary application is simply not an act that ***permanently*** or ***materially interferes*** with JHP's use of the Easements. In the more than five years since the application was submitted in 2015, no permits have been issued and no construction has been initiated of the proposed residential real estate development. McNerney Decl., ¶10. The JHP Property's current zoning allows for redevelopment as either residential or commercial use, as well as heavy manufacturing, storage yards, truck terminals, internet service exchange (e.g., a data center) and/or wireless telecommunication facilities, among other uses. McNerney Decl., ¶5; Quan Decl., ¶5, Ex. 11.JHP has not committed to developing the JHP Property into residential real estate or for any other particular or singular use. McNerney Decl., ¶¶9, 10. Even if JHP were to proceed with a condominium project on the JHP Property, however, that would not demonstrate a permanent and material interference with JHP's use of the Easements, but rather it would reaffirm JHP's need for and use of the Easements, as communication lines and facilities will be necessary for a residential real estate development on the JHP Property. McNerney Decl., ¶9.

Similarly, that the JHP Property has not been used for railroad purposes for ten years is false and nevertheless does not evidence an intent to abandon the Easements. First, the JHP Property was recently licensed to a railroad maintenance and construction contractor to support its railroad construction work, precisely one of the railroad uses contemplated by the Easements. McNerney Decl., ¶7, Ex. 3. Moreover, the JHP Property is adjacent to passenger and freight train rail lines, and has a potential future use as an adjunct to these existing rail lines, including for railroad electrification, shipping and receiving, and loading and unloading of rail cars, all of which requires the use of the Easements. McNerney Decl., ¶¶4, 5, 6, 9. Importantly, if non-use for railroad purposes automatically terminated a railroad's easements, a railroad could never sell excess or surplus property and the value of the railroad's property would be substantially diminished. Quan Decl., ¶6, Ex. 12 at 150:1-14. Further, Plaintiff's argument presupposes that the Easements are restricted for railroad purposes, which, as discussed above, is plainly wrong. There is nothing in the language of the Easements that requires the easement holder to operate a railroad as a condition to exercising the Easements, so Plaintiff's argument that a railroad is not an economically feasible use of the JHP Property is unavailing.

Nor does Plaintiff's argument that there is now no economically feasible use of the Easements have any merit. The non-use of the JHP Property for railroad purposes does not preclude JHP from using the Easements in the future within the scope of the Easements, whether it be for railroad related purposes, for access, or for communication lines and facilities. In fact, given the current differential grade between Plaintiff's Property, the JHP Property and Blanken Avenue, the Access Roadway area is currently the most economically feasible access to the JHP Property and, given that Plaintiff's Property remains undeveloped, Plaintiff's proposed alternative access would not be available to JHP for several years. McNerney Decl., ¶13.

Finally, Plaintiff's claim that JHP has no intent to resume railroad related operations on the JHP Property is simply untrue since the JHP Property is adjacent to existing and fully operational passenger and freight train rail lines, and has a potential use as an adjunct to these existing rail lines, which requires the use of the Easements. McNerney Decl., ¶¶4, 8. However, even if this were true, JHP can still use the Easements for facilities for nonrailroad operations on the JHP Property and

communication lines. McNerney Decl., ¶¶5, 9.

The Easements were not relinquished for the same reasons that the Easements were not abandoned or terminated. While Plaintiff cites to the language of the Easements to assert that JHP must relinquish the Easements to Plaintiff, the obligation to execute and deliver an instrument relinquishing the Easements is only triggered "[u]pon abandonment or termination" of the Easements. Quan Decl., ¶2, Ex. 7 at ¶¶ 14-15, Exs. 1-2. Because JHP has not abandoned or terminated the Easements, it does not and cannot have an obligation to now relinquish the Easements to Plaintiff. Indeed, when asked to help Plaintiff clear title to Plaintiff's Property of the Easements, Union Pacific noted that the Easements were conveyed to McNerney. McNerney Decl., ¶12, Ex. 5.

C. PLAINTIFF MISAPPLIES AND MISCONTRUES CASE LAW CONCERNING ABANDONMENT OF EASEMENTS

Plaintiff's entire motion is based on the false premise that the Easements are one railroad easement, and therefore simply derives its legal arguments and basis for summary judgment and summary adjudication in its favor from cases that concern abandonment of railroad easements. As discussed above, Plaintiff is wrong that the Easements – plural - are a singular railroad easement. Its reliance, therefore, on Ocean Shore Railroad Co. v. Doelger (1954) 127 Cal.App.2d 392 ("Doelger I") and Ocean Shore Railroad Co. v. Doelger (1960) 179 Cal.App.2d 222 ("Doelger II") and similar railroad easement cases is unavailing.

Plaintiff's argument that the court of appeal in Doelger I and Doelger II held that the evidence of removal of railroad lines, the liquidation and lack of railroad business operations, and economic infeasibility of the easement for railroad purposes supported abandonment of the easement. However, the court of appeal's analysis of abandonment of the easements in those cases is inapplicable here because the facts and circumstances here are clearly distinguishable. Unlike the railroad easements that were conveyed by grant to the railroad company for "a surface right of way, ***for railroad purposes only***" and obtained by prescription rather than by grant in Doelger I, 127 Cal.App.2d at 394, 400, the Easements were expressly reserved by Southern Pacific and expressly include "access roadway," "communication lines and facilities of every

kind and nature including but not limited to all existing facilities, telephone, telegraph, television and fiber optic lines and related equipment." Quan Decl., ¶2, Ex. 7 at ¶¶ 14-15, Exs. 1-2. Not only did JHP Property require access, but unlike Ocean Shore Railroad Company in Doleger I and Doelger II , at the time of the reservation of the Easements and conveyance of the Easements to Mr. McNerney, Southern Pacific, and later its successor Union Pacific, was not solely a railroad company, but a long-distance telephone and data communications carrier. Quan Decl., ¶6, Ex. 12 at 70:17-71:12, 72:4-24, 101:23-102:18. Furthermore, the Easements expressly permit ***removal*** of railroad lines. Quan Decl., ¶2, Ex. 7 at ¶¶ 14-15, Exs. 1-2.

Plaintiff also tries to analogize the physical impediments across the railroad lines and the selling off of portions of the connected right of way in Doelger II to the covenant in the 2015 Deed conveying the JHP Property to McNerney to build a fence along the property line between the JHP Property and the property owned by Union Pacific that abuts the easterly boundary line of the JHP Property. There is no analogy. While the court of appeal in Doelger II considered the crops that grew within the easement and conveyances of other parts of the right of way as evidence of abandonment of the subject easement, the fence here is simply a boundary fence between the JHP Property and the property owned by Union Pacific for safety and security purposes and is not a physical impediment within the Easements themselves to prevent the use of the Easements. McNerney Decl., ¶4; Quan Decl., ¶6, Ex. 12 at 64:21-65:8, 89:14-21. As Mr. Krantz testified, the fence would not prevent connection to the existing railroad lines or impede the use of the Easements for railroad related equipment and facilities. Quan Decl., ¶6, Ex. 12 at 149:10-25. In fact, the JHP Property was recently licensed to a railroad maintenance and construction contractor to support its work on the Peninsula Corridor Electrification Project for Caltrain. McNerney Decl., ¶7, Ex. 3. Nor does the fence prevent the use of the Easements for access or non-railroad related uses, such as either residential or commercial use, as well as heavy manufacturing, storage yards, truck terminals, internet service exchange (e.g., a data center) and/or wireless telecommunication facilities, among other uses, all of which would require use of the Easements, including the easement for communication lines and facilities. McNerney Decl., ¶5; Quan Decl., ¶5, Ex. 11.

As Plaintiff stated in its motion, "[r]ailroad easements have been held to have, in some

respects, their own distinctive rules and principles of construction." (Plaintiff's MPA at 13:17-19.) Unfortunately for Plaintiff, the cases it relies on that are specific to railroad easements are inapplicable here because the Easements are not simply railroad easements that are restricted to railroad uses only. These cases cannot and do not support Plaintiff's argument that the Easements were relinquished, abandoned, or terminated. Not only does Plaintiff's motion lack any evidentiary basis for abandonment of the Easements because the undisputed evidence show that the Easements were not relinquished, abandoned, or terminated, but Plaintiff's motion also lacks the legal basis for abandonment, termination, or relinquishment.

IV. CONCLUSION

For each of the foregoing reasons, it is undisputed that the Easements were not relinquished, abandoned, or terminated, and therefore JHP, and not Plaintiff, is entitled to quiet title and declaratory relief of JHP's rights to the Easements. Accordingly, the Court should deny Plaintiff's motion for summary judgment, and grant JHP's motion for summary judgment on Plaintiff's Complaint and JHP's Cross-complaint.

Dated: May 27, 2021

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

VISITACION INVESTMENT, LLC, a California limited liability company, Plaintiff, v. 424 JESSIE HISTORIC PROPERTIES, LLC, a California limited liability company, all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the Complaint adverse to Plaintiff's title, or any cloud on Plaintiff's title thereto, and DOES 1 through 50, inclusive, Defendants. AND RELATED CROSS-ACTION.	Case No. CGC-19-579667 **424 JESSIE HISTORIC PROPERTIES, LLC'S SEPARATE STATEMENT IN OPPOSITION TO VISITACION INVESTMENT, LLC'S MOTION FOR SUMMARY JUDGMENT OR, ALTERNATIVELY, SUMMARY ADJUDICATION** Date: June 10, 2021 Time: 9:30 a.m. Dept: 501 Action Filed: October 1, 2019 Trial Date: July 12, 2021

Pursuant to California Code of Civil Procedure section 437c, defendant and cross-complainant 424 Jessie Historic Properties, LLC ("JHP") hereby submits the following separate statement of disputed and undisputed material facts and supporting evidence in opposition to plaintiff and cross-defendant Visitacion Investments, LLC's ("Plaintiff") motion for summary judgment, or, alternatively, for summary adjudication.

ISSUE 1 – PLAINTIFF'S FIRST CAUSE OF ACTION TO QUIET TITLE AS A MATTER OF LAW, PLAINTIFF HAS MET ITS BURDEN TO PREVAIL AGAINST JHP ON ITS FIRST CAUSE OF ACTION TO QUIET TITLE BECAUSE THE UNDISPUTED FACTS DEMONSTRATE THAT DEFENDANT HAS RELINQUISHED ANY PROPERTY RIGHTS IN THE SUBJECT EASEMENTS AND THE EASEMENTS HAVE BEEN ABANDONED AND/OR TERMINATED.

Moving Party's Undisputed Material Facts and Supporting Evidence:	**Opposing Party's Response and Supporting Evidence:**
1. Plaintiff owns 10 contiguous parcels of real property located in the Visitacion Valley neighborhood in the southeast corner of the City and County of San Francisco and commonly known as 2201, 2245, 2500 and 2555 Bay Shore Boulevard, 222 Tunnel Avenue and 289, 290 and 292 Sunnydale Avenue, San Francisco, CA ("the Visitacion Property"). The Property is also known as Assessor's Parcel Numbers 5087-003; 5087-003A; 5099-014; 5100-002; 5100-003; 5100-010; 5101-006; 5101-007; 5102-009; and 5107-001. Verified Complaint to Quiet Tile, for Declaratory Relief and for Preliminary and Permanent Injunction ("Complaint"), ¶ 1 attached as Exhibit A to Declaration of Stephen Preonas in Support of Motion ("Preonas Decl."), ¶ 3.	Objection on the ground that this purported fact is not supported by admissible evidence. (See Objection No. 1.)
2. Plaintiff is an affiliate of Universal Paragon Corporation ("UPC"), an entity formerly known as Tuntex (U.S.A.), Inc. ("Tuntex"). Complaint, ¶ 11. Declaration of Greg Vilkin in Support of Motion ("Vilkin Decl."), ¶ 4; Declaration of Howard Pearce in Support of	Objection on the ground that this purported fact is not supported by admissible evidence. (See Objection No. 1.) Subject to this objection, JHP does not dispute that Plaintiff is an affiliate of

Moving Party's Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
Motion ("Pearce Decl."), ¶ 1.	UPC, which was formerly known as Tuntex.
3. Plaintiff is the developer of a major construction project at the Visitacion Property that is one of the largest residential developments in San Francisco consisting of approximately 1,679 housing units constructed in phases ("the Visitacion Project"). Complaint, ¶ 2; Vilkin Decl., ¶ 5; Pearce Decl., ¶ 6.	Objection on the ground that this purported fact is not supported by admissible evidence (see Objection No. 1), and is not relevant or material to the existence or rights under the Easements expressly reserved by Southern Pacific Transportation Company and granted to JHP.
4. Defendant JHP owns two contiguous parcels of real property known as 2201 Bay Shore Boulevard and 220 Tunnel Avenue, San Francisco also known as Assessor's Parcel Numbers 5087-004 and 5087-005 ("the JHP Property") that is adjacent to the Visitacion Property. Complaint, ¶ 3, 8 & Exh. 4; Defendant's Verified Answer to Complaint for Quiet Title, for Declaratory Relief, and for Preliminary and Permanent Injunction ("Answer"), ¶ 2; Vilkin Decl., ¶ 7 - 8 & Exh. A; Pearce Decl., ¶ 7, 10 – 11 & Exhs. A – B; Request for Judicial Notice in Support of Plaintiff's Motion for Summary Judgment and/or Summary Adjudication ("RJN"), Request No. 4.	Objection on the ground that this purported fact is not supported by admissible evidence. (See Objection Nos. 1, 5, 7, 8.) Subject to this objection, JHP does not dispute that it owns the real property including easements over Plaintiff's property as legally described in JHP's grant deed recorded on September 14, 2016, and depicted in the record of survey. Evidence: Declaration of Patrick McNerney ("McNerney Decl."), ¶¶1, 2, 3, Exs. 2, 6; Declaration of Stacey C. Quan ("Quan Decl."), ¶2, Ex. 7 at ¶18, Ex. 4.
5. The Visitacion Property formerly contained the home of the Schlage Lock Factory and was used for industrial purposes ("the Schlage Property"); Vilkin Decl., ¶ 4; Pearce Decl., ¶ 4. Complaint, ¶ 9.	Objection on the ground that this purported fact is not supported by admissible evidence (see Objection No. 1), and is not relevant or material to the existence or rights under the Easements expressly reserved by Southern Pacific Transportation Company and granted to JHP.

Moving Party's Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
6. The Visitacion Property also includes certain parcels adjacent to the Former Schlage Property that were previously owned by Southern Pacific Transportation Company, a railroad company which later merged with Union Pacific Railroad ("UP"). ("the Former RR Property"). Complaint, ¶ 9 – 10; Vilkin Decl., ¶ 4; Pearce Decl., ¶ 4.	Objection on the ground that this purported fact is not supported by admissible evidence. (See Objection Nos. 1, 4.) Subject to this objection, JHP does not dispute that Plaintiff's property was previously owned by Southern Pacific Transportation Company which later merged with Union Pacific Railroad as legally described in that certain grant deed recorded on August 10, 1990, and depicted in the record of survey. Evidence: Quan Decl., ¶2, Ex. 7 at ¶¶1, 8, 14, 15, Ex. 1; McNerney Decl., ¶2, Exs. 6, 20.
7. In or about August 1990 UP transferred the Former RR Property to Tuntex. Complaint, ¶ 11 – 12 & Exh. 1; Answer, ¶ 8 – 9; RJN No. 1.	Objection on the ground that this purported fact is not supported by admissible evidence. (See Objection No. 1.) Subject to this objection, JHP does not dispute that Southern Pacific Transportation Company transferred certain real property to Plaintiff's predecessor in interest Tuntex as legally described in that certain grant deed recorded on August 10, 1990, and depicted in the record of survey. Evidence: Quan Decl., ¶2, Ex. 7 at ¶¶1, 8, 14, 15, Ex. 1; McNerney Decl., ¶2, Exs. 6, 20.
8. When it transferred the Former RR Property to Tuntex, the RR, as Grantor, reserved in itself an easement ("the Railroad Easement") over the Former RR Property, set forth in the deed transferring the Former RR Property from the RR, as Grantor, to Tuntex, as Grantee, recorded August 10, 1990 Document No. E761808 ("the	Objection on the ground that this purported fact is not supported by admissible evidence. (See Objection No. 1.) Subject to this objection, ***disputed***. Southern Pacific Transportation

Moving Party's Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
1990 RR Deed") Complaint, ¶ 11 & Exh. 1; RJN No. 1; Answer, ¶ 8.	Company reserved for itself and for its successors and assigns *three* express recorded easements in three separate areas over Plaintiff's property for, among other things, "an access roadway", "communication lines and facilities of every kind and nature", and "railroad equipment and facilities" as legally described in that certain grant deed recorded on August 10, 1990, and depicted in the record of survey (collectively, "Easements"), which by their terms are not limited to railroad purposes. Evidence: Quan Decl., ¶2, Ex. 7 at ¶¶1, 8-15, Exs. 1, 2; Quan Decl., ¶¶7-8, Exs. 13, 14; Quan Decl., ¶6, Ex. 12 at 70:17-71:12, 72:4-24, 101:23-102:18; McNerney Decl., ¶2, Exs. 6, 20.
9. Tuntex and the RR later executed and recorded a "Deed Correcting Description of Rail Easement" recorded on August 22, 1991 as Document No. E962735 ("the 1991 RR Correction Deed" and with the 1990 RR Deed both collectively "the RR Deeds") that replaced the metes and bounds description of the Easements in the 1990 RR Deed and incorporated verbatim as Exhibit 1 the stated purpose and terms of the Easements set forth in Exhibit B to the 1990 RR Deed and described the Easements as "Form of Railroad Easement." Complaint, ¶ 15 & Exhs. 1 – 2; RJN Nos. 1 – 2; Answer, ¶ 12.	Objection on the ground that this purported fact is not supported by admissible evidence. (See Objection No. 1.) Subject to this objection, ***disputed***. Southern Pacific Transportation Company reserved for itself and for its successors and assigns *three* express recorded easements in three separate areas over Plaintiff's property for, among other things, "an access roadway", "communication lines and facilities of every kind and nature", and "railroad equipment and facilities" as legally described in that certain grant deed recorded on August 10, 1990, in that certain deed correcting the legal description of the Easements recorded on August 22, 1991, and depicted in the record of survey (collectively,

Moving Party's Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
	"Easements"), which by their terms are not limited to railroad purposes. Evidence: Quan Decl., ¶2, Ex. 7 at ¶¶1, 8-15, Exs. 1, 2; Quan Decl., ¶¶7-8, Exs. 13, 14; Quan Decl., ¶6, Ex. 12 at 70:17-71:12, 72:4-24, 101:23-102:18; McNerney Decl., ¶2, Exs. 6, 20.
10. The sole source of any claimed easement encumbering the Visitacion Property involved in this case is the Railroad Easement reserved in the 1990 RR Deed the RR to Tuntex, as corrected by the 1991 RR Correction Deed. Complaint, ¶ 15 & Exhs. 1 – 2; RJN Nos. 1 – 2; Answer, ¶ 12.	Objection on the ground that this purported fact is not supported by admissible evidence. (See Objection No. 1.) Subject to this objection, ***disputed***. Southern Pacific Transportation Company reserved for itself and for its successors and assigns *three* express recorded easements in three separate areas over Plaintiff's property for, among other things, "an access roadway", "communication lines and facilities of every kind and nature", and "railroad equipment and facilities" as legally described in that certain grant deed recorded on August 10, 1990, in that certain deed correcting the legal description of the Easements recorded on August 22, 1991, and depicted in the record of survey (collectively, "Easements"), which by their terms are not limited to railroad purposes. The JHP Property and the Easements were then expressly granted to Patrick McNerney in that certain quitclaim deed recorded on February 5, 2015, who subsequently transferred the JHP Property and the Easements to JHP by grant deed recorded on September 14, 2016. Evidence: Quan Decl., ¶2, Ex. 7 at ¶¶1, 8-15, Exs. 1, 2; Quan Decl., ¶¶7-8, Exs.

Moving Party's Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
	13, 14; Quan Decl., ¶6, Ex. 12 at 70:17-71:12, 72:4-24, 101:23-102:18; McNerney Decl., ¶2, Exs. 1, 2, 6, 20.
11. The 1990 RR Deed specifies the following purpose for the Railroad Easement: "to own, operate, maintain, repair, lease, license, and/or remove existing and/or future railroad, rail and railroad related equipment and facilities and communications lines and facilities of every kind and nature including but not limited to all existing facilities, telephone, telegraph, television and fiber optic lines and related equipment." Complaint, ¶ 14 & Exh. 1; RJN No. 1; Answer, ¶ 11.	Objection on the ground that this purported fact is not supported by admissible evidence. (See Objection No. 1.) Subject to this objection, ***disputed***. Southern Pacific Transportation Company reserved for itself and for its successors and assigns *three* express recorded easements in three separate areas over Plaintiff's property for, among other things, "an access roadway", "communication lines and facilities of every kind and nature", and "railroad equipment and facilities" as legally described in that certain grant deed recorded on August 10, 1990, in that certain deed correcting the legal description of the Easements recorded on August 22, 1991, and depicted in the record of survey (collectively, "Easements"), which by their terms are not limited to railroad purposes. Evidence: Quan Decl., ¶2, Ex. 7 at ¶¶1, 8-15, Exs. 1, 2; Quan Decl., ¶¶7-8, Exs. 13, 14; Quan Decl., ¶6, Ex. 12 at 70:17-71:12, 72:4-24, 101:23-102:18; McNerney Decl., ¶2, Exs. 6, 20.
12. The text of the Railroad Easement is set forth in the recorded 1990 RR Deed which states: "Form of Railroad Easement," and this "Form of Railroad Easement" governs all of the described areas on "Schedule 1" (RR Main Line easement) "Schedule 2" (Drill & Spur Track Easement) and "Schedule 3" (Access Roadway Easement). Complaint, ¶ 14 & Exh. 1; RJN No. 1; Answer,	Objection on the ground that this purported fact is not supported by admissible evidence. (See Objection No. 1.) Subject to this objection, ***disputed***. Southern Pacific Transportation Company reserved for itself and for its successors and assigns *three* express recorded easements in three separate

Moving Party's Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
¶ 8.	areas over Plaintiff's property for, among other things, "an access roadway", "communication lines and facilities of every kind and nature", and "railroad equipment and facilities" as legally described in that certain grant deed recorded on August 10, 1990, in that certain deed correcting the legal description of the Easements recorded on August 22, 1991, and depicted in the record of survey (collectively, "Easements"), which by their terms are not limited to railroad purposes. Evidence: Quan Decl., ¶2, Ex. 7 at ¶¶1, 8-15, Exs. 1, 2; Quan Decl., ¶¶7-8, Exs. 13, 14; Quan Decl., ¶6, Ex. 12 at 70:17-71:12, 72:4-24, 101:23-102:18; McNerney Decl., ¶2, Exs. 6, 20.
13. Both of the RR Deeds describe the abandonment and termination of all or a portion of the Easements as follows: "Upon abandonment or termination of the easement, or any portion thereof, Grantor shall be obligated to execute and deliver to Grantee or its successors and assigns an instrument in form and substance a satisfactory to Grantee, or its successors and assigns, relinquishing the easement described in this paragraph." JHP has refused Plaintiff's request that it execute and deliver such an instrument. Complaint, ¶ 16 & Exhs. 1 – 2; RJN Nos. 1 – 2; Answer, ¶ 13; Preonas Decl., ¶ 10 & Exh. H.	Objection on the ground that this purported fact is not supported by admissible evidence. (See Objection No. 1.) Subject to this objection, ***disputed***. Southern Pacific Transportation Company reserved for itself and for its successors and assigns *three* express recorded easements in three separate areas over Plaintiff's property for, among other things, "an access roadway", "communication lines and facilities of every kind and nature", and "railroad equipment and facilities" as legally described in that certain grant deed recorded on August 10, 1990, in that certain deed correcting the legal description of the Easements recorded on August 22, 1991, and depicted in the record of survey (collectively, "Easements"), which by their terms are not limited to railroad purposes. Neither

Moving Party's Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
	JHP nor JHP's predecessor owners of the JHP Property abandoned or terminated the Easements. Evidence: Quan Decl., ¶2, Ex. 7 at ¶¶1, 8-15, Exs. 1, 2; Quan Decl., ¶¶7-13, Exs. 13-19; Quan Decl., ¶6, Ex. 12 at 23:2-25:7, 25:16-24, 29:12-30:7, 30:21-31:3, 46:3-48:18, 49:8-15, 54:12-25, 59:24-60:16, 61:17-20, 63:18-64:12; 70:17-71:12, 72:4-24, 101:23-102:18, 116:13-118:3, 143:5-19, 146:11-22, 150:3-14, 151:7-20; McNerney Decl., ¶¶2, 3, 7-12, Exs. 2-5, 6, 20.
14. The Railroad Easement is phrased throughout as a railroad-related document. Its provisions about "communication lines and facilities" and the like are ancillary to railroad uses. Complaint, ¶ 16 & Exhs. 1 – 2; RJN Nos. 1 – 2; Answer, ¶ 13.	Objection on the ground that this purported fact is not supported by admissible evidence. (See Objection No. 1.) Subject to this objection, ***disputed***. Southern Pacific Transportation Company reserved for itself and for its successors and assigns *three* express recorded easements in three separate areas over Plaintiff's property for, among other things, "an access roadway", "communication lines and facilities of every kind and nature", and "railroad equipment and facilities" as legally described in that certain grant deed recorded on August 10, 1990, in that certain deed correcting the legal description of the Easements recorded on August 22, 1991, and depicted in the record of survey (collectively, "Easements"), which by their terms are not limited to railroad purposes. Evidence: Quan Decl., ¶2, Ex. 7 at ¶¶1, 8-15, Exs. 1, 2; Quan Decl., ¶¶7-8, Exs. 13, 14; Quan Decl., ¶6, Ex. 12 at 39:21-40:3, 70:17-71:12, 72:4-24, 101:23-

Moving Party's Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
	102:18, 144:5-15; McNerney Decl., ¶2, Exs. 6, 20.
15. Among its provisions ancillary to its railroad purposes, the Railroad Easement permits the Grantee to use the Railroad Easement for "Rail Crossings" and to construct "improvements over said easement commencing at a minimum height of thirty-five (35) feet above top of rail line." It also provides for "structural support improvements and other improvements reasonably related to a rail depot." Complaint, ¶ 16 & Exhs. 1 – 2; RJN Nos. 1 – 2; Answer, ¶ 13.	Objection on the ground that this purported fact is not supported by admissible evidence. (See Objection No. 1.) Subject to this objection, ***disputed***. Southern Pacific Transportation Company reserved for itself and for its successors and assigns *three* express recorded easements in three separate areas over Plaintiff's property for, among other things, "an access roadway", "communication lines and facilities of every kind and nature", and "railroad equipment and facilities" as legally described in that certain grant deed recorded on August 10, 1990, in that certain deed correcting the legal description of the Easements recorded on August 22, 1991, and depicted in the record of survey (collectively, "Easements"), which by their terms are not limited to railroad purposes. Evidence: Quan Decl., ¶2, Ex. 7 at ¶¶1, 8-15, Exs. 1, 2; Quan Decl., ¶¶7-8, Exs. 13, 14; Quan Decl., ¶6, Ex. 12 at 39:21-40:3, 70:17-71:12, 72:4-24, 101:23-102:18, 144:5-15; McNerney Decl., ¶2, Exs. 6, 20.
16. UP transferred the JHP Property to McNerney pursuant to a February 5, 2015 "Quitclaim Deed" recorded as Document No. 2015-K016863-00 ("the 2015 RR Deed"). Complaint, ¶ 18 & Exh. 3; Answer, ¶ 15; RJN No. 3.	Objection on the ground that this purported fact is not supported by admissible evidence. (See Objection No. 1.) Subject to this objection, JHP does not dispute that Union Pacific Railroad Company sold the JHP Property *and the*

Moving Party's Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
	Easements to Patrick McNerney in that certain quitclaim deed recorded on February 5, 2015, who subsequently transferred the JHP Property *and the Easements* to JHP by grant deed recorded on September 14, 2016. Evidence: McNerney Decl., ¶2, Exs. 1, 2, 6, 20.
17. McNerney subsequently transferred the JHP Property to JHP pursuant to a "Grant Deed" recorded as Document No. 2016-K328238 on Sept. 14, 2016. Complaint, Exh. 4; RJN No. 4.	Objection on the ground that this purported fact is not supported by admissible evidence. (See Objection No. 1.) Subject to this objection, JHP does not dispute that Union Pacific Railroad Company sold the JHP Property *and the Easements* to Patrick McNerney in that certain quitclaim deed recorded on February 5, 2015, who subsequently transferred the JHP Property *and the Easements* to JHP by grant deed recorded on September 14, 2016. Evidence: McNerney Decl., ¶2, Exs. 1, 2, 6, 20.
18. The 2015 RR Deed did not include a grant of UP's railroad right of way adjacent to the easterly boundary of the JHP Property. Complaint, ¶ 18 & Exh. 3; Answer, ¶ 15; RJN No. 3.	Objection on the ground that this purported fact is not supported by admissible evidence. (See Objection No. 1.) Subject to this objection, JHP does not dispute that only those Easements described in that certain quitclaim deed recorded on February 5, 2015, including *three* express recorded easements in three separate areas over Plaintiff's property for, among other things, "an access roadway", "communication lines and facilities of every kind and nature", and "railroad equipment and facilities"

Moving Party's Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
	and depicted in the record of survey, were granted to Mr. McNerney. Evidence: McNerney Decl., ¶2, Exs. 1, 2, 6, 20.
19. The 2015 RR Deed from UP to McNerney affirmatively required McNerney to install a fence or other barrier to keep persons on the JHP Property from having any access or encroachment on the railroad right of way, which was explicitly retained by UP and was not transferred to McNerney. Complaint, ¶ 18 & Exh. 3; Answer, ¶ 15; RJN No. 3.	Objection on the ground that this purported fact is not supported by admissible evidence. (See Objection No. 1.) Subject to this objection, ***disputed***. Union Pacific intended to transfer all of its easement rights reserved in the 1990 Deed, as corrected by the 1991 Deed, to Mr. McNerney, and the fence referred to in the February 5, 2015 quitclaim deed does not prevent current and future access and use of the Easements for railroad, rail and railroad related equipment and facilities and was required for safety and security reasons, and may be gated to permit access to the Main Line to be used in conjunction with spur tracks. The JHP Property is adjacent to JPB's property on which at all times relevant existed fully operational Cal Train passenger rail lines and freight train rail lines. Accordingly, the JHP Property can be used as an adjunct to these existing rail lines, including railroad electrification, shipping and receiving, and loading and unloading of rail cars, which requires use of the Easements. Evidence: McNerney Decl., ¶¶1, 2, 4, 7, Exs. 1, 2, 6, 20, 21; Quan Decl., ¶6, Ex. 12 at 26:6-23, 64:21-65:8, 89:14-21, 149:10-25,151:23-153:13.
20. McNerney and JHP are real estate developers who are contemplating residential and	Objection on the ground that this purported fact is not supported by

Moving Party's Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
commercial improvements on the JHP Property. They have no experience, ownership or development interest in railroads. In fact, they have developed other former railroad properties, and none of them are devoted to any form of railroad use. Complaint, ¶ 17, 20 – 21 & Exh. 6; Answer, ¶ 14, 17 – 18; McNerney Depo, 9:13 – 11:7, 11:5 – 11:7, 12:3 – 12:17, 40:16 – 43:4 & Exh 6, 52:1 – 52:8 & Exh 7, 81:17 - 81:24 & Exh. 10, 86:7 - 86:18 & Exh. 10, 171:2 – 171:17 & Exh. 20, 203:22 – 204:22 & Exh. 29, 237:2 – 237:25 & Exh. 37.	admissible evidence. (See Objection No. 1.) Subject to this objection, ***disputed***. The JHP Property is zoned M-1 and currently undeveloped. The JHP Property is adjacent to JPB's property on which at all times relevant existed fully operational Cal Train passenger rail lines and freight train rail lines. The JHP Property can be used as an adjunct to these existing rail lines, including railroad electrification, shipping and receiving, and loading and unloading of rail cars, which requires use of the Easements. Although JHP has not committed to any particular or singular use of the JHP Property, it has evaluated the JHP Property for future development for residential use, including, without limitation, apartment, condominiums, single family homes, and live work spaces, for commercial use, independently and as an adjunct to the existing rail lines, and for industrial use, including, without limitation, shipping and receiving, heavy manufacturing, storage yards, truck terminals, loading and unloading of rail cars, train electrification, and internet service exchange (*e.g.*, a data center). Evidence: McNerney Decl., ¶¶1, 4-7, 9, Ex. 21; Quan Decl., ¶4, Ex. 10 at 82:4-17, 83:14-85:12; Quan Decl., ¶6, Ex. 12 at 26:6-23, 151:23-153:13.
21. Plaintiff is developing the Visitacion Property with a residential development consisting of approximately 1,679 housing units (the "Visitacion Project"). On July 24, 2014 the City of San Francisco	Objection on the ground that this purported "fact" is not relevant or material to the existence or rights under the Easements expressly reserved by Southern Pacific Transportation Company and granted to JHP.

Moving Party's Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
("City") enacted Ordinance No. 149-14 approving of a Development Agreement between the City and Visitacion for the Visitacion Property and the Visitacion Project ("the Development Agreement" and the "Development Ordinance") that made the following findings regarding the Project: "The City has determined that as a result of the development of the Project Site in accordance with the Development Agreement, clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies, as more particularly described in the Development Agreement." Vilkin Decl., ¶ 5; Pearce Decl., ¶ 6; RJN Nos. 7 – 8 & Exhs. A – B.	Subject to this objection, JHP does not dispute that the City made the purported "findings" concerning the development of Plaintiff's property.
22. The Railroad Easement is incompatible with the Visitacion Project. The City of San Francisco has required the Railroad Easement be removed as a condition of approval of the development, which the City has found to include clear public benefits. Complaint, ¶ 2; Vilkin Decl., ¶ 5, 12; Pearce Decl., ¶ 6; Declaration of John Rahaim ("Rahaim Decl.") attached as Exh I to Preonas Decl., ¶ 11 – 13 & Exhs. 1 – 2; Declaration of Emily Lesk ("Lesk Decl.") attached as Exh. J to Preonas Decl., ¶ 11 – 13 & Exhs. 1 – 2; RJN No. 7 & Exh. A.	Objection on the ground that this purported fact is not supported by admissible evidence (see Objection No. 1), and is not relevant or material to the existence or rights under the Easements expressly reserved by Southern Pacific Transportation Company and granted to JHP. Subject to this objection, ***disputed***. Southern Pacific Transportation Company reserved for itself and for its successors and assigns *three* express recorded easements in three separate areas over Plaintiff's property for, among other things, "an access roadway", "communication lines and facilities of every kind and nature", and "railroad equipment and facilities" as legally described in that certain grant deed recorded on August 10, 1990, in that certain deed correcting the legal description of the Easements recorded

Moving Party's Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
	on August 22, 1991, and depicted in the record of survey (collectively, "Easements"), which by their terms are not limited to railroad purposes. Evidence: Quan Decl., ¶2, Ex. 7 at ¶¶1, 8-15, Exs. 1, 2; Quan Decl., ¶¶7-8, Exs. 13, 14; Quan Decl., ¶6, Ex. 12 at 70:17-71:12, 72:4-24, 101:23-102:18; McNerney Decl., ¶2, Exs. 6, 20.
23. Since 2008 at the latest, the Railroad Easement has never been used for any railroad-related uses. By 2008 at the latest, all tracks formerly in the Railroad Easement area were removed. McNerney Depo., 38:1 – 39:16, 38:20 – 39:22, 69:22 – 69:24, 180:13 – 181:25 & Exh. 22; Pearce Decl., ¶ 13 – 15 & Exh. D; Preonas Decl., ¶ 14 & Exh. K; RJN No. 9.	Objection on the ground that purported "fact" is not relevant or material to the existence or rights under the Easements expressly reserved by Southern Pacific Transportation Company and granted to JHP, as express easements may not be abandoned or terminated by mere non-use. Subject to this objection, ***disputed***. Southern Pacific Transportation Company reserved for itself and for its successors and assigns *three* express recorded easements in three separate areas over Plaintiff's property for, among other things, "an access roadway", "communication lines and facilities of every kind and nature", and "railroad equipment and facilities" as legally described in that certain grant deed recorded on August 10, 1990, in that certain deed correcting the legal description of the Easements recorded on August 22, 1991, and depicted in the record of survey (collectively, "Easements"), which by their terms are not limited to railroad purposes and are not restricted to then existing or historical use, but are also expressly reserved for *future* uses. The Easements unambiguously grant the holder the "right to own, operate, maintain, repair,

Moving Party's Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
	lease, license and/or *remove existing and/or future* railroad, rail and railroad related equipment and facilities…" Because the Easements expressly grant to the dominant owner the right of *removal* of existing *and/or future* railroad, rail and railroad related equipment and facilities, any removal of existing railroad tracks was simply the exercise of the dominant owner's rights expressly provided for in the Easements themselves. The JHP Property is adjacent to passenger and freight train rail lines, and has a potential future use as an adjunct to these existing rail lines, including for railroad electrification, shipping and receiving, and loading and unloading of rail cars, all of which requires the use of the Easements. Moreover, the JHP Property was recently licensed to a railroad maintenance and construction contractor to support its railroad construction work, precisely one of the railroad uses contemplated by the Easements. Further, the Easements are necessary for both access and communications lines in the development of the JHP Property separate and apart from railroad use. Although future use of the JHP Property is uncertain, it may include future railroad related facilities such as railroad electrification, shipping and receiving, and loading and unloading of rail cars. Evidence: Quan Decl., ¶2, Ex. 7 at ¶¶1, 8-15, Exs. 1, 2; Quan Decl., ¶4, Ex. 10 at 82:4-17, 83:14-85:12; Quan Decl., ¶¶7-8, Exs. 13, 14; Quan Decl., ¶6, Ex. 12 at 70:17-71:12, 72:4-24, 101:23-102:18, 150:1-14, 152:11-153:13;

Moving Party's Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
	McNerney Decl., ¶¶2, 4-7, 9, 10, 13, Exs. 3, 6, 20.
24. There are currently no rail or railroad-related equipment or facilities, and there are also no communications lines or facilities, anywhere in the Railroad Easement. McNerney Depo, 38:1 – 39:22; 69:22 – 69:24, 180:13 – 181:25 & Exh. 22; Pearce Decl., ¶ 13 – 15 & Exh. D.	Objection on the ground that purported "fact" is not relevant or material to the existence or rights under the Easements expressly reserved by Southern Pacific Transportation Company and granted to JHP, as express easements may not be abandoned or terminated by mere non-use. Subject to this objection, ***disputed***. Southern Pacific Transportation Company reserved for itself and for its successors and assigns *three* express recorded easements in three separate areas over Plaintiff's property for, among other things, "an access roadway", "communication lines and facilities of every kind and nature", and "railroad equipment and facilities" as legally described in that certain grant deed recorded on August 10, 1990, in that certain deed correcting the legal description of the Easements recorded on August 22, 1991, and depicted in the record of survey (collectively, "Easements"), which by their terms are not limited to railroad purposes and are not restricted to then existing or historical use, but are also expressly reserved for *future* uses. The Easements unambiguously grant the holder the "right to own, operate, maintain, repair, lease, license and/or *remove existing and/or future* railroad, rail and railroad related equipment and facilities…" Because the Easements expressly grant to the dominant owner the right of *removal* of existing *and/or future* railroad, rail and railroad related

Moving Party's Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
	equipment and facilities, any removal of existing railroad tracks was simply the exercise of the dominant owner's rights expressly provided for in the Easements themselves. The JHP Property is adjacent to passenger and freight train rail lines, and has a potential future use as an adjunct to these existing rail lines, including for railroad electrification, shipping and receiving, and loading and unloading of rail cars, all of which requires the use of the Easements. Moreover, the JHP Property was recently licensed to a railroad maintenance and construction contractor to support its railroad construction work, precisely one of the railroad uses contemplated by the Easements. Further, the Easements are necessary for both access and communications lines in the development of the JHP Property separate and apart from railroad use. Although future use of the JHP Property is uncertain, it may include future railroad related facilities such as railroad electrification, shipping and receiving, and loading and unloading of rail cars. Evidence: Quan Decl., ¶2, Ex. 7 at ¶¶1, 8-15, Exs. 1, 2; Quan Decl., ¶4, Ex. 10 at 82:4-17, 83:14-85:12; Quan Decl., ¶¶7-8, Exs. 13, 14; Quan Decl., ¶6, Ex. 12 at 70:17-71:12, 72:4-24, 101:23-102:18, 150:1-14, 152:11-153:13; McNerney Decl., ¶¶2, 4-7, 9, 10, 13, Exs. 3, 6, 20.
25. A mid 1990s Sanborn Map of the Railroad Easement depicts railroad tracks in the Railroad Easement that no longer exist.	***Disputed***. The cited evidence is inadmissible and in any event does not support a claim that railroad tracks no longer exist.

Moving Party's Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
Preonas Decl., ¶ 14 & Exh. K; RJN, No. 9	
26. There is no economically feasible use of the Railroad Easement that involves installing communications lines and facilities in the absence of a railroad. Vilkin Decl., ¶ 13.	Objection on the ground that this purported fact is not supported by admissible evidence. (See Objection No. 6.) Subject to this objection, ***disputed***. The non-use of the JHP Property for railroad purposes does not preclude JHP from using the Easements in the future within the scope of the Easements, whether it be for railroad related purposes, for access, or for communication lines and facilities. In fact, given the current differential grade between Plaintiff's Property, the JHP Property and Blanken Avenue, the Access Roadway area is currently the most economically feasible access to the JHP Property and, given that Plaintiff's Property remains undeveloped, no agreement has been reached, and Plaintiff's proposed alternative access would not be available to JHP for several years. The JHP Property is adjacent to existing and fully operational passenger and freight train rail lines, and has a potential use as an adjunct to these existing rail lines, which requires the use of the Easements. Moreover, it is entirely feasible to bring communication lines to the JHP Property through the Easements that run to Sunnydale Avenue, which leads to Bayshore Boulevard, through which communication lines run and are readily and economically accessible from the JHP Property. Evidence: McNerney Decl., ¶¶4, 8, 9, 13; Quan Decl., ¶4, Ex. 10 at 82:4-17,

Moving Party's Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
	83:14-85:12.
27. Since McNerney purchased the JHP Property no people, other than Proven Management, Inc. ("Proven") have used the JHP Property with JHP's permission. McNerney Depo, 50:6 – 50:11.	***Disputed***. On or about March 2, 2016, I entered into a Temporary License Agreement with Plaintiff wherein Plaintiff affirmed the Easements burdening Plaintiff's property and I granted to Plaintiff temporary access to, over and through the JHP Property, including the Easements. McNerney Decl., ¶11, Ex. 4.
28. Proven used the JHP Property pursuant to a License Agreement for Entry and Use Surface of Property dated February 19, 2019 between JHP as Licensor and Proven and Licensee's ("the Proven License Agreement") that permitted Proven to use the JHP Property "for the purpose of loading and off-loading as well as short term storage of material" for a period of two months and for a fee of $15,000. Preonas Decl., ¶ 9 & Exh. G; McNerney Depo 49:17 – 49:20.	Objection on the ground that this purported fact is not supported by admissible evidence. (See Objection No. 2.) Subject to this objection, ***disputed***. Proven Management, Inc. is a railroad maintenance and construction contractor that used the JHP Property to support its railroad construction work on the Peninsula Corridor Electrification Project for Cal Train. Evidence: McNerney Decl., ¶7, Ex. 3.
29. McNerney and JHP did not know where or what work Proven was to perform in connection with the Proven License Agreement. Preonas Decl., ¶ 9 & Exh. G; McNerney Depo 49:7 – 49:16.	Objection on the ground that this purported fact is not supported by admissible evidence. (See Objection No. 2.) Subject to this objection, ***disputed***. Proven Management, Inc. is a railroad maintenance and construction contractor that used the JHP Property to support its railroad construction work on the Peninsula Corridor Electrification Project for Cal Train. Evidence: McNerney Decl., ¶7, Ex. 3.

Moving Party's Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
30. Proven is a licensed California contractor that was a subcontractor to DeSilva Gates to build a retaining wall along the border of the Properties. Proven also operated soil operations at a landfill located near the Properties on behalf of UPC. Pearce Decl., ¶ 16.	***Disputed***. Proven Management, Inc. is a railroad maintenance and construction contractor that used the JHP Property to support its railroad construction work on the Peninsula Corridor Electrification Project for Cal Train. Evidence: McNerney Decl., ¶7, Ex. 3.

ISSUE 2 - PLAINTIFF'S SECOND CAUSE OF ACTION FOR DECLARATORY RELIEF

AS A MATTER OF LAW, PLAINTIFF HAS MET ITS BURDEN TO PREVAIL AGAINST JHP ON ITS SECOND CAUSE OF ACTION TO FOR DECLARTORY RELIEF BECAUSE THE UNDISPUTED FACTS DEMONSTRATE THAT DEFENDANT HAS RELINQUISHED ANY PROPERTY RIGHTS IN THE SUBJECT EASEMENTS A ND THE EASEMENTS HAVE BEEN ABANDONED AND/OR TERMINATED.

Moving Party's Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
1-30. As referenced above. See supporting evidence referenced above.	1-30. See objections, responses and supporting evidence stated above.

ISSUE 3 - PLAINTIFF'S THIRD CAUSE OF ACTION FOR PRELIMINARY AND PERMANENT INJUNCTION

AS A MATTER OF LAW PLAINTIFF HAS MET ITS BURDEN TO PREVAIL AGAINST JHP ON ITS THIRD CAUSE OF ACTION FOR INJUNCTIVE RELIEF RELATING TO THE EASEMENTS BECAUSE THE UNDISPUTED FACTS DEMONSTRATE THAT DEFENDANT HAS RELINQUISHED ANY PROPERTY RIGHTS IN THE SUBJECT EASEMENTS A ND THE EASEMENTS HAVE BEEN ABANDONED AND/OR TERMINATED.

Moving Party's Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
1-30. As referenced above. See supporting evidence referenced above.	1-30. See objections, responses and supporting evidence stated above.

ISSUE 4 – CROSS-COMPLAINANT'S FIRST CAUSE OF ACTION IN THE CROSS-

COMPLAINT TO QUIET TITLE
AS A MATTER OF LAW, PLAINTIFF/CROSS-DEFENDANT HAS MET ITS BURDEN TO PREVAIL AGAINST JHP ON THE FIRST CAUSE OF ACTION ALEGED IN THE CROSS-COMPLAINT TO QUIET TITLE BECAUSE THE UNDISPUTED FACTS DEMONSTRATE THAT DEFENDANT/CROSS-COMPLAINANT HAS RELINQUISHED ANY PROPERTY RIGHTS IN THE SUBJECT EASEMENTS A ND THE EASEMENTS HAVE BEEN ABANDONED AND/OR TERMINATED.

Moving Party's Undisputed Material Facts and Supporting Evidence:	**Opposing Party's Response and Supporting Evidence:**
1-30. As referenced above. See supporting evidence referenced above.	1-30. See objections, responses and supporting evidence stated above.

ADDITIONAL UNDISPUTED MATERIAL FACTS REQUIRING DENIAL OF VISITACION INVESTMENT, LLC'S MOTION FOR SUMMARY JUDGMENT OR, ALTERNATIVELY, SUMMARY ADJUCIATION

OPPOSING PARTY'S ADDITIONAL UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	**MOVING PARTY'S RESPONSE AND SUPPORTING EVIDENCE**
31. Neither Southern Pacific nor its successor by merger Union Pacific Railroad Company ("Union Pacific") relinquished, abandoned or terminated the Easements. Evidence: Quan Decl., ¶2, Ex. 7, ¶¶ 12-16, 18, 25, Exs. 1-3; Quan Decl., ¶6, Ex. 12 at 38:23-39:20, 47:14-48:11, 59:24-60:16, 61:17-23, 91:11-14, 96:20-25, 97:23-98:15, 98:19-99:1, 116:13-118:3, 121:10-122:6, 136:20-137:8, 150:3-14, 151:7-20; Quan Decl., ¶12, Ex. 18; Quan Decl., ¶13, Ex. 19; McNerney Decl., ¶¶2, 4, 5, 6, 10, 11, 12, Exs. 1, 4, 5, 6.	
32. The JHP Property is adjacent to existing and fully operational passenger and freight train rail lines, and has a potential use as an adjunct to these existing rail lines, including railroad electrification, shipping and receiving, and loading and unloading of rail cars. Evidence: McNerney Decl., ¶¶4, 5, 6, 8, 9;	

Quan Decl., ¶4, Ex. 10 at 82:4-17, 83:14-85:12; Quan Decl., ¶6, Ex. 12 at 46:3-48:18, 49:8-15, 54:12-25; Quan Decl., ¶10, Ex. 16 at UP0026-27; Quan Decl., ¶11, Ex. 17 at UP0211-13.	
33. The JHP Property is zoned M-1, which allows for redevelopment as residential, commercial and/or industrial use, including heavy manufacturing, storage yards, truck terminals, internet service exchange (e.g., a data center) and/or wireless telecommunication facilities, among other uses. Evidence: McNerney Decl., ¶¶1, 2, 4, 5, 6, 9, 10, Ex. 21; Quan Decl., ¶5, Ex. 11; Quan Decl., ¶6, Ex. 12 at 152:11-153:13	
34. JHP has not committed to any particular or singular use of the JHP Property, but has evaluated the JHP Property for possible future development for residential use, including, without limitation, apartment, condominiums, single family homes, and live work spaces, for commercial use, independently and as an adjunct to the existing rail lines, and for industrial use, including, without limitation, shipping and receiving, heavy manufacturing, storage yards, truck terminals, loading and unloading of rail cars, railroad electrification, and internet service exchange (*e.g.*, a data center), all of which would require use of the Easements, including the easement for communication lines and facilities. Evidence: McNerney Decl., ¶¶1, 3, 7- 12, Exs. 2-5, 21; Quan Decl., ¶4, Ex. 10 at 82:4-17, 83:14-85:12.	
10. Commencing February 18, 2019, the JHP Property was licensed to a railroad maintenance and construction contractor to support its railroad construction work. Evidence: McNerney Decl., ¶7, Ex. 3.	

11. During the summer of 2016, JHP was approached by the San Mateo County Transit District and Caltrain to negotiate use of the JHP Property for railroad electrification. Evidence: McNerney Decl., ¶7.	
12. Neither McNerney nor JHP has relinquished, abandoned or terminated the Easements. Evidence: McNerney Decl., ¶¶3, 7-12, Exs. 2-5; Quan Decl., ¶4, Ex. 10 at 82:4-17, 83:14-85:12; Quan Decl., ¶6, Ex. 12 at 32:12-23; 49:8-15.	

Dated: May 27, 2021

STEYER LOWENTHAL BOODROOKAS ALVAREZ & SMITH LLP

Jeffrey H. Lowenthal
Dana M. Andreoli
Stacey C. Quan
Attorneys for Defendant and Cross-Complainant
424 Jessie Historic Properties, LLC

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Attorneys for Defendant and Cross-Complainant
424 Jessie Historic Properties, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

VISITACION INVESTMENT, LLC, a California limited liability company,

Plaintiff,

v.

424 JESSIE HISTORIC PROPERTIES, LLC, a California limited liability company, all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the Complaint adverse to Plaintiff's title, or any cloud on Plaintiff's title thereto, and DOES 1 through 50, inclusive,

Defendants.

AND RELATED CROSS-ACTION.

Case No. CGC-19-579667

DECLARATION OF PATRICK MCNERNEY IN OPPOSITION TO VISITACION INVESTMENT, LLC'S MOTION FOR SUMMARY JUDGMENT OR, ALTERNATIVELY, SUMMARY ADJUDICATION

Date: June 10, 2021
Time: 9:30 a.m.
Dept: 501

Action Filed: October 1, 2019
Trial Date: July 12, 2021

I, Patrick McNerney, declare as follows:

1. I am, and at all referenced times herein was, the Chief Executive Officer of Martin McNerney Development, Inc., which is the manager of defendant and cross-complainant 424 Jessie Historic Properties, LLC ("JHP"). I make this declaration in support of JHP's opposition to Visitacion Investment, LLC's ("Plaintiff") motion for summary judgment or, alternatively, summary adjudication. I have personal knowledge of the facts set forth herein, and if called upon to testify thereto, I could and would competently do so under oath. I have personally developed residential, commercial and industrial properties in the City and County of San Francisco and elsewhere since 1992. Attached as Exhibit 21 is a true and correct copy of my resume. My development experience includes the due diligence, valuation, acquisition, financing, entitlement, construction, sales and leasing of such properties including, among other things, confirming access and that utilities serve the properties.

2. Union Pacific Railroad Company ("Union Pacific") conveyed a portion of 2201 Bayshore Boulevard, San Francisco, and a portion of 220 Tunnel Avenue, San Francisco (collectively, the "JHP Property"), together with three easements (the "Easements") that encumber Plaintiff's Visitacion Valley development property, to me by Quitclaim Deed recorded on February 5, 2015 as Document No. 2015-K016863 in the Official Records of San Francisco County ("McNerney Deed"). A true and correct copy of the McNerney Deed is attached as Exhibit 1. A true and correct copy of the parcel map referenced in the McNerney Deed (and prior deeds reserving the Easements) and depicting the access roadway easement for ingress and egress is attached as Exhibit 20. Union Pacific represented to me, and I understood, that the Easements include, among other things, the right to use the access roadway area, drill and spur tracks area and signal cabinet area. Union Pacific represented to me, and I understood, that the Easements included the right to use these areas not only for historical, existing or future railroad purposes but also for commercial uses independent of railroad purposes, to access the JHP Property and for communication lines and facilities of every kind and nature. A true and correct copy of a December 2014 survey depicting the Easements is attached as Exhibit 6. At the time that Union Pacific conveyed the JHP Property to me, Union Pacific also represented that the property abutting the easterly boundary line of the

JHP Property owned by the Peninsula Corridor Joint Powers Board (commonly referred to as the "JPB Property") is dedicated and used for the "Main Line" railroad.

3. On or about September 14, 2016, I conveyed the JHP Property, together with the Easements, to JHP by Grant Deed recorded as Document No. 2016-K328238 in the Official Records of San Francisco County ("JHP Deed"). A true and correct copy of the JHP Deed is attached as Exhibit 2.

4. Because the JHP Property is adjacent to the JPB property, which contains existing and fully operational Cal Train passenger and freight train rail lines, the JHP Property has potential uses as an adjunct to the Main Line including for railroad electrification, shipping and receiving, and loading and unloading of rail cars, all requiring the use of the Easements. I understand that Plaintiff claims that the provision for installation of a fence in the McNerney Deed prohibits JHP's access to the Main Line. Plaintiff is incorrect. The fence provision in the McNerney Deed specifically provides that the fencing shall be "of a design and type satisfactory to Union Pacific" and was intended to keep trespassers and others off the Main Line for security and safety reasons. I understand that Union Pacific agrees that a gate may be installed in the fence in order for the JHP Property to access the Main Line. I further understand that the railroad regularly enters into Industrial Track Agreements to permit abutting landowners to use privately owned spur tracks on their property to access and utilize the railroad.

5. The JHP Property is zoned M-1, which allows for redevelopment as either residential or commercial use, as well as heavy manufacturing, storage yards, truck terminals, internet service exchange (e.g., a data center) and/or wireless telecommunication facilities, among other uses, all of which would require use of the Easements, including the easements for access roadway and communication lines and facilities.

6. The JHP Property, in its current undeveloped condition, is legally permitted and available for, among other things, commercial and/or industrial use for shipping and receiving, freight storage or transfer, loading and unloading of rail cars, and railroad maintenance, construction or repair. I understand that I have the right to use the Easements, including the access roadway, drill and spur tracks and signal cabinet areas for these purposes.

7. During the summer of 2016 I was contacted by the San Mateo County Transit District and Caltrain to negotiate use of the JHP Property for their railroad electrification project. I understand that the railroad electrification facilities were ultimately placed along the tracks on Tunnel Avenue. The JHP Property was recently licensed to Proven Management, Inc., a railroad maintenance and construction contractor, to support its work on the Peninsula Corridor Electrification Project for Caltrain. Attached as Exhibit 3 is a true and correct copy of JHP's License Agreement for Entry and Use Surface of Property with Proven Management.

8. Neither JHP nor I have relinquished, abandoned or terminated the Easements.

9. Although JHP has not committed to any particular or singular use of the JHP Property, the JHP Property is available for redevelopment as residential, commercial and industrial uses. JHP has evaluated the JHP Property for possible future development for residential use, including, without limitation, apartment, condominiums, single family homes, and live work spaces, for commercial use, independently and as an adjunct to the existing rail lines, and for industrial use, including, without limitation, shipping and receiving, heavy manufacturing, storage yards, truck terminals, loading and unloading of rail cars, railroad electrification, and internet service exchange (*e.g.*, a data center). The Easements, including the easements for access roadway and communication lines and facilities will be necessary to any and all of these potential uses of the JHP Property.

10. Although JHP submitted an application to the City and County of San Francisco for a preliminary project evaluation as a possible residential and commercial development, no permits have been issued and no construction has been initiated for residential and commercial real estate development for the JHP Property. JHP has not committed to developing the JHP Property into residential, commercial and/or industrial real estate. JHP reserves its rights to pursue any and all potential land uses in order to keep all of its options available for the future development of the JHP Property.

11. Attached as Exhibit 4 is a true and correct copy of the March 2, 2016 Temporary License Agreement between me, as Licensor, and Plaintiff, as Licensee, wherein Plaintiff confirmed the Easements burdening Plaintiff's Property in favor of the JHP Property and I granted

Plaintiff temporary access to, over and through the JHP Property, including the Easements.

12. Attached as Exhibit 5 is a true and correct copy of the May 6, 2016 email exchange among Plaintiff's general counsel, Doug Walsh, Robert M. Krantz of Union Pacific, and me in which Mr. Krantz declines Mr. Walsh's request to assist Plaintiff in clearing the Easements from Plaintiff's Property, noting that the Easements had been conveyed to me.

13. I understand that Plaintiff claims that there is now no economically feasible use of the Easements. Notwithstanding that JHP's use of the Easements has not been determined, Plaintiff's claim is incorrect. The access area can be used to access the JHP Property. In fact, given the current differential grade between Plaintiff's Property, the JHP Property and Blanken Avenue, the access roadway area is currently the most economically feasible access to the JHP Property. Although Plaintiff has offered alternative access and utilities through Plaintiff's Property, Plaintiff's Property remains undeveloped and no agreement has been reached. Plaintiff's claim that it is not feasible to use the Easements to bring communication lines of every kind and nature to the JHP Property is also incorrect. The Easements run to Sunnydale Avenue, a sixty-six-foot-wide public right of way, which leads to Bayshore Boulevard, through which communication lines run and are readily and economically accessible from the JHP Property.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed on May 27, 2021.

Patrick McNerney

EXHIBIT 1

20159K01686300014
San Francisco Assessor-Recorder
Carmen Chu, Assessor-Recorder
DOC 2015-K016863-00
Acct 5002-Old Republic Title Company
Thursday, FEB 05, 2015 11:46:49
Ttl Pd$13,939.00 Nbr-0005097538
okc/RE/1-14

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

Patrick McNerney
14 Mint Plaza, Fifth Floor
San Francisco, CA 94103

Mail Tax Statements to:

Patrick McNerney
14 Mint Plaza, Fifth Floor
San Francisco, CA 94103

CRTC
0227015427 DP
Blk 5087, lots 4 & 5
2201 Bayshore Blvd.

Space Above Line for Recorder's Use Only

(1567-58)

DOCUMENTARY TRANSFER TAX $ 13,875.00
XX Computed on the full value of the property conveyed
___ Computed on the full value less liens and encumbrances remaining at the time of sale
___ Not a sale (Rev. & Tax. Code Section 11927(a))

Signature of Declarant or Agent Determining Tax

QUITCLAIM DEED

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (formerly known as Southern Pacific Transportation Company, a Delaware corporation), Grantor, in consideration of the sum of Ten Dollars ($10.00), and other valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, does hereby REMISE, RELEASE and forever QUITCLAIM unto **PATRICK McNERNEY**, an individual, as his sole and separate property, Grantee, whose address is 14 Mint Plaza, Fifth Floor, San Francisco, California 94103 and unto his heirs and assigns forever, all of Grantor's right, title, interest, estate, claim and demand, both at law and in equity, of, in, and to the real estate (hereinafter the "Property") situated in the City and County of San Francisco, State of California, identified and more particularly described as "Fee Parcel" in **Exhibit A**, hereto attached and hereby made a part hereof, together with any and all of Grantor's right, title and interest in and to portions of that certain Form of Railroad Easement reserved by Southern Pacific Transportation Company in that certain Grant Deed dated August 1, 1990, and recorded on August 10, 1990 in the Official Records of San Francisco County, California, as Instrument No. E761808, as modified by that certain Deed Correcting Description of Rail Easement dated July 23, 1991, and recorded on August 22, 1991 in the Official Records of San Francisco County, California, identified and more particularly described as "Schedule 1", "Schedule 2" and "Schedule 3" in the attached **Exhibit A** ("Railroad Easement").

EXCEPTING FROM THIS QUITCLAIM AND RESERVING UNTO GRANTOR, its successors and assigns, forever, all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered underlying the Property, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable to Grantor, its successors and assigns, but without entering upon or using the surface of the Property, and in such manner as not to damage the surface of the Property, or to interfere with the use thereof by Grantee, its successors or assigns.

Except as may be otherwise provided in a written assignment or other written agreement between Grantor and Grantee, Grantor reserves all income (including, without limitation, rentals, license fees and royalties) from any existing license and other existing rights to use the Property and renewals thereof granted by Grantor or Grantor's predecessors in interest. Grantee agrees that if Grantee receives any such income, Grantee will promptly forward the income to Grantor.

Covenants.

The Property is quitclaimed by Grantor subject to the following covenants, conditions and restrictions which Grantee by the acceptance of this Deed covenants for itself, its successors and assigns, faithfully to keep, observe and perform:

Fence Covenant. Grantee, at its sole cost and expense, shall install, within ninety (90) days after the recording of this Deed, and thereafter maintain fencing or other barriers to prevent access to or encroachment on the railroad right-of-way of Grantor adjacent to the easterly boundary of the Property. The fencing or barrier must be of a design and type satisfactory to Grantor, and in compliance with applicable building codes. Grantee shall submit the plans for the fencing or barrier construction to:

Union Pacific Railroad Company
Assistant Vice President-Real Estate (Folder No. 1567-58)
1400 Douglas Street, Mail Stop 1690
Omaha, Nebraska 68179

for review and approval. Grantor shall complete such review and make appropriate response to Grantee within twenty (20) days after receipt of such plans by Grantor. Grantor shall not unreasonably withhold its approval of such plans. Such approval does not constitute a guarantee or warranty that such plans comply with applicable governmental laws, rules, regulations or ordinances, or that the fence as constructed will be structurally sound.

Railroad Proximity Covenant.

(a) Grantee acknowledges that the property abutting the easterly boundary line of the Property is dedicated and used for railroad purposes, that railroad operations may create noise, vibrations, emissions, fumes and odors twenty-four (24) hours a day, and that the amount, nature and intensity of railroad operations may increase or change (collectively, the

"Permitted Effects"). Grantee accepts the Property subject to the existence of the Permitted Effects. By acceptance of the Property, Grantee agrees that, at Grantee's sole cost and expense, as part of the development of the Property, Grantee shall design and install and/or construct and thereafter maintain improvements to reduce or limit the Permitted Effects and to comply with all governmental requirements, if any, which may be imposed as a condition to the development and use of the Property because of the Permitted Effects.

(b) Grantee shall not, and hereby waives all rights to, (i) institute legal proceedings against Grantor to reduce or lessen the Permitted Effects, and (ii) directly or indirectly participate in petition drives, lobbying efforts or other activities seeking the enactment of federal, state or local laws or ordinances to reduce or lessen the Permitted Effects. Any party breaching such covenant shall reimburse Grantor for all costs incurred by Grantor to comply with any such orders, laws or ordinances, including, without limitation, attorney fees and court costs.

(c) If Grantee sells or leases all or any portion of the Property, Grantee shall require all purchasers and tenants to acknowledge the location of the railroad operations abutting the Property and the existence of the Permitted Effects, and to agree in writing, for the benefit of Grantor, to comply with the above covenants.

Covenants To Run With Land. The foregoing covenants, conditions and restrictions shall run with the Property, the burdens of which will be binding on the successors and assigns of Grantee, and the benefits of which will inure to the successors and assigns of Grantor. A breach of the foregoing covenants, conditions and restrictions, or the continuance thereof, may, at the option of Grantor, its successors or assigns, be enjoined, abated or remedied by appropriate proceedings.

Environmental.

"As Is" Sale. Grantee acknowledges and agrees that the Property and the Railroad Easement have been sold and quitclaimed to and accepted by Grantee in an "as is" condition with all faults, and that the Property and the property over which the Railroad Easement is located ("Railroad Easement Area") have been used for, among other things, railroad operating right-of-way and for other commercial or industrial purposes. Grantor does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the Property, Railroad Easement Area or Railroad Easement or any of such related matters; in particular, but without limitation, Grantor makes no representations or warranties with respect to the use, condition, title, occupation or management of the Property, Railroad Easement Area or Railroad Easement, compliance with applicable statutes, laws, codes, ordinances, regulations or requirements relating to leasing, zoning, subdivision, planning, building, fire, safety, health or environmental matters (including but not limited to the existence of Hazardous Materials, in, on, under or emanating to or from the Property), compliance with covenants, conditions and restrictions (whether or not of record), other local, municipal, regional, state or federal requirements, or other statutes, laws, codes, ordinances, regulations or requirements (collectively, "Condition of the Property"). Grantee acknowledges and agrees that the Property and Railroad Easement have been sold and quitclaimed on the basis of Grantee's own

investigation of the physical and environmental conditions of the Property and Railroad Easement Area, including the subsurface conditions and Grantee assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation. For purposes of this Deed, "Hazardous Materials" means any flammable or explosive materials, petroleum or petroleum products, oil, crude oil, natural gas or synthetic gas usable for fuel, radioactive materials, asbestos, hazardous waste or substances or toxic waste or substances, including, without limitation, any substances now or hereafter defined as or included in the definition of "hazardous substances", "hazardous waste", "hazardous materials", "toxic materials" or "toxic substances" under any applicable federal, state or local law or regulation now or hereafter in effect.

Release. GRANTEE, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES GRANTOR, GRANTOR'S EMPLOYEES, AGENTS, OR ANY OTHER PERSON ACTING ON BEHALF OF GRANTOR, OF AND FROM ANY CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, DAMAGES, COSTS, EXPENSES, PENALTIES, FINES OR COMPENSATION WHATSOEVER, DIRECT OR INDIRECT, WHICH GRANTEE NOW HAS OR WHICH GRANTEE MAY HAVE IN THE FUTURE ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE CONDITION OF THE PROPERTY OR RAILROAD EASEMENT AREA, INCLUDING, WITHOUT LIMITATION, THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY AND RAILROAD EASEMENT AREA (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY AND RAILROAD EASEMENT AREA BY ANY HAZARDOUS MATERIALS), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING APPLIES REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS. WITH RESPECT TO THE FOREGOING RELEASE, GRANTEE EXPRESSLY WAIVES THE BENEFITS AND PROTECTIONS OF SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA, WHICH READS AS FOLLOWS:

> **1542. Certain Claims Not Affected by General Release. 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.**

Indemnity. FROM AND AFTER CLOSING, GRANTEE SHALL, TO THE MAXIMUM EXTENT PERMITTED BY LAW, INDEMNIFY, DEFEND AND SAVE HARMLESS GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, FINES, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND

EXPENSES, INCLUDING ATTORNEY'S FEES, IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER, ADJACENT OR EMANATING FROM OR TO THE PROPERTY BY ANY HAZARDOUS MATERIALS), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING APPLIES REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.

General Allocation of Environmental Responsibility. With respect to any existing or future presence of Hazardous Materials in, under or emanating to or from the Property or Railroad Easement Area, Grantee, at no cost to Grantor, agrees to be solely responsible for conducting any investigation, monitoring, remediation, removal, response or other action required by any governmental agency, court order, law or regulation or which may otherwise be necessary to make the Property or Railroad Easement Area suitable for Grantee's use of the Property or Railroad Easement Area.

IN WITNESS WHEREOF, the Grantor has caused this deed to be duly executed as of the 21st day of January, 2015.

Attest:

Barbara Holder
Assistant Secretary

(Seal)

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: Tony Lara
Title: Assistant Vice President – Real Estate

Grantee hereby accepts this Quitclaim Deed and agrees for himself, his heirs and assigns, to be bound by the covenants set forth herein.

Dated this 2ND day of ~~January~~ FEBRUARY, 2015.

PATRICK McNERNEY

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On January 21, 2015, before me, Gregg A Larsen, Notary Public in and for said County and State, personally appeared TONY K LOVE and Barbara Holder who are the Assistant Vice President – Real Estate and the Assistant Secretary, respectively, of Union Pacific Railroad Company, a Delaware corporation, and who are personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

GENERAL NOTARY - State of Nebraska
GREGG A. LARSEN
My Comm. Exp. Aug. 28, 2018

Notary Public

(Seal)

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On this 2nd day of ~~January~~ February, 2015, before me, June Y Williams, Notary Public, personally appeared PATRICK McNERNEY, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.

June Y Williams
Notary Public

(Seal)

JUNE Y. WILLIAMS
COMM. #1997789
NOTARY PUBLIC-CALIFORNIA
SAN FRANCISCO COUNTY
My Comm. Expires Nov. 11, 2016

Union Pacific Railroad Company

San Francisco County, California

Exhibit "A"

FEE PARCEL

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

THOSE PORTIONS OF PARCEL 4 AND 5 AS SHOWN ON THAT CERTAIN "PARCEL MAP" FILED JULY 16, 1980 IN BOOK 16 OF PARCEL MAPS, PAGE 40, IN THE OFFICE OF THE COUNTY RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO DESCRIBED AS FOLLOWS:

PARCEL 1:

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID LOT NO. 4; THENCE ALONG THE NORTHERLY LINE OF SAID LOT NO. 4 SOUTH 74°37'31" EAST (SHOWN AS "SOUTH 75°48'30" EAST" ON SAID PARCEL MAP) 55.07 FEET TO A POINT IN A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE EXISTING CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO); THENCE SOUTHERLY ALONG SAID CONCENTRIC LINE ON A CURVE TO THE LEFT, TANGENT TO SAID CURVE AT LAST SAID POINT BEARS SOUTH 15°18'45" WEST, HAVING A RADIUS OF 5785.096 FEET, THROUGH A CENTRAL ANGLE OF 1°17'04" AN ARC DISTANCE OF 129.70 FEET TO THE WESTERLY LINE OF SAID LOT NO. 5; THENCE CONTINUING SOUTHERLY ALONG SAID CONCENTRIC LINE THROUGH A CENTRAL ANGLE OF 5°21'01" AN ARC DISTANCE OF 540.10 FEET TO THE SOUTHERLY LINE OF SAID LOT NO. 5; THENCE ALONG SAID SOUTHERLY LINE OF SAID LOT NO. 5 NORTH 72°09'01" WEST (SHOWN AS "NORTH 73°20' WEST" ON SAID PARCEL MAP) 117.46 FEET TO SOUTHEASTERLY LINE OF SAID LOT NO. 4; THENCE ALONG SAID SOUTHEASTERLY LINE SOUTH 32°17'13" WEST 29.95 FEET; THENCE NORTH 17°58'59" EAST (SHOWN AS "SOUTH 16°48'00" WEST" ON SAID PARCEL MAP) 309.26 FEET; THENCE SOUTH 71°57'37" EAST 19.979 FEET; THENCE NORTH 17°58'59" EAST 304.33 FEET; THENCE NORTH 74°37'31" WEST 20.00 FEET; THENCE NORTH 17°58'59" EAST 80.00 FEET TO THE POINT OF BEGINNING.

PORTION OF ASSESSOR'S LOTS 004 AND 005, BLOCK 5087

SCHEDULE 1
(MAIN LINE EASTMENT)

THOSE CERTAIN PARCELS OF LAND SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (NOT INCLUDED)

PARCEL NO. 2: (SIGNAL CABINET AREA)

COMMENCING AT THE NORTHERLY TERMINUS OF THAT CERTAIN COURSE HAVING A DISTANCE OF 109.964 FEET AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099, AND 5101, SAN FRANCISCO, CALIFORNIA", AS PER MAP FILED JULY 16, 1980, IN BOOK 16 OF PARCEL MAPS, PAGE 40, RECORDS OF SAID COUNTY; THENCE SOUTH 17°58'59" WEST ALONG SAID COURSE, 3.2 FEET TO A CHAIN LINK FENCE; THENCE SOUTH 32°17'13" WEST ALONG SAID FENCE, 21.6 FEET TO A FENCE POST; THENCE SOUTH 17°42'55" WEST, CONTINUING ALONG SAID FENCE, 100.2 FEET TO ANOTHER FENCE POST; THENCE SOUTH 69°17'37" EAST, CONTINUING ALONG SAID FENCE, 117.3 FEET TO ANOTHER FENCE POST; THENCE NORTH 9°22'01" EAST, CONTINUING ALONG SAID FENCE, 2.0 FEET TO THE TRUE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN TO BE DESCRIBED; THENCE CONTINUING NORTH 9°22'01" EAST ALONG SAID FENCE, 22.0 FEET; THENCE SOUTH 80°37'59" EAST, LEAVING SAID FENCE, 22.8 FEET; THENCE SOUTH 9°22'01" WEST 22.0 FEET; THENCE NORTH 80°37'59" WEST 22.8 FEET TO THE TRUE POINT OF BEGINNING.

SCHEDULE 2
(DRILL & SPUR TRACK EASEMENT)

THOSE CERTAIN PARCELS OR STRIPS OF LAND SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (NOT INCLUDED)

PARCEL NO. 2: (DRILL AND SPUR TRACK AREA)

A STRIP OF LAND, 30 FEET WIDE LYING EQUALLY 15.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEASTERLY CORNER OF THE 0.411 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED JUNE 13, 1985, FROM SOUTHERN PACIFIC TRANSPORTATION COMPANY TO STATE OF CALIFORNIA, RECORDED JUNE 26, 1985, AS INSTRUMENT D660213, REEL D867, PAGE 591, OFFICIAL RECORDS OF SAID COUNTY; THENCE NORTH 6°33'34" WEST 309.26 FEET TO A POINT IN THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY DRILL TRACK RIGHT OF WAY (WHICH TRACK LIES WESTERLY OF AND WHICH DIVERGES SOUTHERLY, SOUTHWESTERLY, AND SOUTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S EASTBOUND MAIN TRACK (SAN FRANCISCO - SAN JOSE) AND WHICH CROSSES THE COMMON COUNTY LINE BETWEEN THE COUNTY OF SAN FRANCISCO AND THE COUNTY OF SAN MATEO AT TA POINT DISTANT SOUTH 88°58'58" EAST ALONG SAID COUNTY LINE, 237.36 FEET FROM ITS INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT 105.67 FEET EASTERLY, MEASURED AT RIGHT ANGLES, FROM THE EASTERLY LINE OF BAYSHORE BOULEVARD); THENCE SOUTH 15°19'08" WEST ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY, 88.81 FEET TO A POINT IN THE NORTHERLY LINE OF LOT NO. 8, AS SAID LOT IS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099 & 5101, SAN FRANCISCO, CALIFORNIA," AS PER MAP FILED JULY 16, 1980, IN BOOK 16 OF PARCEL MAPS, PAGE 40, RECORDS OF SAID COUNTY, LAST SAID POINT BEING DISTANT NORTH 72°09'01" WEST ALONG SAID NORTHERLY LINE, 68.75 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT NO. 8, LAST SAID POINT BEING TRUE POINT OF BEGINNING OF

THE LINE HEREIN TO BE DESCRIBED; THENCE SOUTHERLY AND SOUTHWESTERLY AND SOUTHERLY CONTINUING ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY, THE COURSES AND CURVATURES THEREOF AS FOLLOWS: SOUTH 15°19'08" WEST 3.62 FEET TO A POINT; SOUTHERLY ON A CURVE TO THE RIGHT, TANGENT TO SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 3564.239 FEET, A CENTRAL ANGLE OF 0°22'10", AN ARC DISTANCE OF 22.99 FEET TO A POINT; SOUTH 15°41'18' WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 152.89 FEET TO A POINT; SOUTHERLY AND SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 382.245 FEET, A CENTRAL ANGLE OF 16°38'26", AN ARC DISTANCE OF 111.02 FEET TO A POINT; SOUTH 32°19'44" WEST, TANGENT TO THE LAST SAID CURVE AT LAST SAID POINT, 161.72 FEET TO A POINT; SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 286.483 FEET, A CENTRAL ANGLE OF 35°25'30", AN ARC DISTANCE OF 177.35 FEET TO A POINT; AND SOUTH 67°45'14" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 544.20 FEET.

EXCEPTING THEREFROM THAT PORTION LYING EASTERLY OF AND COINCIDENT WITH A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO).

ALSO, EXCEPTING THEREFROM THAT PORTION LYING WITHIN SAID COUNTY OF SAN MATEO.

PARCEL NO. 3: (DRILL AND SPUR TRACK AREA)

A STRIP OF LAND, 30 FEET WIDE, LAYING EQUALLY 15.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEASTERLY CORNER OF THE 0.411 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED JUNE 13, 1985, FROM SOUTHERN PACIFIC TRANSPORTATION COMPANY TO STATE OF CALIFORNIA, RECORDED JUNE 26, 1985, AS INSTRUMENT D660213, REAL D867, PAGE 591, OFFICIAL RECORDS OF SAID COUNTY; THENCE NORTH 6°33'34" WEST 309.26 FEET TO A POINT IN THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY (WHICH TRACK LIES WESTERLY OF AND WHICH DIVERGES SOUTHERLY, SOUTHWESTERLY, AND SOUTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S EASTBOUND MAIN TRACK (SAN FRANCISCO - SAN JOSE) AND WHICH CROSSES THE COMMON COUNTY LINE BETWEEN THE COUNTY OF SAN FRANCISCO AND THE COUNTY OF SAN MATEO AT A POINT DISTANT SOUTH 88°58'58" EAST ALONG SAID COUNTY LINE, 237.36 FEET FROM ITS INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT 105.67 FEET EASTERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY LINE OF BAYSHORE BOULEVARD); THENCE SOUTHERLY ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY, THE COURSES AND CURVATURES THEREOF AS FOLLOWS: SOUTH 15°19'08" WEST 92.43 FEET TO A POINT; SOUTHERLY ON A CURVE TO THE RIGHT, TANGENT TO SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 3564.239 FEET, A CENTRAL ANGLE OF 0°22'10' AND ARC DISTANCE OF 22.99 FEET TO A POINT; SOUTH 15°41'18" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 152.89 FEET TO A POINT; SOUTHERLY AND SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 382.245 FEET, A CENTRAL ANGLE OF 16°38'26", AN ARC DISTANCE OF 111.02 FEET TO A POINT; AND SOUTH 32°19'44" WEST, TANGENT TO LAST SAID CURVE AT

LAST SAID POINT, 53.00 FEET TO A POINT IN THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S SPUR TRACK RIGHT OF WAY (WHICH TRACK DIVERGES NORTHERLY FROM SAID CENTER LING OF SAID COMPANY'S DRILL TRACK) AND THE TRUE POINT OF BEGINNING OF THE LINE HEREIN TO BE DESCRIBED; THENCE NORTHERLY ALONG SAID CENTER OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S SPUR TRACK RIGHT OF WAY, THE COURSES AND CURVATURES THEREOF AS FOLLOWS: NORTH 25°58'09" EAST 81.00 FEET TO A POINT; NORTHERLY ON A CURVE TO THE LEFT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 382.245 FEET, A CENTRAL ANGLE OF 16°36'08", AND ARC DISTANCE OF 110.76 FEET TO A POINT; AND NORTH 9°22'01' EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 109.53 FEET.

EXCEPTING THEREFROM THAT PORTION OF THE ABOVE DESCRIBED 30 FOOT WIDE STRIP OF LAND, HEREIN ABOVE DESCRIBED IN "PARCEL NO. 3, LYING EASTERLY OF AND COINCIDENT WITH A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO).

SCHEDULE 3
(ACCESS ROADWAY EASEMENT)

THOSE CERTAIN PARCELS OF LAND SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (NOT INCLUDED)

PARCEL NO. 2: (ROADWAY AREA)

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF LOT NO. 8, AS SAID LOT IS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099, &5101, SAN FRANCISCO, CALIFORNIA", AS PER MAP FILED JULY 16, 1980, IN BOOK 16 OF PARCEL MAPS, PAGE 40, RECORDS OF SAID COUNTY, WITH A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO), SAID POINT BEING DISTANT NORTH 72°09'01" WEST ALONG SAID NORTHERLY LINE, 115.29 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT NO. 8; THENCE SOUTHERLY ALONG SAID CONCENTRIC LINE, ON A CURVE TO THE LEFT, TANGENT TO SAID CURVE AT LAST SAID POINT BEARS SOUTH 8°40'41" WEST, HAVING A RADIUS OF 5785.096 FEET, A CENTRAL ANGLE OF 0°51'24", AN ARC DISTANCE OF 86.50 FEET TO A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 15.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S TAIL TRACK (WHICH LIES WESTERLY OF AND WIIICH DIVERGES NORTHERLY FROM THE CFNTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK AND WHICH DRILL TRACK LIES WESTERLY OF AND WHICH DIVERGES SOUTHERLY, SOUTHWESTERLY, AND SOUTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S EASTBOUND MAIN TRACK (SAN FRANCISCO - SAN JOSE), AND WHICH SAID DRILL TRACK CROSSES THE COMMON COUNTY LINE BETWEEN COUNTY OF SAN FRANCISCO AND COUNTY OF SAN MATEO AT A POINT DISTANT SOUTH 88°58'58" EAST ALONG SAID COUNTY LINE, 237.36 FEET FROM ITS INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT 105.67 FEET EASTERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY LINE OF BAYSHORE BOULEVARD); THENCE SOUTHERLY AND SOUTHWESTERLY ALONG SAID PARALLEL AND

CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: SOUTH 9°22'01" WEST 67.82 FEET TO A POINT; SOUTHERLY AND SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 367.245 FEET, A CENTRAL ANGLE OF 16°36'08", AN ARC DISTANCE OF 106.41 FEET TO A POINT; AND SOUTH 25°58'09" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 80.17 FEET TO A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 15.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK; THENCE SOUTHWESTERLY ALONG LAST SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: SOUTH 32°19'44" WEST 107.88 FEET TO A POINT; SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 271.843 FEET, A CENTRAL ANGLE OF 35°25'30", AN ARC DISTANCE OF 168.08 FEET TO A POINT; AND SOUTH 67°45'14" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 356.47 FEET TO THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF SUNNYDALE AVENUE, 66 FEET WIDE; THENCE LEAVING LAST SAID PARALLEL AND CONCENTRIC LINE, NORTH 69°24'23" WEST ALONG SAID PROLONGATION, 65.40 FEET TO A POINT IN THE MOST WESTERLY LINE OF SAID LOT NO. 8, LAST SAID POINT BEING THE SOUTHERLY TERMINUS OF THAT CERTAIN COURSE SHOWN ON SAID MAP HAVING A DISTANCE OF "66.00'"; THENCE NORTH 20°35'37" EAST ALONG LAST SAID WESTERLY LINE, 43.00 FEET TO A LINE PARALLEL WITH AND DISTANT 10.00 FEET NORTHERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY PROLONGATION OF THE CENTER LINE OF SAID SUNNYDALE AVENUE; THENCE SOUTH 69°24'23" EAST ALONG LAST SAID PROLONGATION, 13.70 FEET TO A POINT; THENCE EASTERLY AND NORTHEASTERLY ON A CURVE TO THE LEFT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 175.00 FEET, A CENTRAL ANGLE OF 42°50'23", AN ARC DISTANCE OF 130.85 FEET TO A POINT IN A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 35.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK; THENCE NORTHEASTERLY ALONG LAST SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: NORTH 67°45'14" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 246.15 FEET TO A POINT; NORTHEASTERLY ON A CURVE TO THE LEFT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 251.843 FEET, A CENTRAL ANGLE OF 35°25'30", AN ARC DISTANCE OF 155.71 FEET TO A POINT; AND NORTH 32°19'44" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 106.77 FEET TO A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 35.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S TAIL TRACK; THENCE NORTHERLY ALONG LAST SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: NORTH 25°58'09" EAST 79.06 FEET TO A POINT; NORTHEASTERLY AND NORTHERLY ON A CURVE TO THE LEFT TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 347.245 FEET, A CENTRAL ANGLE OF 16°36'08", AND ARC DISTANCE OF 100.62 FEET TO A POINT; AND NORTH 9°22'01" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 67.27 FEET TO A POINT IN A LINE CONCENTRIC WITH AND DISTANT 95.00 FEET WESTERLY, MEASURED RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK; THENCE LEAVING LAST SAID PARALLEL AND CONCENTRIC LINE, NORTHERLY ALONG LAST SAID CONCENTRIC LINE, ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT BEARS NORTH 7°49'17" EAST, HAVING A RADIUS OF 5805.096 FEET, A CENTRAL ANGLE OF 0°53'19", AN ARC DISTANCE OF 90.03 FEET TO SAID NORTHERLY LINE OF SAID LOT NO. 8; THENCE SOUTH 72°09'01" EAST ALONG LAST SAID NORTHERLY LINE, 20.26 FEET TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 0.519 OF AN ACRE, MORE OR LESS.

INGRESS/EGRESS AREA

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

THAT PORTION OF PARCEL 4, A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AS SHOWN ON THAT CERTAIN "PARCEL MAP" FILED JULY 16, 1980 IN BOOK 16 OF PARCEL MAPS AT PAGE 40, IN THE OFFICE OF THE COUNTY RECORDERS OF THE CITY AND COUNTY OF SAN FRANCISCO, LYING SOUTHERLY OF THE EASTERLY PROLONGATION OF THE NORTHERLY LINE OF LOT NO. 7 OF SAID PARCEL MAP.

Union Pacific Railroad Co.
Real Estate Department
Omaha, NE

LD 0156758
January 16, 2015

EXHIBIT 2

RECORDING REQUESTED BY:

Old Republic Title Company

Escrow No.:
APN: 5087; Portions of 005 and 004 ✓
Situs: APN 5087; portion of Lot 004 and 005 ✓
No Property address
When Recorded Mail Document and Tax Statements to:

424 Jessie Historic Properties, LLC
14 Mint Plaza, 5th Floor
San Francisco, CA 94103

20169K32823800008
San Francisco Assessor-Recorder
Carmen Chu, Assessor-Recorder
DOC 2016-K328238-00
Acct 5002-Old Republic Title Company
Wednesday, SEP 14, 2016 08:44:57
Ttl Pd $39.00 Nbr-0005457639
oar/RE/1-8

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

Grant Deed

The undersigned grantor(s) declare(s):
Documentary Transfer Tax is $0.00 transfer from individual name to single member LLC
(X) computed on full value of property conveyed, or
( ) computed on full value less of liens and encumbrances remaining at time of sale.
( ) Unincorporated area: (X) City of San Francisco

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
Patrick McNerney, an individual, as his sole and separate property

hereby GRANT(S) to
424 Jessie Historic Properties, LLC, a California limited liability company

that property in City of San Francisco, San Francisco County, State of California, described as:
See "Exhibit A" attached hereto and made a part hereof.

Date: August 17, 2016

Patrick McNerney

cription: San Francisco,CA Document - Year.DocID 2016.328238 Page: 1 of 8

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

State of California
County of San Francisco

On 9.12.16 before me, June Y Williams a Notary Public, personally appeared Patrick McNerney, 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: June Y Williams

Name: June Y Williams
(Typed or Printed)

(Seal)

JUNE Y. WILLIAMS
COMM. #1997789
NOTARY PUBLIC-CALIFORNIA
SAN FRANCISCO COUNTY
My Comm. Expires Nov. 11, 2016

Exhibit "A"

FEE PARCEL

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

THOSE PORTIONS OF PARCEL 4 AND 5 AS SHOWN ON THAT CERTAIN "PARCEL MAP" FILED JULY 16, 1980 IN BOOK 16 OF PARCEL MAPS, PAGE 40, IN THE OFFICE OF THE COUNTY RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO DESCRIBED AS FOLLOWS:

PARCEL 1:

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID LOT NO. 4; THENCE ALONG THE NORTHERLY LINE OF SAID LOT NO. 4 SOUTH 74°37'31" EAST (SHOWN AS "SOUTH 75°48'30" EAST" ON SAID PARCEL MAP) 55.07 FEET TO A POINT IN A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE EXISTING CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO); THENCE SOUTHERLY ALONG SAID CONCENTRIC LINE ON A CURVE TO THE LEFT, TANGENT TO SAID CURVE AT LAST SAID POINT BEARS SOUTH 15°18'45" WEST, HAVING A RADIUS OF 5785.096 FEET, THROUGH A CENTRAL ANGLE OF 1°17'04" AN ARC DISTANCE OF 129.70 FEET TO THE WESTERLY LINE OF SAID LOT NO. 5; THENCE CONTINUING SOUTHERLY ALONG SAID CONCENTRIC LINE THROUGH A CENTRAL ANGLE OF 5°21'01" AN ARC DISTANCE OF 540.10 FEET TO THE SOUTHERLY LINE OF SAID LOT NO. 5; THENCE ALONG SAID SOUTHERLY LINE OF SAID LOT NO. 5 NORTH 72°09'01" WEST (SHOWN AS "NORTH 73°20' WEST" ON SAID PARCEL MAP) 117.46 FEET TO SOUTHEASTERLY LINE OF SAID LOT NO. 4; THENCE ALONG SAID SOUTHEASTERLY LINE SO E NORTH 17°58'59" EAST (SHOWN AS "SOUTH 16°48'00" WEST" ON SAID PARCEL MAP) 309.26 FEET; THENCE SOUTH 71°57'37" EAST 19.979 FEET; THENCE NORTH 17°58'59" EAST 304.33 FEET; THENCE NORTH 74°37'31" WEST 20.00 FEET; THENCE NORTH 17°58'59" EAST 80.00 FEET TO THE POINT OF BEGINNING.

PORTION OF ASSESSOR'S LOTS 004 AND 005, BLOCK 5087

SCHEDULE 1
(MAIN LINE EASTMENT)

THOSE CERTAIN PARCELS OF LAND SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (NOT INCLUDED)

PARCEL NO. 2: (SIGNAL CABINET AREA)

COMMENCING AT THE NORTHERLY TERMINUS OF THAT CERTAIN COURSE HAVING A DISTANCE OF 109.964 FEET AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099, AND 5101, SAN FRANCISCO, CALIFORNIA", AS PER MAP FILED JULY 16, 1980, IN BOOK 16 OF PARCEL MAPS, PAGE 40, RECORDS OF SAID COUNTY; THENCE SOUTH 17°58'59" WEST ALONG SAID COURSE, 3.2 FEET TO A CHAIN LINK FENCE; THENCE SOUTH 32°17'13" WEST ALONG SAID FENCE, 21.6 FEET TO A FENCE POST; THENCE SOUTH 17°42'55" WEST, CONTINUING ALONG SAID FENCE, 100.2 FEET TO ANOTHER FENCE POST; THENCE SOUTH 69°17'37" EAST, CONTINUING ALONG SAID FENCE, 117.3 FEET TO ANOTHER FENCE POST; THENCE NORTH 9°22'01" EAST, CONTINUING ALONG SAID FENCE, 2.0 FEET TO THE TRUE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN TO BE DESCRIBED; THENCE CONTINUING NORTH 9°22'01" EAST ALONG SAID FENCE, 22.0 FEET; THENCE SOUTH 80°37'59" EAST, LEAVING SAID FENCE, 22.8 FEET; THENCE SOUTH 9°22'01" WEST 22.0 FEET; THENCE NORTH 80°37'59" WEST 22.8 FEET TO THE TRUE POINT OF BEGINNING.

SCHEDULE 2
(DRILL & SPUR TRACK EASEMENT)

THOSE CERTAIN PARCELS OR STRIPS OF LAND SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (NOT INCLUDED)

PARCEL NO. 2: (DRILL AND SPUR TRACK AREA)

A STRIP OF LAND, 30 FEET WIDE LYING EQUALLY 15.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEASTERLY CORNER OF THE 0.411 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED JUNE 13, 1985, FROM SOUTHERN PACIFIC TRANSPORTATION COMPANY TO STATE OF CALIFORNIA, RECORDED JUNE 26, 1985, AS INSTRUMENT D660213, REEL D867, PAGE 591, OFFICIAL RECORDS OF SAID COUNTY; THENCE NORTH 6°33'34" WEST 309.26 FEET TO A POINT IN THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY DRILL TRACK RIGHT OF WAY (WHICH TRACK LIES WESTERLY OF AND WHICH DIVERGES SOUTHERLY, SOUTHWESTERLY, AND SOUTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S EASTBOUND MAIN TRACK (SAN FRANCISCO - SAN JOSE) AND WHICH CROSSES THE COMMON COUNTY LINE BETWEEN THE COUNTY OF SAN FRANCISCO AND THE COUNTY OF SAN MATEO AT TA POINT DISTANT SOUTH 88°58'58" EAST ALONG SAID COUNTY LINE, 237.36 FEET FROM ITS INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT 105.67 FEET EASTERLY, MEASURED AT RIGHT ANGLES, FROM THE EASTERLY LINE OF BAYSHORE BOULEVARD); THENCE SOUTH 15°19'08" WEST ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY, 88.81 FEET TO A POINT IN THE NORTHERLY LINE OF LOT NO. 8, AS SAID LOT IS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099 & 5101, SAN FRANCISCO, CALIFORNIA," AS PER MAP FILED JULY 16, 1980, IN BOOK 16 OF PARCEL MAPS, PAGE 40, RECORDS OF SAID COUNTY, LAST SAID POINT BEING DISTANT NORTH 72°09'01" WEST ALONG SAID NORTHERLY LINE, 68.75 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT NO. 8, LAST SAID POINT BEING TRUE POINT OF BEGINNING OF

THE LINE HEREIN TO BE DESCRIBED; THENCE SOUTHERLY AND SOUTHWESTERLY AND SOUTHERLY CONTINUING ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY, THE COURSES AND CURVATURES THEREOF AS FOLLOWS: SOUTH 15°19'08" WEST 3.62 FEET TO A POINT; SOUTHERLY ON A CURVE TO THE RIGHT, TANGENT TO SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 3564.239 FEET, A CENTRAL ANGLE OF 0°22'10", AN ARC DISTANCE OF 22.99 FEET TO A POINT; SOUTH 15°41'18' WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 152.89 FEET TO A POINT; SOUTHERLY AND SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 382.245 FEET, A CENTRAL ANGLE OF 16°38'26", AN ARC DISTANCE OF 111.02 FEET TO A POINT; SOUTH 32°19'44" WEST, TANGENT TO THE LAST SAID CURVE AT LAST SAID POINT, 161.72 FEET TO A POINT; SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 286.483 FEET, A CENTRAL ANGLE OF 35°25'30", AN ARC DISTANCE OF 177.35 FEET TO A POINT; AND SOUTH 67°45'14" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 544.20 FEET.

EXCEPTING THEREFROM THAT PORTION LYING EASTERLY OF AND COINCIDENT WITH A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO).

ALSO, EXCEPTING THEREFROM THAT PORTION LYING WITHIN SAID COUNTY OF SAN MATEO.

PARCEL NO. 3: (DRILL AND SPUR TRACK AREA)

A STRIP OF LAND, 30 FEET WIDE, LAYING EQUALLY 15.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEASTERLY CORNER OF THE 0.411 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED JUNE 13, 1985, FROM SOUTHERN PACIFIC TRANSPORTATION COMPANY TO STATE OF CALIFORNIA, RECORDED JUNE 26, 1985, AS INSTRUMENT D660213, REAL D867, PAGE 591, OFFICIAL RECORDS OF SAID COUNTY; THENCE NORTH 6°33'34" WEST 309.26 FEET TO A POINT IN THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY (WHICH TRACK LIES WESTERLY OF AND WHICH DIVERGES SOUTHERLY, SOUTHWESTERLY, AND SOUTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S EASTBOUND MAIN TRACK (SAN FRANCISCO - SAN JOSE) AND WHICH CROSSES THE COMMON COUNTY LINE BETWEEN THE COUNTY OF SAN FRANCISCO AND THE COUNTY OF SAN MATEO AT A POINT DISTANT SOUTH 88°58'58" EAST ALONG SAID COUNTY LINE, 237.36 FEET FROM ITS INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT 105.67 FEET EASTERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY LINE OF BAYSHORE BOULEVARD); THENCE SOUTHERLY ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY, THE COURSES AND CURVATURES THEREOF AS FOLLOWS: SOUTH 15°19'08" WEST 92.43 FEET TO A POINT; SOUTHERLY ON A CURVE TO THE RIGHT, TANGENT TO SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 3564.239 FEET, A CENTRAL ANGLE OF 0°22'10' AND ARC DISTANCE OF 22.99 FEET TO A POINT; SOUTH 15°41'18" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 152.89 FEET TO A POINT; SOUTHERLY AND SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 382.245 FEET, A CENTRAL ANGLE OF 16°38'26", AN ARC DISTANCE OF 111.02 FEET TO A POINT; AND SOUTH 32°19'44" WEST, TANGENT TO LAST SAID CURVE AT

LAST SAID POINT, 53.00 FEET TO A POINT IN THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S SPUR TRACK RIGHT OF WAY (WHICH TRACK DIVERGES NORTHERLY FROM SAID CENTER LING OF SAID COMPANY'S DRILL TRACK) AND THE TRUE POINT OF BEGINNING OF THE LINE HEREIN TO BE DESCRIBED; THENCE NORTHERLY ALONG SAID CENTER OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S SPUR TRACK RIGHT OF WAY, THE COURSES AND CURVATURES THEREOF AS FOLLOWS: NORTH 25°58'09" EAST 81.00 FEET TO A POINT; NORTHERLY ON A CURVE TO THE LEFT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 382.245 FEET, A CENTRAL ANGLE OF 16°36'08", AND ARC DISTANCE OF 110.76 FEET TO A POINT; AND NORTH 9°22'01' EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 109.53 FEET.

EXCEPTING THEREFROM THAT PORTION OF THE ABOVE DESCRIBED 30 FOOT WIDE STRIP OF LAND, HEREIN ABOVE DESCRIBED IN "PARCEL NO. 3, LYING EASTERLY OF AND COINCIDENT WITH A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO).

SCHEDULE 3
(ACCESS ROADWAY EASEMENT)

THOSE CERTAIN PARCELS OF LAND SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (NOT INCLUDED)

PARCEL NO. 2: (ROADWAY AREA)

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF LOT NO. 8, AS SAID LOT IS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099, &5101, SAN FRANCISCO, CALIFORNIA", AS PER MAP FILED JULY 16, 1980, IN BOOK 16 OF PARCEL MAPS, PAGE 40, RECORDS OF SAID COUNTY, WITH A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO), SAID POINT BEING DISTANT NORTH 72°09'01" WEST ALONG SAID NORTHERLY LINE, 115.29 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT NO. 8; THENCE SOUTHERLY ALONG SAID CONCENTRIC LINE, ON A CURVE TO THE LEFT, TANGENT TO SAID CURVE AT LAST SAID POINT BEARS SOUTH 8°40'41" WEST, HAVING A RADIUS OF 5785.096 FEET, A CENTRAL ANGLE OF 0°51'24", AN ARC DISTANCE OF 86.50 FEET TO A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 15.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S TAIL TRACK (WHICH LIES WESTERLY OF AND WHICH DIVERGES NORTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK AND WHICH DRILL TRACK LIES WESTERLY OF AND WHICH DIVERGES SOUTHERLY, SOUTHWESTERLY, AND SOUTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S EASTBOUND MAIN TRACK (SAN FRANCISCO - SAN JOSE), AND WHICH SAID DRILL TRACK CROSSES THE COMMON COUNTY LINE BETWEEN COUNTY OF SAN FRANCISCO AND COUNTY OF SAN MATEO AT A POINT DISTANT SOUTH 88°58'58" EAST ALONG SAID COUNTY LINE, 237.36 FEET FROM ITS INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT 105.67 FEET EASTERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY LINE OF BAYSHORE BOULEVARD); THENCE SOUTHERLY AND SOUTHWESTERLY ALONG SAID PARALLEL AND

CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: SOUTH 9°22'01" WEST 67.82 FEET TO A POINT; SOUTHERLY AND SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 367.245 FEET, A CENTRAL ANGLE OF 16°36'08", AN ARC DISTANCE OF 106.41 FEET TO A POINT; AND SOUTH 25°58'09" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 80.17 FEET TO A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 15.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK; THENCE SOUTHWESTERLY ALONG LAST SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: SOUTH 32°19'44" WEST 107.88 FEET TO A POINT; SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 271.843 FEET, A CENTRAL ANGLE OF 35°25'30", AN ARC DISTANCE OF 168.08 FEET TO A POINT; AND SOUTH 67°45'14" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 356.47 FEET TO THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF SUNNYDALE AVENUE, 66 FEET WIDE; THENCE LEAVING LAST SAID PARALLEL AND CONCENTRIC LINE, NORTH 69°24'23" WEST ALONG SAID PROLONGATION, 65.40 FEET TO A POINT IN THE MOST WESTERLY LINE OF SAID LOT NO. 8, LAST SAID POINT BEING THE SOUTHERLY TERMINUS OF THAT CERTAIN COURSE SHOWN ON SAID MAP HAVING A DISTANCE OF "66.00'"; THENCE NORTH 20°35'37" EAST ALONG LAST SAID WESTERLY LINE, 43.00 FEET TO A LINE PARALLEL WITH AND DISTANT 10.00 FEET NORTHERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY PROLONGATION OF THE CENTER LINE OF SAID SUNNYDALE AVENUE; THENCE SOUTH 69°24'23" EAST ALONG LAST SAID PROLONGATION, 13.70 FEET TO A POINT; THENCE EASTERLY AND NORTHEASTERLY ON A CURVE TO THE LEFT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 175.00 FEET, A CENTRAL ANGLE OF 42°50'23", AN ARC DISTANCE OF 130.85 FEET TO A POINT IN A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 35.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK; THENCE NORTHEASTERLY ALONG LAST SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: NORTH 67°45'14" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 246.15 FEET TO A POINT; NORTHEASTERLY ON A CURVE TO THE LEFT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 251.843 FEET, A CENTRAL ANGLE OF 35°25'30", AN ARC DISTANCE OF 155.71 FEET TO A POINT; AND NORTH 32°19'44" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 106.77 FEET TO A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 35.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S TAIL TRACK; THENCE NORTHERLY ALONG LAST SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: NORTH 25°58'09" EAST 79.06 FEET TO A POINT; NORTHEASTERLY AND NORTHERLY ON A CURVE TO THE LEFT TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 347.245 FEET, A CENTRAL ANGLE OF 16°36'08", AND ARC DISTANCE OF 100.62 FEET TO A POINT; AND NORTH 9°22'01" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 67.27 FEET TO A POINT IN A LINE CONCENTRIC WITH AND DISTANT 95.00 FEET WESTERLY, MEASURED RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK; THENCE LEAVING LAST SAID PARALLEL AND CONCENTRIC LINE, NORTHERLY ALONG LAST SAID CONCENTRIC LINE, ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT BEARS NORTH 7°49'17" EAST, HAVING A RADIUS OF 5805.096 FEET, A CENTRAL ANGLE OF 0°53'19", AN ARC DISTANCE OF 90.03 FEET TO SAID NORTHERLY LINE OF SAID LOT NO. 8; THENCE SOUTH 72°09'01" EAST ALONG LAST SAID NORTHERLY LINE, 20.26 FEET TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 0.519 OF AN ACRE, MORE OR LESS.

INGRESS/EGRESS AREA

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

THAT PORTION OF PARCEL 4, A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AS SHOWN ON THAT CERTAIN "PARCEL MAP" FILED JULY 16, 1980 IN BOOK 16 OF PARCEL MAPS AT PAGE 40, IN THE OFFICE OF THE COUNTY RECORDERS OF THE CITY AND COUNTY OF SAN FRANCISCO, LYING SOUTHERLY OF THE EASTERLY PROLONGATION OF THE NORTHERLY LINE OF LOT NO. 7 OF SAID PARCEL MAP.

EXHIBIT 3

LICENSE AGREEMENT FOR ENTRY AND USE SURFACE OF PROPERTY

This LICENSE AGREEMENT TO ENTER AND USE SURFACE OF PROPERTY ("Agreement") dated to be effective as of February 18, 2019, is made and entered into by and between 424 Jessie Historic Property, LLC, ("Licensor"), and Proven Management, Inc. ("Licensee").

RECITALS

1. Licensor is the owner or is the authorized agent of the owner of certain premises described as Assessor's Parcel Number Block 5087, Lot 004, situated on or about San Francisco County.

2. Licensee desires permission of Licensor for access to and use of said premises, and Licensor is agreeable to provide access to and use of said premises for the limited purpose and for the limited time as agreed to by the parties herein.

AGREEMENT

Now, therefore, and in consideration of the mutual covenants, promises, and the exchange of consideration described herein, Licensor and Licensee agree as follows:

1. Grant of Right of Entry. Licensor hereby grants the exclusive right ("License") to Licensee and its officers, employees, consultants, contractors, and authorized representatives as well as their respective employees, subcontractors and suppliers, for the purposes and upon the terms and conditions set forth below, to enter upon those certain parcels of real property commonly known and described as Assessor's Parcel Number Block 5087, Lot 004 located to the west of current JPB premises, as depicted as a blue-lined rectangle on the illustration attached hereto as **Exhibit A**, ("Site") or ("Premises"). The license provides Licensee with a non-revocable, temporary, non-possessory and exclusive license to have access to and use of the Site and is not intended to grant any interest in real property of any kind or nature.

2. Permitted Use of Site. Licensee shall have the right to enter and use only the surface of the site for the purpose of loading and off-loading as well as short term storage of materials at the Site, together with necessary rights of ingress and egress to and from the Site depicted by a red arrow as set forth on Exhibit A. Licensee shall not permit any damage or nuisance on the Site, nor permit to be placed any hazardous or explosive material, nor have any right to remove materials or ores within or underlying the Site or its surrounding area.

3. "AS IS" Use. The use permitted by this license is on an "AS IS" basis with all faults of the Site waived or accepted by Licensee. Licensee acknowledges that Licensor has made no representations of any kind in connection with soils, improvements, or physical

condition of the site or the surrounding areas, or bearing on Licensee's use of the Site, whether express or implied.

4. Prior Rights. This License is made subject to all other licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens, and claims of title that may affect the Site that are in effect as of the Effective Date of this license, as well as, by the physical terrain or obstructions that may exist thereon.

5. Term of License. The rights granted to Licensee pursuant to this License shall commence on February 18, 2019, and shall terminate on approximately April 18, 2019, but in no case no later than May 13, 2019 (the ~~"Term"~~ "EXTENSION PERIOD"). Licensor hereby grants Licensee and option to extend the License beyond the Term on a week by week basis from the date the Term expires ("Extension Period"). The License shall be non-revocable during the Term, and if applicable, each Extension Period. Exercise of each Extension Period shall be in writing delivered to Licensor no less than 7 calendar days prior to the expiration of the then existing Term or Extension Period. (THE "TERM")

6. Compensation for Use of Property. The sum of ~~Seven~~ FIFTEEN Thousand ~~Five Hundred~~ Dollars ~~($7,500.00)~~ ($15,000) shall be paid for the Term of License. In the event that Licensee exercises its option to extend the Term, Licensee shall pay One Thousand Seven Hundred Thirty Dollars ($1,730.00) per week. Such payment shall be due in advance of each Extension Period.

7. Permit from Government Agencies. Licensee shall, at its own cost and expense, secure all permits and other authorizations required by law, whether federal, state, local, or city, for its use of the Site as provided by this Agreement and agrees to fully conform to all laws, ordinances, and regulations pertaining thereto. Either Licensor or Licensee may terminate this Lease if any government body seeks to impose any condition or approval of Licensee's use of the Premises that will adversely affect Licensee's use, Licensor's use, the Site, and/or value.

8. Care and Restoration of Premises. Licensee shall keep the Site, including any improveme4nts located thereon, in safe condition and in good order, condition and repair at all times during the License Term. In the event of damage caused by Licensee, Licensee will restore the Premises at its own expense IMMEDIATELY ~~and in a timely manner~~. Upon termination of this Agreement, any and all material or property permitted herein belonging to Licensee will be promptly removed and the Site restored to its original condition.

9. Alterations. Licensee shall not make any alterations, additions, or improvements (collectively "Alterations") in, on, or to the Site without the prior written consent of Licensor ~~, which consent shall be unreasonably withheld or delayed.~~

10. Liens. Licensee shall not permit any mechanics' or materialmen's liens, stop orders, or other liens (collectively, "Liens") to be filed against the Site or Licensor's adjacent property by reason of labor or materials furnished at Licensee's instance or request. If any such Liens are filed against the Site or Licensor's adjacent property, Licensee shall cause the same to be discharged of record either by payment of the claim or by posting and recording a bond contemplated by California Civil Code Section 3143, within 20 days after written demand by Licensor. Licensee shall indemnify, hold harmless, and defend Licensor from and against any and all such liens and any sums claimed therein.

11. Indemnification. Licensee shall indemnify and hold h armless Licensor and its respective directors, officers, employees, agents, contractors, any other person acting on Licensor's behalf, and their successors and assignees, as they now or as they may hereafter be constituted, singly, jointly or severally (collectively, "Licensor Indemnitees") from and against any and all liabilities, penalties, losses, damages, costs, loss of rent, expenses, demands, causes of action, claims of judgments (collectively, "Liabilities") arising out of or in connection with (a) the use, maintenance, occupation, alteration, or improvement of the Site by Licensee, (b) any act, omission or neglect of Licensee, and/or (c) any breach or default by Licensee of any of the terms, covenants or conditions of this Agreement.

12. Insurance. Licensee is required to procure and maintain at its sole cost and expense the following insurance coverages subject to all of the requirements set forth below. Such insurance shall remain in full force and effect throughout the term of the License.

MINIMUM TYPES AND SCOPE OF INSURANCE

A. Workers Compensation Insurance

   a. Statutory Limits

   b. Such insurance shall include the following endorsements:

      Waiver of Subrogation

B. Commercial General Liability Insurance

   Commercial General Liability Insurance for bodily injury and property damage coverage of at least $1 million per occurrence or claim and a general aggregate limit of at least $2 million. For any construction and public works projects, the insurance shall not have any exclusions for Explosion, Collapse, and Underground perils, and for construction or demolition work within 50 feet of railroad tracks, the contractual liability exclusions for liability assumed shall be deleted.

   a. This insurance shall include coverage for, but not be limited to:

Premises and operations;
Personal injury.

C. Business Automobile Liability Insurance

Business Automobile Liability Insurance providing bodily injury and property damage coverage of at least $1 million per accident or loss. This insurance shall include coverage for:

All Owned vehicles;
Non-Owned vehicles;
Hired or rental vehicles.

Such insurance shall include the following endorsements:

Additional Insured;
Primary and Non-Contributory wording;
Waiver of Subrogation.

Licensee shall promptly deliver to Licensor a certificate of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required coverage for the term specified herein. Such certificate shall be delivered to Licensor not less than three business days after to the expiration date of any policy.

13. Non-Liability of Licensor. Licensee shall indemnify and hold Licensor harmless from any damage to the Site including compensation for any loss of income and any bodily injury or death resulting from the use of the Site provided, however, Licensee shall not be obligated to indemnify Licensor to the extent any claim arises out of the sole negligence or willful misconduct of Licensor or its Agents.

14. Default. The occurrence of any of the following shall constitute a material breach and default ("Default") of this Agreement by Licensee:

A. Any failure by Licensee to pay when due any of the moneys or charges payable by Licensee;

B. A failure by Licensee to observe or perform any other provision of this Agreement to be observed or performed by Licensee when such failure is not corrected within 10 days after written notice thereof from Licensor; or if such failure cannot be cured within this 10-day period, as determined by Licensor in its reasonable discretion, if such cure is not commenced within 30 days of Licensor's written notice and thereafter diligently pursued to completion;

C. The happening of any of the following events: (a) filing or institution by Licensee of any proceeding under the Bankruptcy Act and any amendment thereto, or any other

federal or state act now or hereafter relating to the subject of bankruptcy, insolvency, arrangement, reorganization, or other form of debtor relief, (b) the institution or filing of any involuntary proceeding against Licensee under any of the aforementioned laws unless such proceeding is dismissed within 30 days thereafter, (c) an adjudication of bankruptcy or a finding or judgment of insolvency of Licensee, (d) an assignment for the benefit of creditors by Licensee, (e) the levy of a writ of execution of the business of Licensee or the assets of Licensee located on the Premises which is not discharged within 10 days after the date of said levy, or (f) the appointment of a receiver to take possession of any property of Licensee.

15. Remedies. In the event of a Default of Licensee, Licensor may, at any time thereafter, terminate Licensee's right to use the Premises by any lawful means, in which case this License shall terminate, and Licensee shall immediately remove all of its property and improvements and surrender its further use or possession of the Premises to Licensor. Licensor may also pursue any other remedy now or hereafter available to Licensor under the law of California.

16. Surrender of the Premises. Upon expiration or earlier termination of this License, Licensee shall leave the Premises in neat and clean condition, and free of all personal property of Licensee. All repairs, alterations, and/or other improvements made by Licensee shall become the property of Licensor, provided that Licensor may, by written notice given to licensee on not less than 10 days prior to the expiration or termination of this Agreement, require Licensee to remove any such Alterations and improvements from the Premises and to restore the Premises to their original condition prior to termination of this Lease.

17. Holding Over. If Licensee, without Licensor's written consent, remains in possession of all or part of the Premises after expiration or earlier termination of this Agreement, such occupancy shall be construed to be a license for week-to-week subject to the terms and conditions of this Agreement.

18. Attorney's Fees. If either party brings any action against the other to enforce any provision of this License or collect any sum due hereunder, the prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees, in addition to any other remedies to which it may be entitled.

19. Notices. Except as otherwise specified herein, any notices given under this Agreement shall be effective only if in writing addressed as follows (or to such other address as either party may from time to time specify in writing to the other):

Licensor: 424 Jessie Historic Property, LLC
c/o Martin Building Company

14 Main Street
Tiburon, CA 94920
Attn: Patrick McNerney

Licensee: Proven Management, Inc.
225 3rd Street
Oakland, CA 94607
Attn: William Gilmartin III

20. Miscellaneous Provisions.

A. Non-Waiver. Licensor's failure to enforce or exercise its rights with respect to any provision hereof shall not be construed as a waiver of such rights or of such provision. Acceptance of use charges or any other sum shall not be a waiver of any preceding beach by Licensee of any provision hereof, regardless of Licensor's knowledge of such preceding breach at the time of acceptance of such payment; nor shall such acceptance be a waiver in any way of Licensor's right to terminate this Agreement pursuant to its provisions.

B. Time of Essence. Time is of the essence of each provision of this License. Any reference to "days" shall mean calendar days except as otherwise expressly provided in this License.

C. Entire Agreement. This License sets forth the entire agreement between the parties with respect to the use of the Premises and supersedes all prior and/or contemporaneous agreements, communications, and representations, oral or written, expressed or implied, since the parties intend that this be an integrated agreement. This License may not be modified except by written and executed agreement of the parties.

D. Successors and Assigns. This License shall bind the heirs, executors, administrators, successors, and assigns of any and all of the parties hereto.

E. Authority. Each individual executing this License on behalf of the party they represent hereby warrants that he or she is duly authorized to executed and deliver this License on behalf of their principal, and that this License is binding upon their principal in accordance with its terms.

F. Governing Law. This License shall be governed by and construed in accordance with the laws of California as applied to contracts that are made and to be performed entirely in California.

G. Captions. All captions and heading in this License are for the purposes of reference and convenience only and shall not limit or expand the provisions of this License.

H. Counterparts. This License may be entered into in counterparts, each of which shall be deemed an original but both of which together shall be deemed a single agreement.

IN WITNESS WHEREOF, the parties hereto have executed, or have caused to be executed, this Lease as of the day and year first above written.

Address of Landlord:
14 Main Street
Tiburon, CA 94920

Address of Tenant:
225 3rd Street
Oakland, CA 94607

LANDLORD:
BY MARTIN MCHERNEY DEVELOPMENT, INC, ITS MANAGER

Patrick McNerney
Its: President

TENANT:

William Gilmartin III
Its: Vice President

EXHIBIT 4

TEMPORARY LICENSE AGREEMENT

This Temporary License Agreement ("**Agreement**") is made and entered into as of March 2, 2016 (the "**Effective Date**"), by and between Patrick McNerney, an individual ("**Licensor**") and Visitacion Investment, LLC, a California limited liability company ("**Licensee**"), with reference to the following:

RECITALS

A. Licensor is the owner of certain portions of Parcels 4 and 5 as shown on that Parcel Map filed July 16, 1980, in Book 16 of Parcel Maps, Page 40, (the "**Real Property**") pursuant to that Quitclaim Deed recorded on February 5, 2015, as Document No. 2015-K016863-00, San Francisco County Recorder. Licensor also owns portions of certain easements described by Exhibit B-Form of Railroad Easement (hereinafter "RR Easements") attached to that Grant Deed issued to Licensee and recorded on August 10, 1990, as Document No. E761808, with a metes and bounds correction made by that "Deed Correcting Description of Rail Easement," as described by Exhibit 1 thereto recorded on August 22, 1991, Document No. E962735, by said Recorder. A true and correct copy of said Deed Correcting Description of Rail Easement which sets forth the RR Easements (as its Exhibit 1 Form of Railroad Easement) is attached hereto as "**Exhibit A.**"

B. The Real Property is located within a larger development currently known as Visitacion Valley Redevelopment, Zone 1, as more particularly depicted on the Tentative Map attached hereto as "**Exhibit B ('Visitacion Valley').**" Licensee owns the remainder of Visitacion Valley other than the Real Property, subject to Licensor's interest in the RR Easements.

C. Licensee intends to perform certain grading, site preparation, utility installations and road construction (**the "Work"**), at Visitacion Valley. In order to complete the Work, Licensee would benefit from access to, over, and through the Real Property including the RR Easements.

D. Licensor is willing to grant temporary access and permission to the Licensee Parties (as hereinafter defined) in accordance with this Agreement.

AGREEMENT

1. **Temporary License**. Licensor hereby grants to Licensee and its agents, contractors, subcontractors and consultants (collectively, the "**Licensee Parties**"), subject to all of the terms and conditions contained in this Agreement, a non-exclusive, temporary license (the "**License**") to access the Real Property and the RR Easements as necessary to complete the Work. The scope and extent of the Work is attached hereto as "**Exhibit C Scope of Work**"). This License is intended to grant Licensee only personal rights and is not a grant of an easement. This License does not create any interest in real property and Licensee's rights hereunder shall be subject and subordinate to any and all existing real property interests except to the extent described herein. This License does not amend or waive any rights of the parties under the RR Easements. Upon termination of this License, any and all rights granted by this License shall terminate and be of no further force or effect.

2. **Term and Termination**. This Agreement shall commence as of the Effective Date and shall continue as to the (a) Real Property and to (b) the RR Easements as follows:

a. As to the Real Property described above, the Temporary License shall expire one (1) year after the Effective Date of this Agreement unless otherwise extended by mutual agreement;

b. As to the RR Easements described above, the Temporary License shall expire five (5) years after the Effective Date of this Agreement unless otherwise extended by mutual agreement.

3. **Compliance with laws**. Licensee shall itself and shall ensure that all Licensee Parties perform the Work in a safe, prudent and professional manner and comply with all applicable laws, ordinances, regulations, and orders of any governmental authority having jurisdiction over the Visitacion Valley, Real Property, or RR Easements, or otherwise applicable to the Work, including, but not limited to, all applicable hazardous materials laws.

4. **Insurance Requirements**. In conducting any activities on, about, or above the Real Property including the RR Easement Area, Licensee shall comply with the following requirements.

a. The Licensee Parties and any other contractors, agents, consultants or other third parties involved in activities associated with the Work shall carry general liability insurance in an amount of not less than Two Million Dollars ($2,000,000) per occurrence and Five Million Dollars ($5,000,000) in the aggregate, which coverage shall include all claims, loss or damage arising out of or resulting from personal injury (including bodily injury), death and/or property damage sustained by any person for any reason that results from the Licensee Parties' access to the Real Property, the RR Easement areas, or undertaking the Work. Licensor shall be named as additional insured to all such insurance policies and Licensee shall provide Licensor with certificates of insurance evidencing said coverage. In addition, Licensee shall provide at least thirty (30) days' notice to Licensor before any cancellation or material reduction in coverage of said insurance policies.

b. The Licensee Parties shall also provide proof of Workers' Compensation insurance and Employers' Liability insurance which shall provide at least thirty (30) days' notice by Licensee to Licensor before any cancellation or material reduction in coverage.

c. Licensee shall protect the Real Property including the RR Easement areas and all improvements thereon from any damage resulting from the Work and if any such damage occurs, Licensee shall immediately restore the Real Property and/or the RR Easement areas to substantially the same condition as existed before the work began, except as described in the Scope of Work and as otherwise agreed to by the parties hereto.

5. **Indemnification of Licensor**. Licensee agrees to indemnify, defend and hold harmless Licensor, and his successors and assigns, as well as their respective officers, directors, shareholders, partners, affiliates, employees, agents, representatives, and the holders of mortgages or other superior interests in the Real Property, including the RR Easement areas, (collectively, the "**Indemnitees**") from and against any and all claims, liabilities, demands, costs, damages, losses, actions, causes of action or judgments (including reasonable legal fees and expenses) which result from or arise out of the Work whether occurring on the RR Easement Area or any place around the RR Easement Area and whether occurring on the Real Property, RR Easement areas or any place around the Real Property and the RR Easement areas and whether occurring prior to, during or subsequent to the term hereof. The Indemnitees shall not be liable to Licensee and Licensee hereby waives all claims against the Indemnitees for any injury or damage to any person or property in or about the Real Property and RR Easement areas for any costs or losses incurred by Licensee as a result of the Work. Licensee's obligations under this Section 5 shall survive the expiration or earlier termination of this Agreement.

6. **Further Assurances**. The parties to this Agreement agree to execute additional instruments and/or perform all further and other acts reasonably necessary to effectuate the purposes and intent of this Agreement.

7. **Notices**. All notices or communications required or permitted under this Agreement or by law shall, unless otherwise provided in the Agreement, be in writing, shall be personally delivered, sent by reputable overnight courier (such as FedEx), or sent by registered, certified, or express mail, return receipt requested and deposited in the United States mail with postage prepaid, addressed to the parties as set forth below. Notices shall be deemed effective either (i) upon delivery or (ii) upon refusal of delivery. Notice of change of address shall be given in a written notice in the manner as stated herein.

If to Licensor:

Martin Building Company
14 Mint Plaza, 5th Floor
San Francisco, CA 94103
Attn: Patrick McNerney

With a copy to:

Reuben, Junius & Rose, LLP
One Bush Street, Suite 600
San Francisco, CA 94101
Attn: Kevin H. Rose

If to Licensee:

Visitacion Investment, LLC
150 Executive Park Blvd., Suite 4000
San Francisco, CA 94134
Attn: Jeff Brooks, CEO

With a copy to:

Visitacion Investment, LLC
150 Executive Park Blvd., Suite 4000
San Francisco, CA 94134
Attn: Douglas L. Walsh, General Counsel

8. **No Amendment**. It is expressly understood and agreed that this Agreement may not be amended, altered, modified or otherwise changed in any respect except by a writing duly executed by both parties to the Agreement and expressly stating that it is an amendment to this Agreement. Defined words or phrases are to be used only for purpose of interpreting this Agreement. This Agreement has been drafted by a joint effort of the parties. Therefore, the

parties waive the benefit of any statute or legal decision providing that any ambiguities in an agreement shall be interpreted against the drafting party.

9. **Counterparts**. This Agreement may be executed in one or more counterparts and by the different parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

10. **Electronic Signatures**. Each party (i) has agreed to permit the use, from time to time, of electronically transmitted signatures in order to expedite the transaction contemplated by this Agreement, (ii) intends to be bound by such signatures, (iii) is aware that the other will rely on such signatures, and (iv) acknowledges such reliance and waives any defenses (other than fraud) to the enforcement of any document based on the fact that a signature was sent by electronic transmission. As used herein, the term "**electronically transmitted signature**" shall include any signature sent via facsimile or via email in portable document format (".**pdf**").

11. **No Assignment**. Neither party shall assign this Agreement to any third party without the express written consent of the other party which consent shall not be unreasonably denied or delayed.

12. **Due Authorization**. The undersigned individuals represent and warrant that they are duly authorized and permitted to enter into this Agreement on behalf of the principal on whose behalf they execute this Agreement.

13. **No Waiver**. The waiver or failure to enforce the performance of any term, covenant or condition herein contained by either party shall not be deemed to be a waiver of such term, covenant or condition or any other or subsequent breach of the same or any other term, covenant or condition of this Agreement.

14. **No Recordation**. This Agreement shall not be recorded by either party.

IN WITNESS WHEREOF, Licensor and Licensee have entered into this Agreement as of the Effective Date set forth above.

LICENSOR:

Patrick McNerney, an individual

LICENSEE:
Visitacion Investment, LLC

3/6/2016
Jeff Brooks, Chief Executive Officer

EXHIBIT "A"

TO TEMPORARY LICENSE AGREEMENT

SAN FRANCISCO RECORDER'S OFFICE
Bruce Carlson Recorder
DOC - E962735

Thursday, August 22, 1991 09:40:07am
Rec 15.00 --- Pg 17.00
Stf 16.00 --- Mic 1.00
Amt 53.00 ---
TOTAL > 453.00
REEL F445 IMAGE 0298

WHEN RECORDED MAIL TO:

Mr. Robert A. Golbert
Tuntex (U.S.A.) Inc.
150 Executive Park Boulevard
Suite 4200
San Francisco, CA 94134

DEED CORRECTING DESCRIPTION OF RAIL EASEMENT

THIS DEED CORRECTING DESCRIPTION OF RAIL EASEMENT (this "Correcting Grant") is executed as of this 23RD day of JULY, 1991, by Southern Pacific Transportation Company, a Delaware corporation ("SPTCo") and Tuntex Properties, Inc. (Brisbane), formerly known as Oyster Point Properties, Inc., a California corporation ("Tuntex") on the basis of the following facts, understandings and intentions:

A. In furtherance of that certain Agreement of Purchase and Sale (the "Sale Agreement") dated as of December 28, 1989 by and among Tuntex, Tuntex (U.S.A.) inc., a Delaware corporation, and SPTCo, SPTCo conveyed by grant deed certain property (the "Property") described with particularity in the Sale Agreement, reserving therefrom certain easements (the "Easements");

B. Subsequent to the execution of the Sale Agreement and conveyance of the Property, Oyster Point Properties, Inc., a California corporation, changed its name to "Tuntex Properties, Inc. (Brisbane)", without effecting any change in the corporate structure or identity;

C. In that certain executed letter, dated December 29, 1989, (the "Executed Letter"), SPTCo and Tuntex acknowledged and agreed that the legal description of the Easements, as set forth in Exhibit "B" to the grant deed executed and recorded on August 10, 1990 as Instrument No. E761008 in the Official Records of San Francisco County (the "Original Grant Deed") was not prepared by a surveyor, and thus it would be necessary to substitute therefor a legal description based on a survey;

D. Pursuant to the terms of the Executed Letter, SPTCo, at its sole cost and expense, caused a surveyor registered under the laws of the State of California to prepare a new legal description of the Easements attached hereto as Exhibit 1 (the "New Legal Description") and incorporated herein by this reference;

E. Pursuant to the terms of the Executed Letter, SPTCo and Tuntex agreed that, upon Tuntex's approval of the New Legal Description, SPTCo and Tuntex would execute and record in the Official Records of San Francisco County an instrument correcting the description of the Easements by substituting the New Legal Description for the description of the Easements set forth in the Original Grant Deed; and

EXHIBIT A"

F. SPTCo and Tuntex have agreed that the substitution of the description of the Easements set forth in the Original Grant Deed with the New Legal Description shall be effected by the parties' execution and recording of this Correcting Deed.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES OF THE PARTIES AND OTHER VALUABLE CONSIDERATION by the execution and recording hereof, SPTCo and Tuntex hereby correct the Original Grant Deed by:

1. Deleting the legal description of the Easements set forth in the Original Grant Deed; and

2. Substituting therefor the New Legal Description attached hereto as Exhibit 1 and incorporated herein by this reference.

IN WITNESS WHEREOF, SPTCo and Tuntex have executed this Correcting Deed this 30 day of July, 1991.

"SPTCo"

SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation

By: _____
Its: as Vice President

"Tuntex"

TUNTEX (U.S.A.) INC.
a Delaware corporation

By: _____
Its: General Manager

JO:ng

E962735

State of California $
$
City and County of San Francisco $

On July 30, 1991, before me personally appeared Kirk Li (here insert name and title of the officer), personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

OFFICIAL SEAL
C. R. ARENA
NOTARY PUBLIC - CALIFORNIA
SAN MATEO COUNTY
My Comm. Expires April 21, 1994

Signature C R Arena (Seal)

STATE OF CALIFORNIA
City and County of San Francisco } ss.

E962735

On this 23rd day of JULY in the year One Thousand Nine Hundred and Ninety ONE
before me, JOSEPH F. JUBILADO, a Notary Public in and for the City and County of San Francisco, State of California, personally appeared

S. D. STEEL

known to me (or proved to me on the basis of satisfactory evidence) to be the
VICE PRESIDENT
of the corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named and he acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, the day and year in this certificate first above written.

OFFICIAL NOTARY SEAL
JOSEPH F. JUBILADO
Notary Public — California
SAN FRANCISCO COUNTY
My Comm. Expires JUN 05, 1995

Joseph F. Jubilado
Notary Public in and for the City and County of San Francisco, State of California

(Corporation)

My Commission Expires June 5, 1995

EXHIBIT "I" E962735

FORM OF RAILROAD EASEMENT

"Grantor excepts from the Property hereby conveyed and reserves unto itself, its successors and assigns:

A perpetual, exclusive easement in, on, under, over and through the locations described in Schedule 1 (Railroad Main Line Easement), Schedule 2 (Drill & Spur Track Easement), and Schedule 3 (Access Roadway Easement) attached hereto, in which areas Grantor (and its lessees, sublessees, licensees, successors or assigns) shall have the right to own, operate, maintain, repair, lease, license, and/or remove existing and/or future railroad, rail and railroad related equipment and facilities and communications lines and facilities of every kind and nature including but not limited to all existing facilities, telephone, telegraph, television and fiber optic lines and related equipment. All improvements presently existing on or hereafter constructed on the easement area, if owned by Grantor, shall remain the personal property of the Grantor and its successors and assigns. Upon abandonment or termination of the easement, or any portion thereof, Grantor shall be obligated to execute and deliver to Grantee or its successors and assigns an instrument in form and substance satisfactory to Grantee, or its successors and assigns, relinquishing the easement described in this paragraph. Grantor shall defend, indemnify and hold Grantee, its successors and assignees, harmless from and against any liability, damage, cost or expense arising from or in connection with Grantor's use of the property covered by the easement reserved herein.

Notwithstanding the exclusive nature of such easement, Grantor shall permit Grantee, its successors and assigns, (a) such rights of passage on, over, and under such easement area for such public or private streets and rights of way ("Rail Crossings") as Grantee may require to provide reasonable access to any improvements located on the Property, and (b) the right to construct (i) improvements over said easement commencing at a minimum height of thirty-five (35) feet above top of rail and (ii) structural support improvements and other improvements reasonably related to a railroad depot within the easement area ("Improvements"), in all cases subject to (a) approval of the location or locations and the design of such Rail Crossings and Improvements by the Grantor, which approval shall not be unreasonably withheld; (b) such conditions as Grantor may reasonably impose to protect its own operations over such easement area or to comply with applicable law; (c) approval of such Rail Crossings or Improvements by the California Public Utility Commission and by such other governmental and regulatory agencies as may be required; (d) acceptance, to the extent applicable, of such Rail Crossings as dedicated public streets by the City of San Francisco; and (e) construction of the physical improvements constituting such Rail Crossings and Improvements at no expense to the Grantor."

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Page 1 of 1

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EXHIBIT "1"
(Schedule 1)

MAIN LINE EASEMENT

Those certain parcels of land situated in the City and County of San Francisco, State of California, described as follows:

Parcel No. 1:

Commencing at the northeasterly corner of Lot No. 8, as said Lot is shown on that certain map entitled "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCKS 5087, 5099 and 5101, SAN FRANCISCO, CALIFORNIA", as per map filed July 16, 1980, in Book 16 of Parcel Maps, Page 40, Records of said County, said corner being at the easterly terminus of that certain course shown on said map having a bearing and distance of "N 73°20' W 232.62'"; thence North 72°09'01" West along the northerly line of said Lot No. 8, and also said course, 13.84 feet to a point in a line concentric with and distant 25.00 feet easterly, measured radially from the existing center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco), and the True Point of Beginning of the parcel of land herein to be described; thence southerly along said concentric line one curve to the left; tangent to said curve at last said point bears South 8°30'54" West, having a radius of 5685.096 feet, a central angle of 2°04'27", an arc distance of 205.81 feet to the northerly line of the 0.411 acre parcel of land described in deed dated June 13, 1985, from Southern Pacific Transportation Company to State of California, recorded June 26, 1985, as Instrument D660213, Reel C867, Page 951, Official Records of said County;

thence North 88°40'13" West along last said northerly line, 8.03 feet to a point for the northwesterly corner of last said land; thence southerly along the westerly line of last said land, on a curve to the left, tangent to last said curve at last said point bears South 6°24'50" West, having a radius of 5691.60 feet, a central angle of 1°34'15", an arc distance of 156.05 feet to a point of compound curve; thence continuing southerly along said westerly line on last said curve to the left, having a radius of 600.00 feet, a central angle of 9°52'28", an arc distance of 103.41 feet to a point in said concentric line; thence leaving said westerly line, southerly along said concentric line, on a curve to the left, tangent to last said curve at last said point bears South 3°49'34" West, having a radius of 5685.096 feet, a central angle of 1°51'01", an arc distance of 183.60 feet; thence South 1°28'31" West 12.80 feet to a point in the common County line between the County of San Francisco and the County of San Mateo, last said point being distant thereon, North 88°58'58" West 61.21 feet from its intersection with the westerly line of Tunnel Avenue, 60 feet in width; thence North 88°58'58" West along said County line and also the southerly line of said Lot No. 8, passing at 25.06 feet the said center line of Southern Pacific Transportation Company's Westbound main track, and continuing for a total distance of 100.13 feet; thence North 1°28'35" East 14.47 feet to a point in a line concentric with and distant 75.00 feet westerly, measured radially from last said center line; thence northerly along last said concentric line, on a curve to the right, tangent to last said curve at last said point bears North 1°58'33" East, having a radius of 5765.096 feet, a central angle of 6°42'08", an arc distance of 676.72 feet to said northerly line of said Lot No. 8; thence South 72°09'01" East along last said northerly line, passing at 76.11 feet the

said center line of Southern Pacific Transportation Company's westbound main track, and continuing for a total distance of 101.45 feet to the True Point of Beginning, containing an area of 1.513 acres, more or less.

Parcel No. 2:

Commencing at the northerly terminus of that certain course having a distance of 109.964 feet as shown on that certain map entitled, "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099, and 5101, SAN FRANCISCO, CALIFORNIA", as per map filed July 16, 1980, in Book 16 of Parcel Maps, Page 40, Records of said County; thence South 17°58'59" West along said course, 3.2 feet to a chain link fence; thence South 32°17'13" West along said fence, 21.6 feet to a fence post; thence South 17°42'55" West, continuing along said fence, 100.2 feet to another fence post; thence South 69°17'37" East, continuing along said fence, 117.3 feet to another fence post; thence North 9°22'01" East, continuing along said fence, 2.0 feet to the True Point of Beginning of the parcel of land herein to be described; thence continuing North 9°22'01" East along said fence, 22.0 feet; thence South 80°37'59" East, leaving said fence, 22.8 feet; thence South 9°22'01" West 22.0 feet; thence North 80°37'59" West 22.8 feet to the True Point of Beginning.

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EXHIBIT "1"
(Schedule 2)

DRILL & SPUR TRACK EASEMENT

Those certain parcels or strips of land situated in the City and County of San Francisco, State of California, described as follows:

PARCEL NO. 1

Beginning at the point of intersection of the westerly line of Tunnel Avenue, 60 feet in width, with the common County line between the County of San Francisco and the County of San Mateo; thence North 88°58'58" West along said County line and also the southerly line of Lot No. 8, as said Lot is shown on that certain map entitled "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCKS 5087, 5099, & 5101, SAN FRANCISCO, CALIFORNIA," as per map filed July 16, 1980 in Book 16 of Maps, Page 40, Records of said County, 39.80 feet to a point in a line concentric and parallel with and distant 15.00 feet westerly, measured radially and at right angles from the center line of Southern Pacific Transportation Company's drill track (which lies easterly of and which diverges southerly from the center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco) and which crosses said County line at a point distant North 88°58'58" West along said County line 24.41 feet from its intersection with said westerly line of Tunnel Avenue); thence northerly along said concentric and parallel line, the curvature and course thereof as follows: northerly on a curve to the left, tangent to said curve at last said point bears North 12°03'07" West, having a radius of 558.14 feet, a central angle of 2°35'41", an arc distance of 25.28 feet to a point, and North 14°38'48" West, tangent to last said curve at last said point, 50.80 feet to a point in a line concentric with and distant 25.00 feet easterly, measured radially, from said center line of Southern Pacific

Transportation Company's westbound main track; thence northerly along last said concentric line, on a curve to the right, tangent to last said curve at last said point bears North 2°35'12" East, having a radius of 5685.096 feet, a central angle of 1°14'22", an arc distance of 122.98 feet to a point in the westerly line of the 0.411 acre parcel of land described in deed dated June 13, 1985, from Southern Pacific Transportation Company to the State of California, recorded June 25, 1985, as Instrument 0660213, Reel D867, Page 591, Official Records of said County; thence southerly along last said westerly line, on a curve to the left, tangent to last said curve at last said point bears South 5°01'53" East, having a radius of 600.00 feet, a central angle of 8°36'56", an arc distance of 90.22 feet; thence South 28°11'12" East, continuing along last said westerly line, 70.12 feet to the easterly line of last said land; thence leaving last said westerly line, North 1°13'47" East along said easterly line, 1.77 feet to said westerly line of Tunnel Avenue; thence South 4°30'58" East along last said westerly line, 48.41 feet to the Point of Beginning, containing an area of 5018 square feet, more or less.

PARCEL NO. 2

A strip of land, 30 feet wide lying equally 15.00 feet on each side of the following described line:

Commencing at the northeasterly corner of the 0.411 acre parcel of land described in deed dated June 13, 1985, from Southern Pacific Transportation Company to State of California, recorded June 26, 1985, as Instrument 0660213, Reel D867, Page 591, Official Records of said County; thence North 6°33'34" West 309.26 feet to a point in the center line of Southern Pacific Transportation Company drill track right of way (which track lies westerly of and which diverges southerly, southwesterly, and southerly from the center line of Southern Pacific Transportation Company's eastbound main track (San Francisco-San Jose) and which

crosses the common County line between the County of San Francisco and the County of San Mateo at a point distant South 88°58'58" East along said County line, 237.36 feet from its intersection with a line parallel with and distant 105.67 feet easterly, measured at right angles, from the easterly line of Bayshore Boulevard); thence South 15°19'08" West along said center line of Southern Pacific Transportation Company's drill track right of way, 88.81 feet to a point in the northerly line of Lot No. 8, as said Lot is shown on that certain map entitled "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCKS 5087, 5099 & 5101, SAN FRANCISCO, CALIFORNIA," as per map filed July 16, 1980, in Book 16 of Parcel Maps, Page 40, Records of said County, last said point being distant North 72°09'01" West along said northerly line, 68.75 feet from the northeasterly corner of said Lot No. 8, last said point being the True Point of Beginning of the line herein to be described; thence southerly and southwesterly and southerly continuing along said center line of Southern Pacific Transportation Company's drill track right of way, the courses and curvatures thereof as follows: South 15°19'08" West 3.62 feet to a point; southerly on a curve to the right, tangent to said curve at last said point is last described course, having a radius of 3564.239 feet, a central angle of 0°22'10", an arc distance of 22.99 feet to a point; South 15°41'18" West, tangent to last said curve at last said point, 152.89 feet to a point; southerly and southwesterly on a curve to the right, tangent to last said curve at last said point is last described course, having a radius of 382.245 feet, a central angle of 16°38'26", an arc distance of 111.02 feet to a point; South 32°19'44" West, tangent to the last said curve at last said point, 161.72 feet to a point; southwesterly on a curve to the right, tangent to last said curve at last said point is last described course, having a radius of 286.483 feet, a central angle of 35°25'30", an arc distance of 177.35 feet to a point; and South 67°45'14" West, tangent to last said curve at last said point, 544.20 feet.

Excepting therefrom that portion lying easterly of and coincident with a line concentric with and distant 75.00 feet westerly, measured radially from the center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco).

Also, excepting therefrom that portion lying within said County of San Mateo.

PARCEL NO. 3

A strip of land, 30 feet wide, lying equally 15.00 feet on each side of the following described line:

Commencing at the northeasterly corner of the 0.411 acre parcel of land described in deed dated June 13, 1985, from Southern Pacific Transportation Company to State of California, recorded June 26, 1985, as Instrument D660213, Reel D867, Page 591, Official Records of said County; thence North 6°33'34" West 309.26 feet to a point in the center line of Southern Pacific Transportation Company's drill track right of way (which track lies westerly of and which diverges southerly, southwesterly, and southerly from the center line of Southern Pacific Transportation Company's eastbound main track (San Francisco-San Jose) and which crosses the common County line between the County of San Francisco and the County of San Mateo at a point distant South 88°58'58" East along said County line, 237.36 feet from its intersection with a line parallel with and distant 105.67 feet easterly, measured at right angles from the easterly line of Bayshore Boulevard); thence southerly along said center line of Southern Pacific Transportation Company's drill track right of way, the courses and curvatures thereof as follows: South 15°19'08" West 92.43 feet to a point; southerly on a curve to the right, tangent to said curve at last said point is last described course, having a radius of 3564.239 feet, a central angle of 0°22'10" an arc distance of 22.99 feet to a point; South 15°41'18" West, tangent to last said

curve at last said point, 152.89 feet to a point; southerly and southwesterly on a curve to the right, tangent to last said curve at last said point is last described course, having a radius of 382.245 feet, a central angle of 16°38'26", an arc distance of 111.02 feet to a point; and South 32°19'44" West, tangent to last said curve at last said point, 53.00 feet to a point in the center line of Southern Pacific Transportation Company's spur track right of way (which track diverges northerly from said center line of said Company's drill track) and the True Point of Beginning of the line herein to be described; thence northerly along said center line of Southern Pacific Transportation Company's spur track right of way, the courses and curvatures thereof as follows: North 25°58'09" East 81.00 feet to a point; northerly on a curve to the left, tangent to last said curve at last said point is last described course; having a radius of 382.245 feet; a central angle of 16°36'08", an arc distance of 110.76 feet to a point; and North 9°22'01" East, tangent to last said curve at last said point, 109.53 feet.

Excepting therefrom that portion of the above described 30 foot wide strip of land, herein above described in "PARCEL NO. 3, lying easterly of and coincident with a line concentric with and distant 75.00 feet westerly, measured radially from the center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco).

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EXHIBIT "1"
(Schedule 3)

ACCESS ROADWAY EASEMENT

Those certain parcels of land situated in the City and County of San Francisco, State of California, described as follows:

PARCEL NO. 1

Beginning at the northeasterly corner of the 0.411 acre parcel of land described in deed dated June 13, 1985, from Southern Pacific Transportation Company to State of California, recorded June 25, 1985, as Instrument 0660213, Reel 0867, Page 591, Official Records of said County; thence North 88°46'13" West along the northerly line of said 0.411 acre parcel of land, 33.31 feet to a point in a line concentric with and distant 25.00 feet easterly, measured radially from the center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco), said point being distant South 88°46'13" East along said northerly line, 8.08 feet from the northwesterly corner of said 0.411 acre parcel of land; thence northerly along said concentric line, on a curve to the right, tangent to said curve at last said point bears North 6°26'27" East, having a radius of 5685.096 feet, a central angle of 2°04'27", an arc distance of 205.81 feet to the northerly line of Lot No. 8, as said Lot is shown on that certain map entitled "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCKS 5087, 5099, & 5101, SAN FRANCISCO, CALIFORNIA", as per map filed July 16, 1980, in Book 16 of Parcel Maps, Page 40, Records of said County; thence South 72°09'01" East along last said northerly line, 13.84 feet to the northeasterly corner of said Lot No. 8; thence South 13°42'29" West along the easterly line of said Lot No. 8 and also the westerly line of Tunnel Avenue, 60

feet in width, 10.88 feet to an angle point therein; thence continuing along said easterly line and also last said westerly line, South 1°13'47" West 190.00 feet to the Point of Beginning, containing an area of 4646 square feet, more or less.

PARCEL NO. 2

Beginning at the point of intersection of the northerly line of Lot No. 8, as said Lot is shown on that certain map entitled "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCKS 5087, 5099, & 5101, SAN FRANCISCO, CALIFORNIA", as per map filed July 16, 1980, in Book 16 of Parcel Maps, Page 40, Records of said County, with a line concentric with and distant 75.00 feet westerly, measured radially from the center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco), said point being distant North 72°09'01" West along said northerly line, 115.29 feet from the northeasterly corner of said Lot No. 8; thence southerly along said concentric line, on a curve to the left, tangent to said curve at last said point bears South 8°40'41" West, having a radius of 5785.096 feet, a central angle of 0°51'24", an arc distance of 86.50 feet to a line parallel and concentric with and distant 15.00 feet westerly, measured at right angles and radially from the center line of Southern Pacific Transportation Company's tail track (which lies westerly of and which diverges northerly from the center line of Southern Pacific Transportation Company's drill track and which drill track lies westerly of and which diverges southerly, southwesterly, and southerly from the center line of Southern Pacific Transportation Company's eastbound main track (San Francisco-San Jose), and which said drill track crosses the common County line between the County of San

Francisco and the County of San Mateo at a point distant South 88°58'58" East along said County line, 237.36 feet from its intersection with a line parallel with and distant 105.67 feet easterly, measured at right angles from the easterly line of Bayshore Boulevard); thence southerly and southwesterly along said parallel and concentric line, the courses and curvature thereof as follows: South 9°22'01" West 67.82 feet to a point; southerly and southwesterly on a curve to the right, tangent to last said curve at last said point is last described course, having a radius of 367.245 feet, a central angle of 16°36'08", an arc distance of 106.41 feet to a point; and South 25°58'09" West, tangent to last said curve at last said point, 80.17 feet to a line parallel and concentric with and distant 15.00 feet northwesterly, measured at right angles and radially from said center line of Southern Pacific Transportation Company's drill track; thence southwesterly along last said parallel and concentric line, the courses and curvature thereof as follows: South 32°19'44" West 107.88 feet to a point; southwesterly on a curve to the right, tangent to last said curve at last said point is last described course, having a radius of 271.843 feet, a central angle of 35°25'30", an arc distance of 168.08 feet to a point; and South 67°45'14" West, tangent to last said curve at last said point, 356.47 feet to the easterly prolongation of the southerly line of Sunnydale Avenue, 66 feet wide; thence leaving last said parallel and concentric line, North 69°24'23" West along said prolongation, 65.40 feet to a point in the most westerly line of said Lot No. 8, last said point being the southerly terminus of that certain course shown on said map having a distance of "66.00"; thence North 20°35'37" East along last said westerly line, 43.00 feet to a line parallel with and distant 10.00 feet northerly, measured at right angles from the easterly prolongation of the center line of said Sunnydale Avenue; thence South 69°24'23" East along last said prolongation, 13.70 feet to a point; thence easterly and northeasterly on a

curve to the left, tangent to last said curve at last said point is last described course, having a radius of 175.00 feet, a central angle of 42°50'23", an arc distance of 130.85 feet to a point in a line parallel and concentric with and distant 35.00 feet northwesterly, measured at right angles and radially from said center line of Southern Pacific Transportation Company's drill track; thence northeasterly along last said parallel and concentric line, the courses and curvature thereof as follows: North 67°45'14" East, tangent to last said curve at last said point, 246.15 feet to a point; northeasterly on a curve to the left, tangent to last said curve at last said point is last described course, having a radius of 251.843 feet, a central angle of 35°25'30", an arc distance of 155.71 feet to a point; and North 32°19'44" East, tangent to last said curve at last said point, 106.11 feet to a line parallel and concentric with and distant 35.00 feet westerly, measured at right angles and radially from said center line of Southern Pacific Transportation Company's tail track; thence northerly along last said parallel and concentric line, the courses and curvature thereof as follows: North 25°58'09" East 79.06 feet to a point; northeasterly and northerly on a curve to the left tangent to last said curve at last said point is last described course, having a radius of 347.245 feet, a central angle of 16°36'08", an arc distance of 100.62 feet to a point; and North 9°22'01" East, tangent to last said curve at last said point, 67.27 feet to a point in a line concentric with and distant 95.00 feet westerly, measured radially from said center line of Southern Pacific Transportation Company's westbound main track; thence leaving last said parallel and concentric line, northerly along last said concentric line, on a curve to the right, tangent to last said curve at last said point bears North 7°49'17" East, having a radius of 5805.096 feet, a central angle of 0°53'19", an arc distance of 90.03 feet to said northerly line of said Lot No. 8; thence South 72°09'01" East along last said northerly line, 20.26 feet to the Point of Beginning, containing an area of 0.619 of an acre, more or less.

EXHIBIT B

VISITACION VALLEY

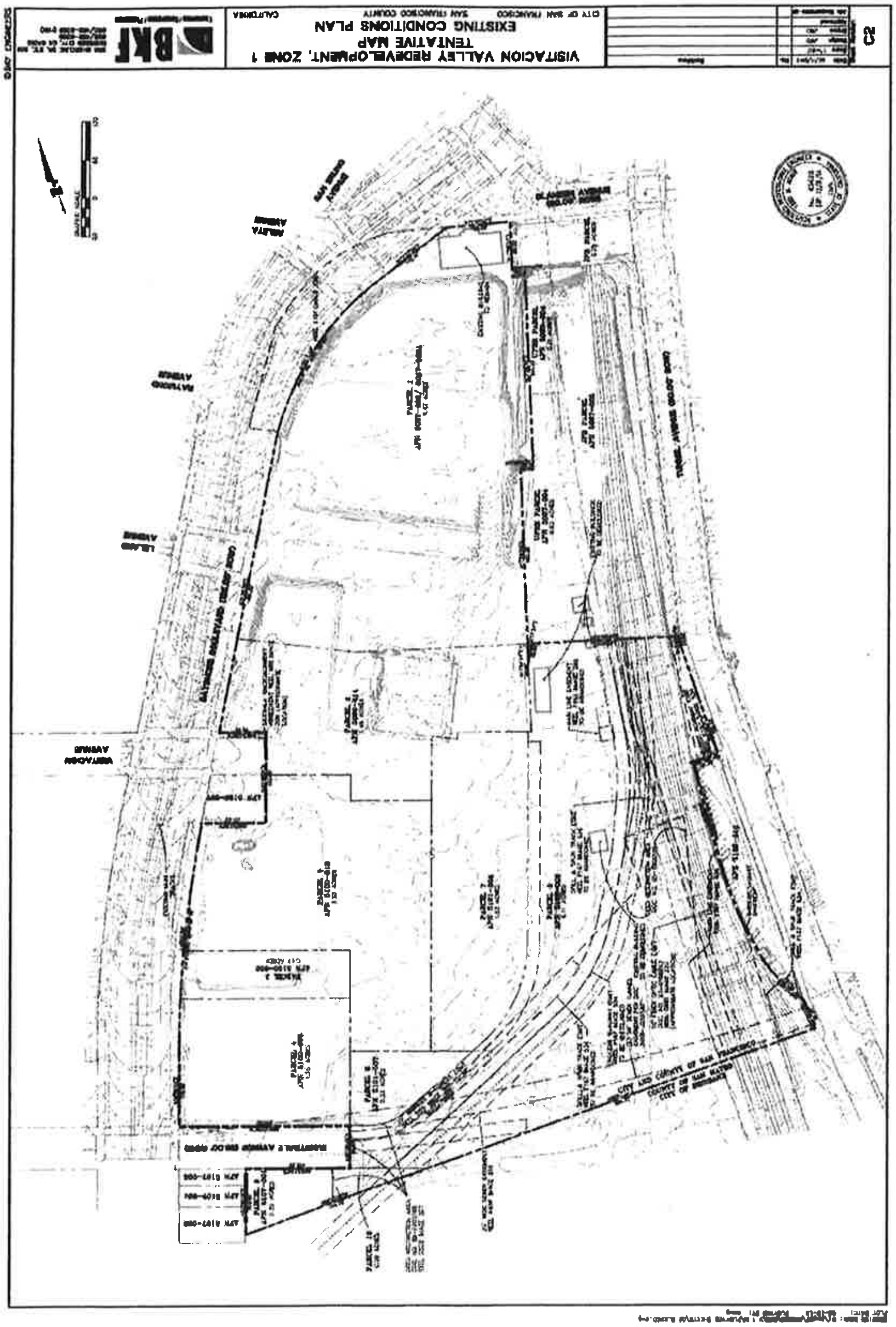


EXHIBIT C

SCOPE OF WORK

SUMMARY

Schlage Lock / Vis Valley Civil Infrastructure Scope of Work Narrative

The Scope of Work to occur near, over, and under the referenced railroad access easement includes, but is not limited to the following:

- Rough grading
- Fine grading
- Low pressure water supply installation
- Stormwater management infrastructure
- Combined sewer installation
- Street preparation and road base installation
- Curb, gutter, and sidewalk preparation
- Dry utility preparation and installation
- Retaining wall construction activity access

These activities (except for retaining wall construction) are described in greater detail by narratives written by civil engineers BKF, and dry-utility engineers RGA, attached hereto.

EXHIBIT 5

From: Patrick M. McNerney <pmcnerney@martinbuilding.com>
Sent: Friday, May 06, 2016 2:15 PM
To: Robert M. Krantz <rmkrantz@up.com>; Doug Walsh <dwalsh@bsdsf.com>
Cc: Howard Pearce <hpearce@upcsf.com>; Pat R. McGill <PRMCGILL@up.com>
Subject: RE: Emailing - 1018_001.pdf--Sale of Union Pacific Property to Patrick McNerney, San Francisco, CA (Folder No. 1567-58)

Thanks for jumping in Rob. Due to the existence of the easements (and their excellent configuration), we are also strongly considering the construction of a data-center on a portion of our site. Thanks again for your assistance.

Patrick McNerney
President

Martin Building Company
14 Mint Plaza, Fifth Floor
San Francisco, CA 94103
t: 415.348.4600 f: 415.348.8058
www.martinbuilding.com

From: Robert M. Krantz [mailto:rmkrantz@up.com]
Sent: Friday, May 06, 2016 11:00 AM
To: Doug Walsh
Cc: Howard Pearce ; Patrick M. McNerney ; Pat R. McGill
Subject: Re: Emailing - 1018_001.pdf--Sale of Union Pacific Property to Patrick McNerney, San Francisco, CA (Folder No. 1567-58)

Doug, Union Pacific sold its Property abutting the former Schlage Lock facility (now owned by UPC) on 2/5/15 to Patrick McNerney, who is copied on this email. In that transaction, Union Pacific quitclaimed the fee interest in its Property along with various easements it held to Mr. McNerney. These easements are subject of your email and attachment below.

I understand that subsequent to Union Pacific's sale to Mr. McNerney, that UPC and he have been in discussions regarding these easements. I do not know who on the UPC side has been involved in those discussions.

As Union Pacific no longer holds an interest in the referenced easements and that these interests were conveyed to Mr. McNerney, please contact him to discuss your interest in having the easement rights quitclaimed to UPC.

Thank you.

Regards,

Robert M. Krantz, Director-Real Estate
Union Pacific Railroad
2603 Camino Ramon, Suite 200
San Ramon, CA 94583

Direct: 925-242-2100
Fax: 402-501-0340
Email: rmkrantz@up.com



From: Doug Walsh <dwalsh@bsdsf.com>
To: "rmkrantz@up.com" <rmkrantz@up.com>
Cc: Howard Pearce <hpearce@upcsf.com>
Date: 05/05/2016 03:00 PM
Subject: Emailing - 1018_001.pdf

This email originated from outside of the company. Please use discretion if opening attachments or clicking on links.

Dear Mr. Krantz: I'm General Counsel for Universal Paragon Corporation (UPC). I've been with UPC a little over a year and am trying to tie up some loose ends with regard to some old RR easements. I've attached a drawing that shows the three easements I'm concerned about highlighted in yellow. These were reserved to the RR when title to the property was transferred to Tuntex (U.S.A), Inc., in August 1990. They are described as:

- Main Line Easement Parcel No. 2;
- Drill and Spur Track Easement Parcel No. 2;
- Drill and Spur Track Easement Parcel No. 3;

Although the easements have been physically abandoned, they are still showing up on title reports as existing easements. I've been tasked with getting these cleared from title and wonder if you have time to meet with me and our Civil Engineer, Howard Pearce, in the next week or two. We'd be happy to travel to your office to discuss. Thanks.

Best wishes
DOUG WALSH

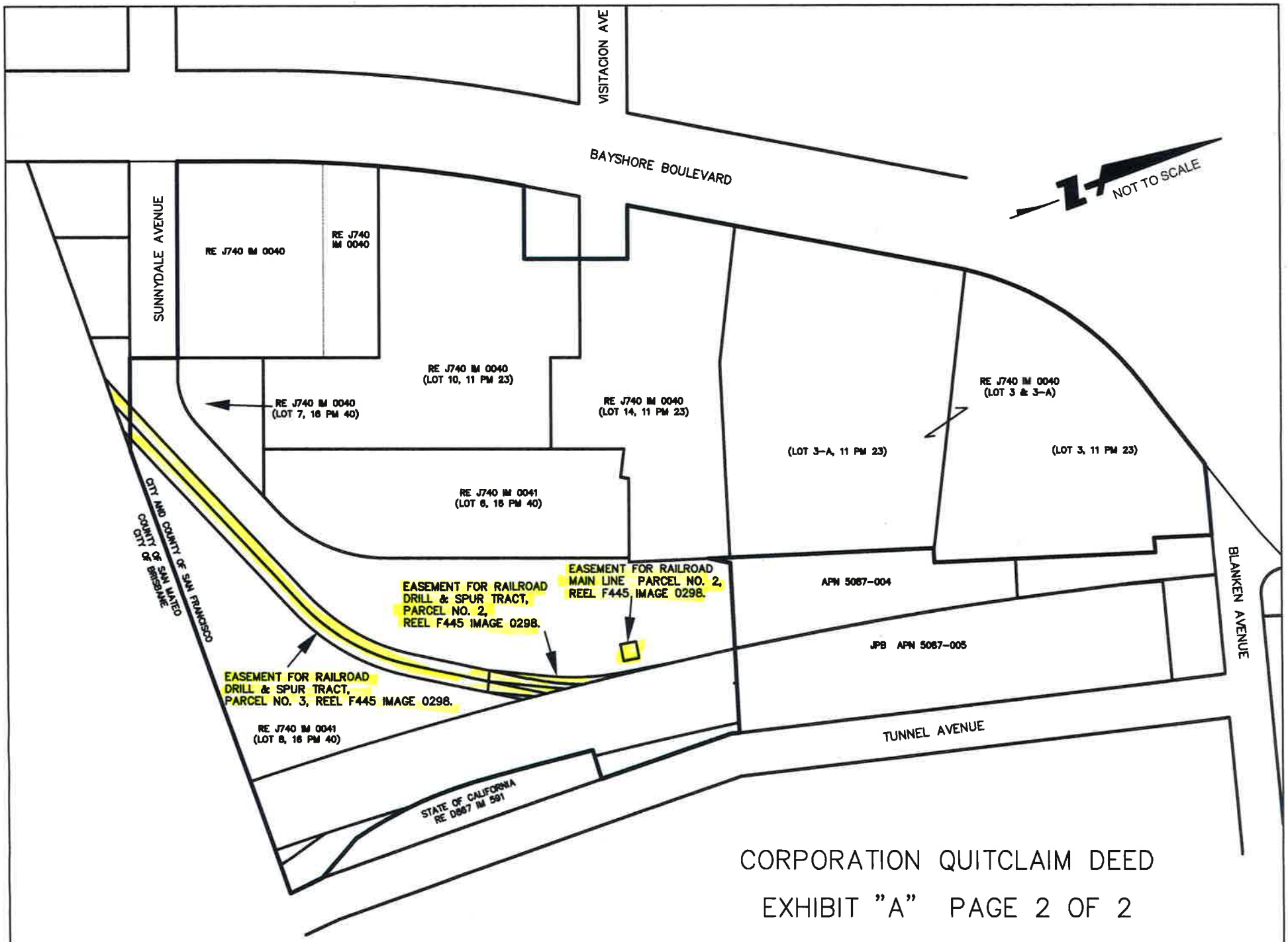

General Counsel
Universal Paragon Corporation
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Tel: 415-468-6676 ext. 272 | Cell: 310-384-4549
www.universalparagoncorp.com| dwalsh@bsdsf.com

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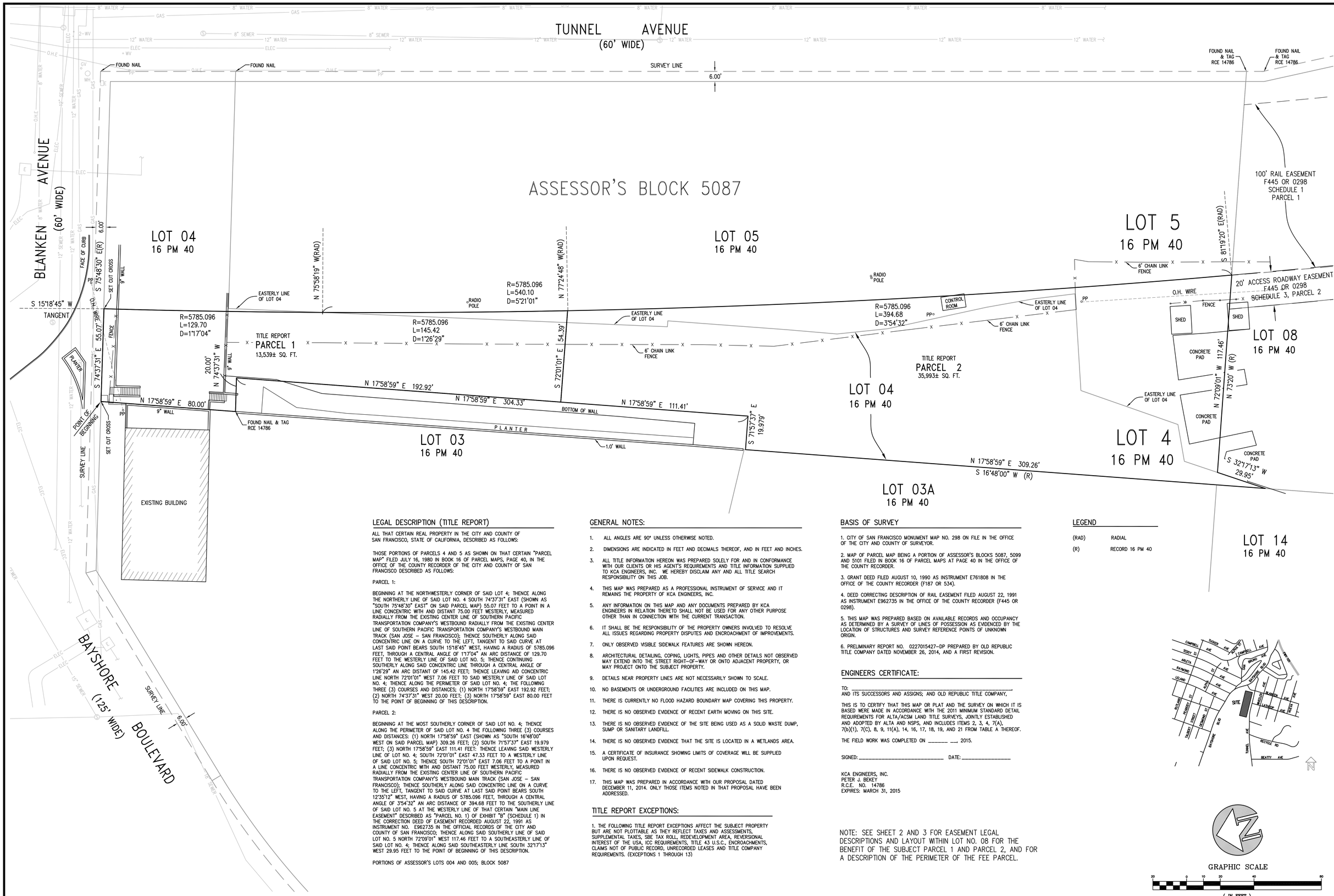
**



CORPORATION QUITCLAIM DEED

EXHIBIT "A" PAGE 2 OF 2

EXHIBIT 6



LEGAL DESCRIPTION (TITLE REPORT)

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

THOSE PORTIONS OF PARCELS 4 AND 5 AS SHOWN ON THAT CERTAIN "PARCEL MAP" FILED JULY 16, 1980 IN BOOK 16 OF PARCEL MAPS, PAGE 40, IN THE OFFICE OF THE COUNTY RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO DESCRIBED AS FOLLOWS:

PARCEL 1:

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID LOT 4; THENCE ALONG THE NORTHERLY LINE OF SAID LOT NO. 4 SOUTH 74°37'31" EAST (SHOWN AS "SOUTH 75°48'30" EAST" ON SAID PARCEL MAP) 55.07 FEET TO A POINT IN A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE EXISTING CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND RADIALLY FROM THE EXISTING CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE – SAN FRANCISCO); THENCE SOUTHERLY ALONG SAID CONCENTRIC LINE ON A CURVE TO THE LEFT, TANGENT TO SAID CURVE AT LAST SAID POINT BEARS SOUTH 15°18'45" WEST, HAVING A RADIUS OF 5785.096 FEET, THROUGH A CENTRAL ANGLE OF 1°17'04" AN ARC DISTANCE OF 129.70 FEET TO THE WESTERLY LINE OF SAID LOT NO. 5; THENCE CONTINUING SOUTHERLY ALONG SAID CONCENTRIC LINE THROUGH A CENTRAL ANGLE OF 1°26'29" AN ARC DISTANT OF 145.42 FEET; THENCE LEAVING AID CONCENTRIC LINE NORTH 72°01'01" WEST 7.06 FEET TO SAID WESTERLY LINE OF SAID LOT NO. 4; THENCE ALONG THE PERIMETER OF SAID LOT NO. 4; THE FOLLOWING THREE (3) COURSES AND DISTANCES; (1) NORTH 17°58'59" EAST 192.92 FEET; (2) NORTH 74°37'31" WEST 20.00 FEET; (3) NORTH 17°58'59" EAST 80.00 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION.

PARCEL 2:

BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID LOT NO. 4; THENCE ALONG THE PERIMETER OF SAID LOT NO. 4 THE FOLLOWING THREE (3) COURSES AND DISTANCES: (1) NORTH 17°58'59" EAST (SHOWN AS "SOUTH 16°48'00" WEST ON SAID PARCEL MAP) 309.26 FEET; (2) SOUTH 71°57'37" EAST 19.979 FEET; (3) NORTH 17°58'59" EAST 111.41 FEET: THENCE LEAVING SAID WESTERLY LINE OF LOT NO. 4; SOUTH 72°01'01" EAST 47.33 FEET TO A WESTERLY LINE OF SAID LOT NO. 5; THENCE SOUTH 72°01'01" EAST 7.06 FEET TO A POINT IN A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE EXISTING CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE – SAN FRANCISCO); THENCE SOUTHERLY ALONG SAID CONCENTRIC LINE ON A CURVE TO THE LEFT, TANGENT TO SAID CURVE AT LAST SAID POINT BEARS SOUTH 12°35'12" WEST, HAVING A RADIUS OF 5785.096 FEET, THROUGH A CENTRAL ANGLE OF 3°54'32" AN ARC DISTANCE OF 394.68 FEET TO THE SOUTHERLY LINE OF SAID LOT NO. 5 AT THE WESTERLY LINE OF THAT CERTAIN "MAIN LINE EASEMENT" DESCRIBED AS "PARCEL NO. 1) OF EXHIBIT "B" (SCHEDULE 1) IN THE CORRECTION DEED OF EASEMENT RECORDED AUGUST 22, 1991 AS INSTRUMENT NO. E962735 IN THE OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO; THENCE ALONG SAID SOUTHERLY LINE OF SAID LOT NO. 5 NORTH 72°09'01" WEST 117.46 FEET TO A SOUTHEASTERLY LINE OF SAID LOT NO. 4; THENCE ALONG SAID SOUTHEASTERLY LINE SOUTH 32°17'13" WEST 29.95 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION.

PORTIONS OF ASSESSOR'S LOTS 004 AND 005; BLOCK 5087

GENERAL NOTES:

1. ALL ANGLES ARE 90° UNLESS OTHERWISE NOTED.
2. DIMENSIONS ARE INDICATED IN FEET AND DECIMALS THEREOF, AND IN FEET AND INCHES.
3. ALL TITLE INFORMATION HEREON WAS PREPARED SOLELY FOR AND IN CONFORMANCE WITH OUR CLIENTS OR HIS AGENT'S REQUIREMENTS AND TITLE INFORMATION SUPPLIED TO KCA ENGINEERS, INC. WE HEREBY DISCLAIM ANY AND ALL TITLE SEARCH RESPONSIBILITY ON THIS JOB.
4. THIS MAP WAS PREPARED AS A PROFESSIONAL INSTRUMENT OF SERVICE AND IT REMAINS THE PROPERTY OF KCA ENGINEERS, INC.
5. ANY INFORMATION ON THIS MAP AND ANY DOCUMENTS PREPARED BY KCA ENGINEERS IN RELATION THERETO SHALL NOT BE USED FOR ANY OTHER PURPOSE OTHER THAN IN CONNECTION WITH THE CURRENT TRANSACTION.
6. IT SHALL BE THE RESPONSIBILITY OF THE PROPERTY OWNERS INVOLVED TO RESOLVE ALL ISSUES REGARDING PROPERTY DISPUTES AND ENCROACHMENT OF IMPROVEMENTS.
7. ONLY OBSERVED VISIBLE SIDEWALK FEATURES ARE SHOWN HEREON.
8. ARCHITECTURAL DETAILING, COPING, LIGHTS, PIPES AND OTHER DETAILS NOT OBSERVED MAY EXTEND INTO THE STREET RIGHT-OF-WAY OR ONTO ADJACENT PROPERTY, OR MAY PROJECT ONTO THE SUBJECT PROPERTY.
9. DETAILS NEAR PROPERTY LINES ARE NOT NECESSARILY SHOWN TO SCALE.
10. NO BASEMENTS OR UNDERGROUND FACILITIES ARE INCLUDED ON THIS MAP.
11. THERE IS CURRENTLY NO FLOOD HAZARD BOUNDARY MAP COVERING THIS PROPERTY.
12. THERE IS NO OBSERVED EVIDENCE OF RECENT EARTH MOVING ON THIS SITE.
13. THERE IS NO OBSERVED EVIDENCE OF THE SITE BEING USED AS A SOLID WASTE DUMP, SUMP OR SANITARY LANDFILL.
14. THERE IS NO OBSERVED EVIDENCE THAT THE SITE IS LOCATED IN A WETLANDS AREA.
15. A CERTIFICATE OF INSURANCE SHOWING LIMITS OF COVERAGE WILL BE SUPPLIED UPON REQUEST.
16. THERE IS NO OBSERVED EVIDENCE OF RECENT SIDEWALK CONSTRUCTION.
17. THIS MAP WAS PREPARED IN ACCORDANCE WITH OUR PROPOSAL DATED DECEMBER 11, 2014. ONLY THOSE ITEMS NOTED IN THAT PROPOSAL HAVE BEEN ADDRESSED.

TITLE REPORT EXCEPTIONS:

1. THE FOLLOWING TITLE REPORT EXCEPTIONS AFFECT THE SUBJECT PROPERTY BUT ARE NOT PLOTTABLE AS THEY REFLECT TAXES AND ASSESSMENTS, SUPPLEMENTAL TAXES, SBE TAX ROLL, REDEVELOPMENT AREA, REVERSIONAL INTEREST OF THE USA, ICC REQUIREMENTS, TITLE 43 U.S.C., ENCROACHMENTS, CLAIMS NOT OF PUBLIC RECORD, UNRECORDED LEASES AND TITLE COMPANY REQUIREMENTS. (EXCEPTIONS 1 THROUGH 13)

BASIS OF SURVEY

1. CITY OF SAN FRANCISCO MONUMENT MAP NO. 298 ON FILE IN THE OFFICE OF THE CITY AND COUNTY OF SURVEYOR.
2. MAP OF PARCEL MAP BEING A PORTION OF ASSESSOR'S BLOCKS 5087, 5099 AND 5101 FILED IN BOOK 16 OF PARCEL MAPS AT PAGE 40 IN THE OFFICE OF THE COUNTY RECORDER.
3. GRANT DEED FILED AUGUST 10, 1990 AS INSTRUMENT E761808 IN THE OFFICE OF THE COUNTY RECORDER (F187 OR 534).
4. DEED CORRECTING DESCRIPTION OF RAIL EASEMENT FILED AUGUST 22, 1991 AS INSTRUMENT E962735 IN THE OFFICE OF THE COUNTY RECORDER (F445 OR 0298).
5. THIS MAP WAS PREPARED BASED ON AVAILABLE RECORDS AND OCCUPANCY AS DETERMINED BY A SURVEY OF LINES OF POSSESSION AS EVIDENCED BY THE LOCATION OF STRUCTURES AND SURVEY REFERENCE POINTS OF UNKNOWN ORIGIN.
6. PRELIMINARY REPORT NO. 0227015427-DP PREPARED BY OLD REPUBLIC TITLE COMPANY DATED NOVEMBER 26, 2014, AND A FIRST REVISION.

LEGEND

(RAD)	RADIAL
(R)	RECORD 16 PM 40

ENGINEERS CERTIFICATE:

TO: _____
AND ITS SUCCESSORS AND ASSIGNS; AND OLD REPUBLIC TITLE COMPANY,

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2011 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ACSM LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 2, 3, 4, 7(A), 7(b)(1), 7(C), 8, 9, 11(A), 14, 16, 17, 18, 19, AND 21 FROM TABLE A THEREOF.

THE FIELD WORK WAS COMPLETED ON _____ __, 2015.

SIGNED: _____ DATE: _____

KCA ENGINEERS, INC.
PETER J. BEKEY
R.C.E. NO. 14786
EXPIRES: MARCH 31, 2015

NOTE: SEE SHEET 2 AND 3 FOR EASEMENT LEGAL DESCRIPTIONS AND LAYOUT WITHIN LOT NO. 08 FOR THE BENEFIT OF THE SUBJECT PARCEL 1 AND PARCEL 2, AND FOR A DESCRIPTION OF THE PERIMETER OF THE FEE PARCEL.

GRAPHIC SCALE

20 0 10 20 40 80
(IN FEET)
1 inch = 20 ft.

1466

KCA ENGINEERS, INC.
CONSULTING ENGINEERS • SURVEYORS • PLANNERS
318 BRANNAN ST. • SAN FRANCISCO, CA.94107 • (415) 546-7111 • FAX: (415) 546-9472
E-MAIL : mailbox@kcaengineers.com

APPROVED: _____

APPROVED: _____

CAD FILE	ALTA...	DES.	PJB
CADD	KB		
LOCATION		CKD.	PJB
REVD.	JH		
PLOT DATE	12.22.14	DATE	DEC 2014
DRAWING NO.		JOB NO.	6046

REVISIONS NO.	DATE	DESCRIPTION
	01.12.15	NOTE UPDATE
	01.06.15	REVISED PRELIM TITLE REPORT
	12.23.14	PRELIMINARY
	12.22.14	ORIG. KCA JOB NO. 4547

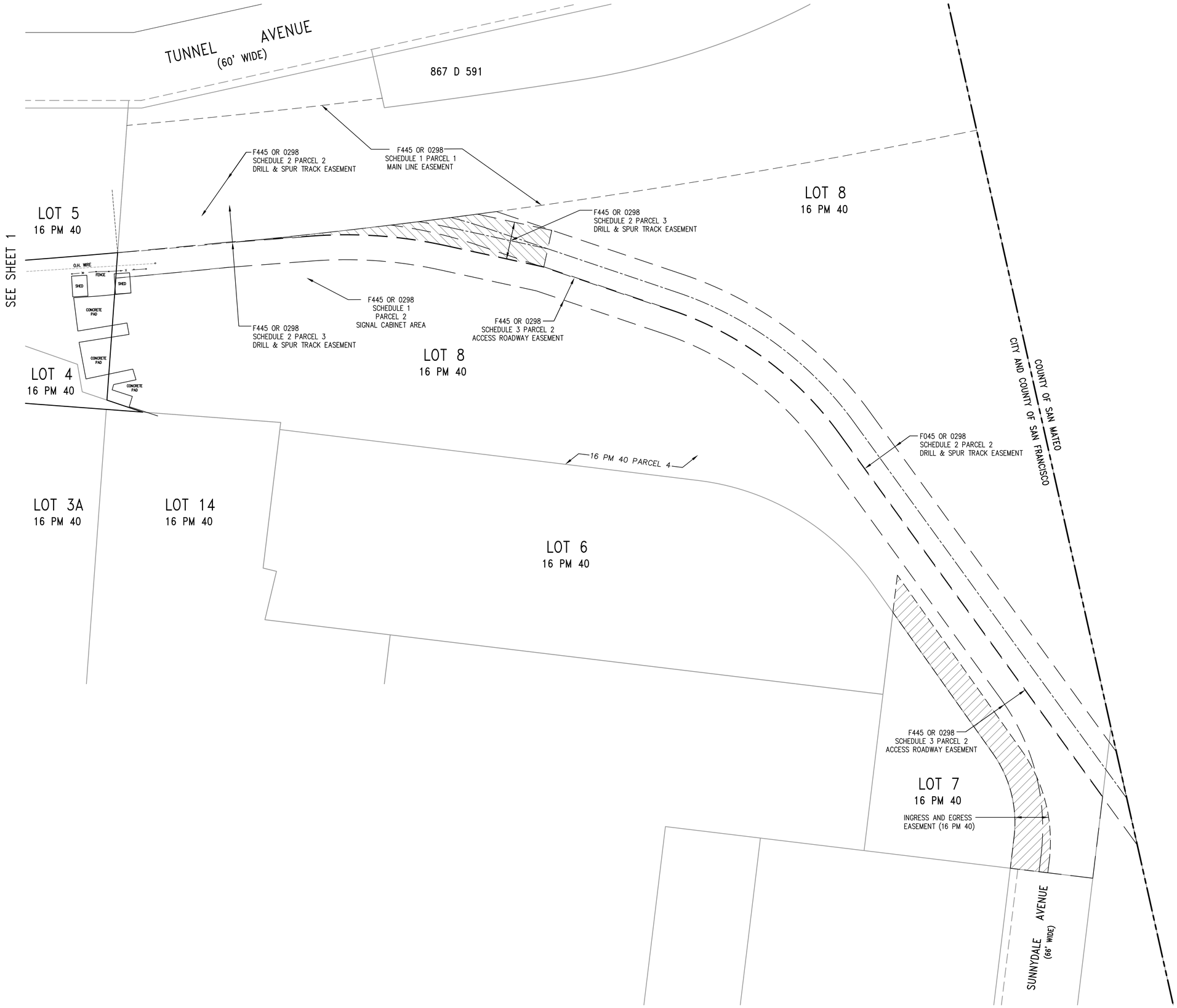
REVISIONS NO.	DATE	DESCRIPTION
	03.05.15	UTILITIES
	01.27.15	DESCRIPTION CORRECTIONS
	01.20.15	NOTE CORRECTION
	01.15.15	PRELIMINARY TO CLIENT

ALTA/ACSM LAND TITLE SURVEY OF
2201 BAYSHORE BOULEVARD
ASSESSOR'S BLOCK 5087, PORTION OF LOT 004 AND 005
SAN FRANCISCO CALIFORNIA

SCALE:
HORIZ.: 1" = 20'
VERT.:

1 OF 3

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COMPUTER STATION-SERVER



GRAPHIC SCALE

30 0 15 30 60 120

(IN FEET)

1 inch = 30 ft.

1467

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E-MAIL : mailbox@kcaengineers.com

APPROVED:

APPROVED:

CAD FILE ALTA...	DES. PJB	CADD KB	
LOCATION	CKD. PJB	REVD. JH	
PLOT DATE 12.22.14	DATE DEC 2014		
DRAWING NO.	JOB NO. 6046		

REVISIONS

NO.	DATE	DESCRIPTION
	01.12.15	NOTE UPDATE
	01.06.15	REVISED PRELIM TITLE REPORT
	12.23.14	PRELIMINARY
	12.22.14	ORIG. KCA JOB NO. 4547

REVISIONS

NO.	DATE	DESCRIPTION
	03.05.15	UTILITIES
	01.27.15	DESCRIPTION CORRECTIONS
	01.20.15	NOTE CORRECTION
	01.15.15	PRELIMINARY TO CLIENT

ALTA/ACSM LAND TITLE SURVEY OF

2201 BAYSHORE BOULEVARD

ASSESSOR'S BLOCK 5087, PORTION OF LOT 004 AND 005

SAN FRANCISCO CALIFORNIA

SCALE:
HORIZ.: 1" = 30'
VERT.:

2 OF 3

© COPYRIGHT 2013 KCA ENGINEERS,INC.

FEE PARCEL

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

THOSE PORTIONS OF PARCEL 4 AND 5 AS SHOWN ON THAT CERTAIN "PARCEL MAP" FILED JULY 16, 1980 IN BOOK 16 OF PARCEL MAPS, PAGE 40, IN THE OFFICE OF THE COUNTY RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID LOT NO. 4; THENCE ALONG THE NORTHERLY LINE OF SAID LOT NO. 4 SOUTH 74°37'31" EAST (SHOWN AS "SOUTH 75°48'30" EAST" ON SAID PARCEL MAP) 55.07 FEET TO A POINT IN A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE EXISTING CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE – SAN FRANCISCO); THENCE SOUTHERLY ALONG SAID CONCENTRIC LINE ON A CURVE TO THE LEFT, TANGENT TO SAID CURVE AT LAST SAID POINT BEARS SOUTH 15°18'45" WEST, HAVING A RADIUS OF 5785.096 FEET, THROUGH A CENTRAL ANGLE OF 1°17'04" AN ARC DISTANCE OF 129.70 FEET TO THE WESTERLY LINE OF SAID LOT NO. 5; THENCE CONTINUING SOUTHERLY ALONG SAID CONCENTRIC LINE THROUGH A CENTRAL ANGLE OF 5°21'01" AN ARC DISTANCE OF 540.10 FEET TO THE SOUTHERLY LINE OF SAID LOT NO. 5; THENCE ALONG SAID SOUTHERLY LINE OF SAID LOT NO. 5 NORTH 72°09'01" WEST (SHOWN AS "NORTH 73°20' WEST" ON SAID PARCEL MAP) 117.46 FEET TO SOUTHEASTERLY LINE OF SAID LOT NO. 4; THENCE ALONG SAID SOUTHEASTERLY LINE SOUTH 32°17'13" WEST 29.95 FEET; THENCE NORTH 17°58'59" EAST (SHOWN AS "SOUTH 16°48'00" WEST" ON SAID PARCEL MAP) 309.26 FEET; THENCE SOUTH 71°57'37" EAST 19.979 FEET; THENCE NORTH 17°58'59" EAST 304.33 FEET; THENCE NORTH 74°37'31" WEST 20.00 FEET; THENCE NORTH 17°58'59" EAST 80.00 FEET TO THE POINT OF BEGINNING.

PORTION OF ASSESSOR'S LOTS 004 AND 005, BLOCK 5087

SCHEDULE 1 (MAIN LINE EASEMENT)

THOSE CERTAIN PARCELS OF LAND SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (NOT INCLUDED)

PARCEL NO. 2: (SIGNAL CABINET AREA)

COMMENCING AT THE NORTHERLY TERMINUS OF THAT CERTAIN COURSE HAVING A DISTANCE OF 109.964 FEET AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099, AND 5101, SAN FRANCISCO, CALIFORNIA", AS PER MAP FILED JULY 16, 1980, IN BOOK 16 OF PARCEL MAPS, PAGE 40, RECORDS OF SAID COUNTY; THENCE SOUTH 17°58'59" WEST ALONG SAID COURSE, 3.2 FEET TO A CHAIN LINK FENCE; THENCE SOUTH 32°17'13" WEST ALONG SAID FENCE, 21.6 FEET TO A FENCE POST; THENCE SOUTH 17°42'55" WEST, CONTINUING ALONG SAID FENCE, 100.2 FEET TO ANOTHER FENCE POST; THENCE SOUTH 69°17'37" EAST, CONTINUING ALONG SAID FENCE, 117.3 FEET TO ANOTHER FENCE POST; THENCE NORTH 9°22'01" EAST, CONTINUING ALONG SAID FENCE, 2.0 FEET TO THE TRUE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN TO BE DESCRIBED; THENCE CONTINUING NORTH 9°22'01" EAST ALONG SAID FENCE, 22.0 FEET; THENCE SOUTH 80°37'59" EAST, LEAVING SAID FENCE, 22.8 FEET; THENCE SOUTH 9°22'01" WEST 22.0 FEET; THENCE NORTH 80°37'59" WEST 22.3 FEET TO THE TRUE POINT OF BEGINNING.

SCHEDULE 2 (DRILL & SPUR TRACK EASEMENT)

THOSE CERTAIN PARCELS OR STRIPS OF LAND SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (NOT INCLUDED)

PARCEL NO. 2: (DRILL AND SPUR TRACK AREA)

A STRIP OF LAND, 30 FEET WIDE LYING EQUALLY 15.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEASTERLY CORNER OF THE 0.411 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED JUNE 13, 1985, FROM SOUTHERN PACIFIC TRANSPORTATION COMPANY TO STATE OF CALIFORNIA, RECORDED JUNE 26, 1985, AS INSTRUMENT D660213, REEL D867, PAGE 591, OFFICIAL RECORDS OF SAID COUNTY; THENCE NORTH 6°33'34" WEST 309.26 FEET TO A POINT IN THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY DRILL TRACK RIGHT OF WAY (WHICH TRACK LIES WESTERLY OF AND WHICH DIVERGES SOUTHERLY, SOUTHWESTERLY, AND SOUTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S EASTBOUND MAIN TRACK (SAN FRANCISCO – SAN JOSE) AND WHICH CROSSES THE COMMON COUNTY LINE BETWEEN THE COUNTY OF SAN FRANCISCO AND THE COUNTY OF SAN MATEO AT A POINT DISTANT SOUTH 88°58'58" EAST ALONG SAID COUNTY LINE, 237.36 FEET FROM ITS INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT 105.67 FEET EASTERLY, MEASURED AT RIGHT ANGLES, FROM THE EASTERLY LINE OF BAYSHORE BOULEVARD); THENCE SOUTH 15°19'08" WEST ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY, 88.81 FEET TO A POINT IN THE NORTHERLY LINE OF LOT NO. 8, AS SAID LOT IS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099 & 5101, SAN FRANCISCO, CALIFORNIA," AS PER MAP FILED JULY 16, 1980, IN BOOK 16 OF PARCEL MAPS, PAGE 40, RECORDS OF SAID COUNTY, LAST SAID POINT BEING DISTANT NORTH 72°09'01" WEST ALONG SAID NORTHERLY LINE, 68.75 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT NO. 8, LAST SAID POINT BEING THE TRUE POINT OF BEGINNING OF THE LINE HEREIN TO BE DESCRIBED; THENCE SOUTHERLY AND SOUTHWESTERLY AND SOUTHERLY CONTINUING ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY, THE COURSES AND CURVATURES THEREOF AS FOLLOWS: SOUTH 15°19'08" WEST 3.62 FEET TO A POINT; SOUTHERLY ON A CURVE TO THE RIGHT, TANGENT TO SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 3564.239 FEET, A CENTRAL ANGLE OF 0°22'10", AN ARC DISTANCE OF 22.99 FEET TO A POINT; SOUTH 15°41'18" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 152.89 FEET TO A POINT; SOUTHERLY AND SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 382.245 FEET, A CENTRAL ANGLE OF 16°38'26", AN ARC DISTANCE OF 111.02 FEET TO A POINT; SOUTH 32°19'44" WEST, TANGENT TO THE LAST SAID CURVE AT LAST SAID POINT, 161.72 FEET TO A POINT; SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 286.483 FEET, A CENTRAL ANGLE OF 35°25'30", AN ARC DISTANCE OF 177.35 FEET TO A POINT; AND SOUTH 67°45'14" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 544.20 FEET.

EXCEPTING THEREFROM THAT PORTION LYING EASTERLY OF AND COINCIDENT WITH A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE – SAN FRANCISCO).

ALSO, EXCEPTING THEREFROM THAT PORTION LYING WITHIN SAID COUNTY OF SAN MATEO.

PARCEL NO. 3: (DRILL AND SPUR TRACK AREA)

A STRIP OF LAND, 30 FEET WIDE, LAYING EQUALLY 15.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEASTERLY CORNER OF THE 0.411 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED JUNE 13, 1985, FROM SOUTHERN PACIFIC TRANSPORTATION COMPANY TO STATE OF CALIFORNIA, RECORDED JUNE 26, 1985, AS INSTRUMENT D660213, REEL D867, PAGE 591, OFFICIAL RECORDS OF SAID COUNTY; THENCE NORTH 6°33'34" WEST 309.26 FEET TO A POINT IN THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY (WHICH TRACK LIES WESTERLY OF AND WHICH DIVERGES SOUTHERLY, SOUTHWESTERLY, AND SOUTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S EASTBOUND MAIN TRACK (SAN FRANCISCO – SAN JOSE) AND WHICH CROSSES THE COMMON COUNTY LINE BETWEEN THE COUNTY OF SAN FRANCISCO AND THE COUNTY OF SAN MATEO AT A POINT DISTANT SOUTH 88°58'58" EAST ALONG SAID COUNTY LINE, 237.36 FEET FROM ITS INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT 105.67 FEET EASTERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY LINE OF BAYSHORE BOULEVARD); THENCE SOUTHERLY ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY, THE COURSES AND CURVATURES THEREOF AS FOLLOWS: SOUTH 15°19'08" WEST 92.43 FEET TO A POINT; SOUTHERLY ON A CURVE TO THE RIGHT, TANGENT TO SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 3564.239 FEET, A CENTRAL ANGLE OF 0°22'10" AND AN ARC DISTANCE OF 22.99 FEET TO A POINT; SOUTH 15°41'18" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 152.89 FEET TO A POINT; SOUTHERLY AND SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 382.245 FEET, A CENTRAL ANGLE OF 16°38'26", AN ARC DISTANCE OF 111.02 FEET TO A POINT; AND SOUTH 32°19'44" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 53.00 FEET TO A POINT IN THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S SPUR TRACK RIGHT OF WAY (WHICH TRACK DIVERGES NORTHERLY FROM SAID CENTER LING OF SAID COMPANY'S DRILL TRACK) AND THE TRUE POINT OF BEGINNING OF THE LINE HEREIN TO BE DESCRIBED; THENCE NORTHERLY ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S SPUR TRACK RIGHT OF WAY, THE COURSES AND CURVATURES THEREOF AS FOLLOWS: NORTH 25°58'09" EAST 81.00 FEET TO A POINT; NORTHERLY ON A CURVE TO THE LEFT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 382.245 FEET, A CENTRAL ANGLE OF 16°36'08", AND ARC DISTANCE OF 110.76 FEET TO A POINT; AND NORTH 9°22'01" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 109.53 FEET.

EXCEPTING THEREFROM THAT PORTION OF THE ABOVE DESCRIBED 30 FOOT WIDE STRIP OF LAND, HEREIN ABOVE DESCRIBED IN "PARCEL NO. 3, LYING EASTERLY OF AND COINCIDENT WITH A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE – SAN FRANCISCO).

SCHEDULE 3 (ACCESS ROADWAY EASEMENT)

THOSE CERTAIN PARCELS OF LAND SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (NOT INCLUDED)

PARCEL NO. 2: (ROADWAY AREA)

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF LOT NO. 8, AS SAID LOT IS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099, &5101, SAN FRANCISCO, CALIFORNIA", AS PER MAP FILED JULY 16, 1980, IN BOOK 16 OF PARCEL MAPS, PAGE 40, RECORDS OF SAID COUNTY, WITH A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE – SAN FRANCISCO), SAID POINT BEING DISTANT NORTH 72°09'01" WEST ALONG SAID NORTHERLY LINE, 115.29 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT NO. 8; THENCE SOUTHERLY ALONG SAID CONCENTRIC LINE, ON A CURVE TO THE LEFT, TANGENT TO SAID CURVE AT LAST SAID POINT BEARS SOUTH 8°40'41" WEST, HAVING A RADIUS OF 5785.096 FEET, A CENTRAL ANGLE OF 0°51'24", AN ARC DISTANCE OF 86.50 FEET TO A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 15.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S TAIL TRACK (WHICH LIES WESTERLY OF AND WHICH DIVERGES NORTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK AND WHICH DRILL TRACK LIES WESTERLY OF AND WHICH DIVERGES SOUTHERLY, SOUTHWESTERLY, AND SOUTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S EASTBOUND MAIN TRACK (SAN FRANCISCO – SAN JOSE), AND WHICH SAID DRILL TRACK CROSSES THE COMMON COUNTY LINE BETWEEN THE COUNTY OF SAN FRANCISCO AND THE COUNTY OF SAN MATEO AT A POINT DISTANT SOUTH 88°58'58" EAST ALONG SAID COUNTY LINE, 237.36 FEET FROM ITS INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT 105.67 FEET EASTERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY LINE OF BAYSHORE BOULEVARD); THENCE SOUTHERLY AND SOUTHWESTERLY ALONG SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: SOUTH 9°22'01" WEST 67.82 FEET TO A POINT; SOUTHERLY AND SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 367.245 FEET, A CENTRAL ANGLE OF 16°36'08", AN ARC DISTANCE OF 106.41 FEET TO A POINT; AND SOUTH 25°58'09" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 80.17 FEET TO A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 15.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK; THENCE SOUTHWESTERLY ALONG LAST SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: SOUTH 32°19'44" WEST 107.88 FEET TO A POINT; SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 271.843 FEET, A CENTRAL ANGLE OF 35°25'30", AN ARC DISTANCE OF 168.08 FEET TO A POINT; AND SOUTH 67°45'14" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 356.47 FEET TO THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF SUNNYDALE AVENUE, 66 FEET WIDE; THENCE LEAVING LAST SAID PARALLEL AND CONCENTRIC LINE, NORTH 69°24'23" WEST ALONG SAID PROLONGATION, 65.40 FEET TO A POINT IN THE MOST WESTERLY LINE OF SAID LOT NO. 8, LAST SAID POINT BEING THE SOUTHERLY TERMINUS OF THAT CERTAIN COURSE SHOWN ON SAID MAP HAVING A DISTANCE OF "66.00"; THENCE NORTH 20°35'37" EAST ALONG LAST SAID WESTERLY LINE, 43.00 FEET TO A LINE PARALLEL WITH AND DISTANT 10.00 FEET NORTHERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY PROLONGATION OF THE CENTER LINE OF SAID SUNNYDALE AVENUE; THENCE SOUTH 69°24'23" EAST ALONG LAST SAID PROLONGATION, 13.70 FEET TO A POINT; THENCE EASTERLY AND NORTHEASTERLY ON A CURVE TO THE LEFT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 175.00 FEET, A CENTRAL ANGLE OF 42°50'23", AN ARC DISTANCE OF 130.85 FEET TO A POINT IN A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 35.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK; THENCE NORTHEASTERLY ALONG LAST SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: NORTH 67°45'14" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 246.15 FEET TO A POINT; NORTHEASTERLY ON A CURVE TO THE LEFT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 251.843 FEET, A CENTRAL ANGLE OF 35°25'30", AN ARC DISTANCE OF 155.71 FEET TO A POINT; AND NORTH 32°19'44" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 106.77 FEET TO A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 35.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S TAIL TRACK; THENCE NORTHERLY ALONG LAST SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: NORTH 25°58'09" EAST 79.06 FEET TO A POINT; NORTHEASTERLY AND NORTHERLY ON A CURVE TO THE LEFT TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 347.245 FEET, A CENTRAL ANGLE OF 16°36'08", AND ARC DISTANCE OF 100.62 FEET TO A POINT; AND NORTH 9°22'01" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 67.27 FEET TO A POINT IN A LINE CONCENTRIC WITH AND DISTANT 95.00 FEET WESTERLY, MEASURED RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK; THENCE LEAVING LAST SAID PARALLEL AND CONCENTRIC LINE, NORTHERLY ALONG LAST SAID CONCENTRIC LINE, ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT BEARS NORTH 7°49'17" EAST, HAVING A RADIUS OF 5805.096 FEET, A CENTRAL ANGLE OF 0°53'19", AN ARC DISTANCE OF 90.03 FEET TO SAID NORTHERLY LINE OF SAID LOT NO. 8; THENCE SOUTH 72°09'01" EAST ALONG LAST SAID NORTHERLY LINE, 20.26 FEET TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 0.519 OF AN ACRE, MORE OR LESS.

INGRESS/EGRESS AREA

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

THAT PORTION OF PARCEL 4, A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AS SHOWN ON THAT CERTAIN "PARCEL MAP" FILED JULY 16, 1980 IN BOOK 16 OF PARCEL MAPS AT PAGE 40, IN THE OFFICE OF THE COUNTY RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, LYING SOUTHERLY OF THE EASTERLY PROLONGATION OF THE NORTHERLY LINE OF LOT NO. 7 OF SAID PARCEL MAP.

1468

KCA ENGINEERS, INC.
CONSULTING ENGINEERS • SURVEYORS • PLANNERS
318 BRANNAN ST. • SAN FRANCISCO, CA.94107 • (415) 546-7111 • FAX: (415) 546-9472
E-MAIL : mailbox@kcaengineers.com

APPROVED:

APPROVED:

CAD FILE	DES.	CADD
ALTA...	PJB	KB
LOCATION	CKD.	REVD.
	PJB	JH
PLOT DATE	DATE	
12.22.14	DEC 2014	
DRAWING NO.	JOB NO.	
	6046	

REVISIONS NO.	DATE	DESCRIPTION
	01.12.15	NOTE UPDATE
	01.06.15	REVISED PRELIM TITLE REPORT
	12.23.14	PRELIMINARY
	12.22.14	ORIG. KCA JOB NO. 4547

REVISIONS NO.	DATE	DESCRIPTION
	03.05.15	UTILITIES
	01.27.15	DESCRIPTION CORRECTIONS
	01.20.15	NOTE CORRECTION
	01.15.15	PRELIMINARY TO CLIENT

ALTA/ACSM LAND TITLE SURVEY OF
2201 BAYSHORE BOULEVARD
ASSESSOR'S BLOCK 5087, PORTION OF LOT 004 AND 005
SAN FRANCISCO CALIFORNIA

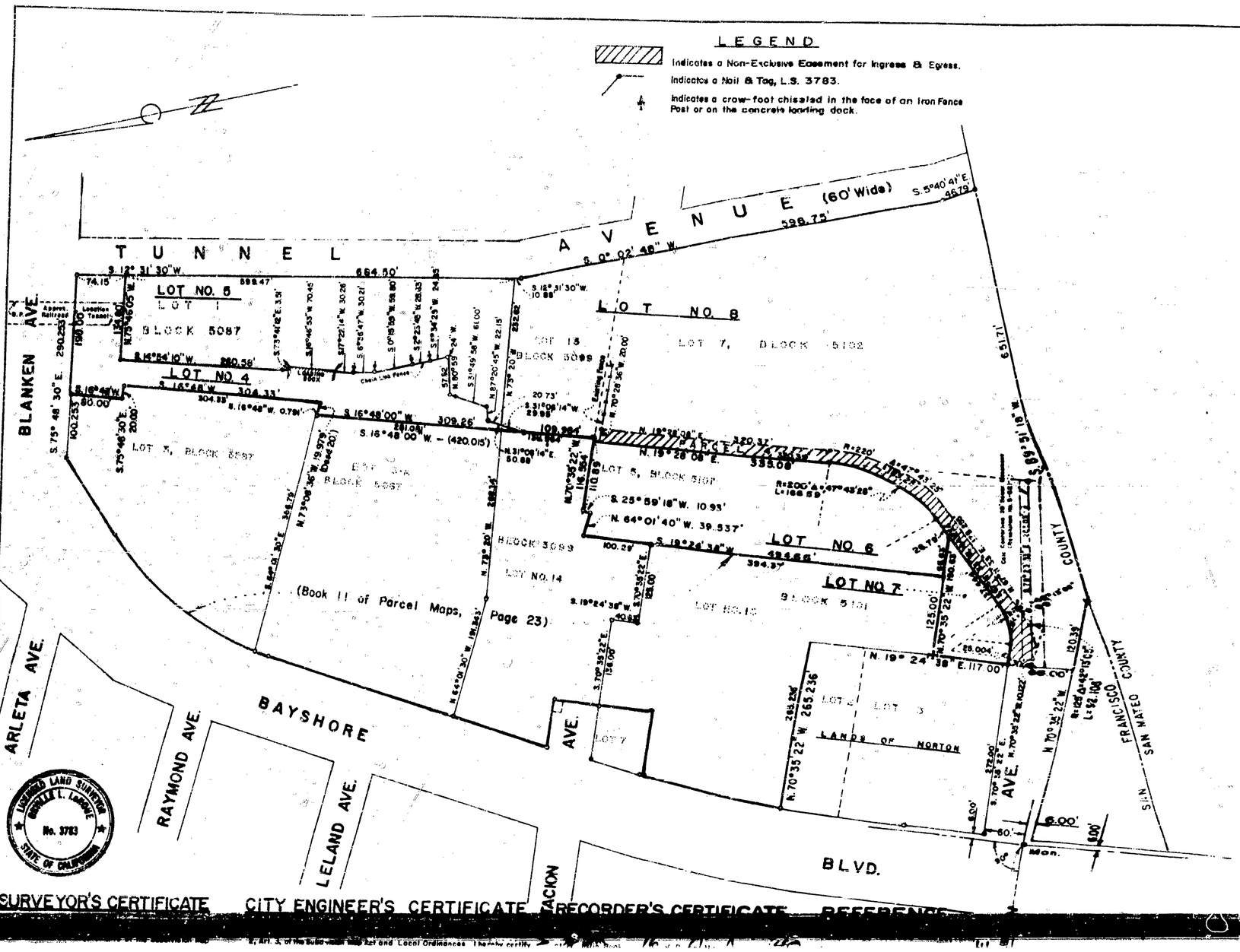
SCALE:
HORIZ.: 1" = 20'
VERT.:

3 OF 3

COMPUTER STATION: DESK09

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EXHIBIT 20



OWNER'S CERTIFICATE

The undersigned certify that they are the only parties having any record title interest in the land subdivided and shown enclosed within the boundary line upon this map and hereby consent to the preparation and recordation of this map entitled "Parcel Map, Being a Portion of Assessor's Blocks 5097, 5099, & 5101, San Francisco, California."

Dated this 2nd day of July, 1980

SOUTHERN PACIFIC TRANSPORTATION COMPANY, AS OWNER

By S. A. SUTFIN, Gen. Manager of Real Estate

By T. F. O'DONNELL, Assistant Secretary

OWNER'S ACKNOWLEDGEMENT

STATE OF CALIFORNIA }
City and County of San Francisco } S.S.

On July 9, 1980, before me, the undersigned, a Notary Public in and for said County and State, personally appeared S. A. SUTFIN and T. F. O'DONNELL, known to me to be the Gen. Mgr. of Real Estate and Asst. Secretary of Southern Pacific Transportation Company, and the Company that executed the within instrument, and also known to me to be the persons who executed it on behalf of said Company, and acknowledged to me that said Company executed the within instrument pursuant to its by-laws or a resolution of its Board of Directors.

SYLVIA E. KARSON
NOTARY PUBLIC-CALIFORNIA
Principal Office in San Francisco County
My Commission Expires June 14, 1982

WITNESS my hand and official seal Sylvia E. Karson
Notary Public

RECORDED AT REQUEST OF
Donald L. Langdon
at 10 Min. past 10 AM
JUL 16 1980
City & County of San Francisco

$5.00

C119631

PARCEL MAP

BEING A PORTION OF

ASSESSOR'S BLOCKS

SURVEYOR'S CERTIFICATE CITY ENGINEER'S CERTIFICATE RECORDER'S CERTIFICATE REFERENCE

EXHIBIT 21

PATRICK MCNERNEY

MARTIN BUILDING COMPANY, San Francisco, CA • February 1989 - Present
President, Chief Executive Officer

Founder and President of innovative design-build firm renowned for its commitment to quality design and neighborhood-oriented urban infill development. Provides hands on direction to all operations, including planning, design, development, and construction of high-profile, diversified projects. Specializing in high-density, multi-family residential, commercial, and historic renovation.

Responsible for the restoration and adaptive re-use of more than twenty historically significant buildings in San Francisco. Instrumental in leading the revitalization of the city's Mid-Market district, and establishing SOMA and Dogpatch as vibrant urban neighborhoods.

Notable projects include: Mint Plaza, the first voluntary downtown street-to-plaza conversion completed by a developer in San Francisco, Mint Collection (2 Mint Plaza, 6 Mint Plaza, 10 Mint Plaza), Haas Candy Factory (14 Mint Plaza), Dahl Beck Warehouse (580 Howard), South Beach Warehouse (164 Townsend), Potrero Launch (2235 Third), Arc Light Co. (21 Clarence Place), Olume (1401 Mission), Steel Arc (85 Natoma), Lusk Warehouse (25 Lusk), South End Lofts (Clarence Place), South Park Lofts (818 S. Grand, Los Angeles).

> **Design**: Oversee all architectural operations including design review, interaction and coordination with governmental agencies, and monitoring design profitability as a stand alone company.
> **Real Estate Brokerage and Development**: Maintain status in good standing with all trade affiliations, real estate acquisition and disposition including all negotiations, and real estate profitability as a stand alone company.
> **Construction:** Oversee all construction operations, estimate formulation and construction value analysis, contract creation and award, manpower management, safety implementation, quality control, develop and monitor construction schedules, warranty management, and construction profitability as a stand alone company.

EDUCATION
Bachelor of Science, Construction Management, California Polytechnic State University, San Luis Obispo, CA

AFFLIATIONS
National Association of Realtors, Broker Member; California Associations of Realtors, Broker Member

PHILANTHROPIES
Urban Preservation Foundation, Friends of Mint Plaza, 2Gen Equity

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST DISTRICT – DIVISION 2

Case No. A163550

VISITACION INVESTMENT, LLC, Plaintiff/Cross-Defendant & Appellant

v.

424 JESSIE HISTORIC PROPERTIES, LLC, Defendant/Cross-Complainant & Respondent

San Francisco Superior Court Case No. CGC-19-579667

JOINT APPENDIX

Volume 6 of 9, Pages 1473-1816 of 2428

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Robert R. Riggs (SBN 107684)
Stephen G. Preonas (SBN 245334)
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Attorneys for Defendant and Cross-Complainant
424 Jessie Historic Properties, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

VISITACION INVESTMENT, LLC, a California limited liability company,

Plaintiff,

v.

424 JESSIE HISTORIC PROPERTIES, LLC, a California limited liability company, all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the Complaint adverse to Plaintiff's title, or any cloud on Plaintiff's title thereto, and DOES 1 through 50, inclusive,

Defendants.

AND RELATED CROSS-ACTION.

Case No. CGC-19-579667

DECLARATION OF STACEY C. QUAN IN OPPOSITION TO VISITACION INVESTMENT, LLC'S MOTION FOR SUMMARY JUDGMENT/ SUMMARY ADJUDICATION

Date: June 10, 2021
Time: 9:30 a.m.
Dept: 501

Action Filed: October 1, 2019
Trial Date: July 12, 2021

I, Stacey C. Quan, declare as follows:

1. I am an attorney at law duly licensed to practice before all of the courts of the state of California and I am an associate in the law firm of Steyer Lowenthal Boodrookas Alvarez & Smith LLP, counsel of record herein for defendant and cross-complainant 424 Jessie Historic Properties, LLC ("JHP"). I make this declaration in support of JHP's opposition to plaintiff and cross-defendant Visitacion Investment, LLC's ("Plaintiff") motion for summary judgment or, alternatively, summary adjudication. I have personal knowledge of the within facts and if called as a witness I could and would competently testify thereto.

2. On October 1, 2019, Plaintiff filed its Complaint initiating this action. A true and correct copy of Plaintiff's Complaint filed in this action is attached as Exhibit 7.

3. On or about January 31, 2020, JHP filed its Answer to Plaintiff's Complaint and filed its own Cross-Complaint. A true and correct copy of JHP's Answer is attached as Exhibit 8. A true and correct copy of JHP's Cross-Complaint is attached as Exhibit 9.

4. On February 2, 2021, the person most qualified for Plaintiff, Gregory M. Vilkin, appeared for deposition in this action pursuant to JHP's notice of deposition. Attached hereto as Exhibit 10 is a true and correct copy of the relevant portions of Mr. Vilkin's deposition transcript.

5. On February 24, 2021, I accessed the San Francisco County Planning Department's zoning website, https://sfplanning.org/zoning, and obtained a copy of the current San Francisco Planning Code ("SF Planning Code"). A true and correct copy of relevant excerpts of the SF Planning Code pertaining to the zoning of the JHP Property are attached as Exhibit 11.

6. On May 20, 2021, the person most qualified on behalf of Union Pacific Railroad, Robert Krantz, appeared for deposition in this action pursuant to JHP's deposition subpoena. Attached hereto as Exhibit 12 is a true and correct copy of the relevant portions of Mr. Krantz's deposition transcript.

7. Attached hereto as Exhibit 13 is a true and correct copy of a document bates labeled UP0061 and UP0107, produced by Union Pacific Railroad Company pursuant to JHP's subpoena issued in this case and authenticated by Mr. Krantz in his deposition at 34:8-35:3 and 37:6-11 (identified as Deposition Exhibit 70).

8. Attached hereto as Exhibit 14 is a true and correct copy of a document bates labeled UP0225 through UP0227, produced by Union Pacific Railroad Company pursuant to JHP's subpoena issued in this case and authenticated by Mr. Krantz in his deposition at 40:19-41:1 and 42:14-43:11 (identified as Deposition Exhibit 71).

9. Attached hereto as Exhibit 15 is a true and correct copy of a document bates labeled UP0062 through UP0066, produced by Union Pacific Railroad Company pursuant to JHP's subpoena issued in this case and authenticated by Mr. Krantz in his deposition at 22:15, 23:2-17, and 24:13-22 (identified as Deposition Exhibit 69).

10. Attached hereto as Exhibit 16 is a true and correct copy of a document bates labeled UP0026 through UP0027, produced by Union Pacific Railroad Company pursuant to JHP's subpoena issued in this case and authenticated by Mr. Krantz in his deposition at 44:4-25, 48:19-49:7 (identified as Deposition Exhibit 72).

11. Attached hereto as Exhibit 17 is a true and correct copy of a document bates labeled UP0211 through UP0221, produced by Union Pacific Railroad Company pursuant to JHP's subpoena issued in this case and authenticated by Mr. Krantz in his deposition at 52:11-16, 53:17-24, 54:12-25 (identified as Deposition Exhibit 73).

12. Attached hereto as Exhibit 18 is a true and correct copy of a document bates labeled UP0024, produced by Union Pacific Railroad Company pursuant to JHP's subpoena issued in this case and authenticated by Mr. Krantz in his deposition at 61:1-11 (identified as Deposition Exhibit 74).

13. Attached hereto as Exhibit 19 is a true and correct copy of a document bates labeled UP0013, produced by Union Pacific Railroad Company pursuant to JHP's subpoena issued in this case and authenticated by Mr. Krantz in his deposition at 61:25-63:12 (identified as Deposition Exhibit 75).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 27, 2021, at Oakland, California.



Stacey C. Quan

EXHIBIT 7

KENNETH S. KATZOFF (SBN 103490)
STEPHEN PREONAS (SBN 245334)
Katzoff & Riggs LLP
1500 Park Avenue, Suite 300
Emeryville, CA 94608
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Attorneys for Plaintiff
VISITACION INVESTMENT, LLC

FILED
Superior Court of California
County of San Francisco
OCT 01 2019
CLERK OF THE COURT
BY: J. LaPorte
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

VISITACION INVESTMENT, LLC, a California limited liability company Plaintiffs, vs. 424 JESSIE HISTORIC PROPERTIES, LLC, a California limited liability company, all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the Complaint adverse to Plaintiff's title, or any cloud on Plainitff's title thereto, and DOES 1 through 50, inclusive, Defendants.	Case No. CGC-19-579667 **VERIFIED COMPLAINT TO QUIET TITLE, FOR DECLARATORY RELIEF AND FOR PRELIMINARY AND PERMANENT INJUNCTION**

Plaintiff VISITACION INVESTMENT, LLC, a California limited liability company ("Plaintiff"), for its complaint herein, alleges:

GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

1. Plaintiff is a California limited liability company that owns 10 contiguous parcels of real property located in the Visitacion Valley neighborhood in the southeast corner of the City and County of San Francisco and commonly known as 2201, 2245, 2500 and 2555 Bay Shore Boulevard, 222 Tunnel Avenue and 289, 290 and 292 Sunnydale Avenue, San Francisco, CA ("the Property"). The Property is also known as Assessor's Parcel Numbers 5087-003; 5087-003A; 5099-014; 5100-002; 5100-003; 5100-010; 5101-006; 5101-007; 5102-009; and 5107-001.

2. Plaintiff was formed to own and develop the Property into of the largest residential developments in San Francisco ("the Project") in a region starved for such projects and suffering from a massive housing shortage.

3. Defendant 424 Jessie Historic Properties, LLC ("JHP") is a California limited liability company located in the City of Tiburon, County of Marin. JHP owns two contiguous parcels of real property known as 2201 Bay Shore Boulevard and 220 Tunnel Avenue, San Francisco ("the JHP Property" or "Parcel B"). The JHP Property is also known as Assessor's Parcel Numbers 5087-004 and 5087-005.

4. Defendants designated as "all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the complaint adverse to Plaintiff's title, or any cloud on plaintiff's title thereto" ("the Unknown Defendants") claim rights, titles, estates, liens, or interests in the Property adverse to Plaintiff's title, and their claims constitute a cloud on Plaintiff's title.

5. Venue is proper in the County of San Francisco because the claims all

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involve real property located in the County of San Francisco.

6. Plaintiff is unaware of the true names and capacities of defendants sued as DOE 1 through DOE 50 herein and, therefore designates said defendants by fictitious names as permitted by the Code of Civil Procedure. Plaintiff will seek leave to amend this Complaint to state the true names and capacities of defendants DOE 1 through DOE 50 when the same are ascertained. JHP, the Unknown Defendants and DOE 1 through DOE 50 shall hereinafter be referred to collectively as "Defendants."

7. Plaintiff is informed and believes and based thereon alleges that at all times mentioned in this Complaint defendants sued as DOE 1 through DOE 50 herein were the agents and employees of Defendants and, in doing the things alleged in this Complaint, were acting within the course and scope of that agency and employment.

8. The northern and eastern boundary of the Property adjoins a portion of the southern and western boundary of the JHP Property.

9. Prior to the transfer of the Property to Plaintiff, the majority of the Property contained the home of the Schlage Lock Factory and was used for industrial purposes ("the Former Schlage Property"). The Property also includes certain parcels adjacent to the Former Schlage Property that were previously used for commercial railroad purposes ("the Former RR Property"). The Property owned by Plaintiff includes both the Former RR Property and the Former Schlage Property

10. The Former RR Property was previously owned by Southern Pacific Transportation Company, a railroad company ("SPRR") which later merged with Union Pacific Railroad ("UPRR" and with SPRR both collectively "the RR").

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11. In or about August 1990 the RR transferred a portion of the Former RR Property to Tuntex (U.S.A.), Inc. ("Tuntex"). Tuntex is the previous name of Universal Paragon Corporation ("UPC"). Plaintiff is an affiliate of UPC formed to hold title to the Property and develop the Project.

12. At the time of the 1990 transfer of the Former RR Property from the RR to Tuntex the RR retained two parcels (designated for convenience as "Parcel A" and Parcel B, as defined above) adjacent to the Former RR Property (both collectively "the Dominant Estates") and continued railroad operations on the Dominant Estates.

13. In connection with and in furtherance of its continued railroad operations on the Dominant Estates, at the time of the transfer of the Former RR Property to Tuntex, the RR reserved in itself three easements ("the Easements") over the Former RR Property. These Easements were set forth in the deed transferring the Former RR Property from the RR, as Grantor, to Tuntex, as Grantee, recorded August 10, 1990 as Document No. E761808 ("the 1990 RR Deed").

14. The three Easements the RR reserved in itself over the Former RR Property are set forth in Exhibit B to the 1990 RR Deed. The 1990 RR Deed specifies the following purpose for the Easements:

> to own, operate, maintain, repair, lease, license, and/or remove existing and/or future railroad, rail and railroad related equipment and facilities and communications lines and facilities of every kind and nature including but not limited to all existing facilities, telephone, telegraph, television and fiber optic lines and related equipment.

The Easements listed in Exhibit B are referred to as "Form of Railroad Easement" and consist of the following three "Schedules":

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- Schedule 1 – Railroad Main Line Easement – describing a "main track"
- Schedule 2 – Drill & Spur Track Easement – describing a "drill track right of way" and "spur track right of way"
- Schedule 3 – Access Roadway Easement

A true and correct copy of the 1990 RR Deed, including Exhibit B describing the Easements as the Form of Railroad Easement is attached as Exhibit 1.

15. A metes and bounds description of the Easements provided by a surveyor was subsequently set forth in a "Deed Correcting Description of Rail Easement" recorded on August 22, 1991 as Document No. E962735 ("the 1991 RR Correction Deed" and with the 1990 RR Deed both collectively "the RR Deeds") and which replaced the metes and bounds description of the Easements in the 1990 RR Deed. The 1991 RR Correction Deed incorporated verbatim as Exhibit 1 the stated purpose and terms of the Easements set forth in Exhibit B to the 1990 RR Deed and described the Easements as "Form of Railroad Easement." A true copy of the 1991 RR Correction Deed is attached as Exhibit 2.

16. Exhibit B to the 1990 RR Deed, and the identical Exhibit 1 to the 1991 RR Correction Deed both describe the Easements and the potential abandonment and termination of all or a portion of the Easements as follows:

> Upon abandonment or termination of the easement, or any portion thereof, Grantor shall be obligated to execute and deliver to Grantee or its successors and assigns an instrument in form and substance a satisfactory to Grantee, or its successors and assigns, relinquishing the easement described in this paragraph

17. The RR later transferred one of the Dominant Estates to UPC and the other to Patrick McNerney, an experienced real estate developer in San Francisco.

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McNerney is the owner and manager of the corporation that manages defendant JHP. The RR transferred what is now the JHP Property to McNerney who subsequently conveyed the property to JHP. The RR transferred the other of the Dominant Estates to UPC who in turn transferred this property to Plaintiff.

18. The RR transferred the JHP Property to McNerney pursuant to a February 5, 2015 "Quitclaim Deed" recorded as Document No. 2015-K016863-00 ("the 2015 RR Deed") pursuant to which the RR disclaimed any interest in the Easements. A true copy of the 2015 RR Deed is attached as Exhibit 3. McNerney transferred the JHP Property to JHP pursuant to a Grant Deed dated September 14, 2016 and recorded in San Francisco as Document No. 2016-K328238. A true copy of this deed is attached as Exhibit 4.

19. Plaintiff is now developing its respective portion of the Dominant Estates for mixed use, multi-family housing. Plaintiff's plan for the Project incorporates one of the Dominant Estates it obtained from the RR into its development of the entirety of the Property. Plaintiff's plan for the Project relinquishes all of its rights to the Easements to accommodate the Project because Plaintiff has not used and does not intend to use the Easements or the Property for railroad purposes and such Easements have been abandoned and terminated as provided for in the RR Deeds describing the Easements.

20. Though smaller in scale than Plaintiff's Project, JHP has also created a plan for a residential real estate development project on the JHP Property ("the JHP Project" and with the Project, both collectively, "the Projects"). On May 8, 2015, in connection with the JPH's proposed development of the JPH Property, JPH submitted a

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Preliminary Project Assessment application to the San Francisco Planning Department. ("the 2015 JHP PPA Application"). The 2015 JHP PPA Application proposed a project consisting of two new residential buildings with a total of 205 dwelling units. A true copy of the 2015 JHP PPA Application is attached as Exhibit 5.

21. The 2015 JHP PPA Application was assigned for review by the San Francisco Planning Department ("SF Planning") as Case No. 2015-006509PPA. In response, SF Planning issued a Preliminary Project Assessment on August 7, 2015 ('the 2015 JHP PPA"). A true copy of the 2015 JHP PPA is attached as Exhibit 6.

22. Neither of the Dominant Estates owned by Plaintiff and JHP have been used for railroad purposes for at least 10 years. Plaintiff is informed and believes that JHP has no intention to resume railroad operations on the JHP Property.

23. Based upon the conveyance of the Dominant Estates to JHP and Plaintiff for the purpose of real estate development and the intention of JHP and Plaintiff to redevelop the Dominant Estates as commercial and residential properties, and not railroad operations, the Easements have been abandoned and terminated.

24. In connection with the Project Plaintiff intends to convert the Property from an industrial use to a residential and commercial use. To accomplish its development goals and to maximize the public benefit of the Project, including providing convenient access to public transit, streets and open space, it is necessary for Plaintiff to use the land contained within the metes and bounds descriptions of the Easements for both access to the Project and/or for permanent improvements to the Property.

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25. In obtaining approvals of and designing the Project, pursuant to Exhibit B to the 1990 RR Deed (and Exhibit 1 to the 1991 RR Correction Deed) Plaintiff, as the successor in interest to the Grantee referenced in the deed, has requested that JHP, as the successor in interest to the Grantor referenced in the deed, execute and deliver to Plaintiff a quitclaim deed relinquishing the Easements. To date, JHP has refused to execute this document, or any other document relinquishing the Easements.

FIRST CAUSE OF ACTION
(Quiet Title – Against All Defendants)

26. Each of the allegations of paragraphs 1 through 25 are incorporated as if fully set forth herein.

27. Plaintiff alleges that Defendants have relinquished any and all property rights in the Easements and that the Easements have been abandoned and/or terminated.

28. Plaintiff alleges that Defendants have without right continued to claim an interest in the Easements adverse to Plaintiff.

29. Plaintiff claims its full legal and equitable interest in the Property, including such portions of the Property described in the Easements.

30. Plaintiff seeks to quiet title in and to Plaintiff against all adverse claims of Defendants, which claims are without any right whatever and interfere, trespass or encroach upon Plaintiff's use of the Property.

31. Plaintiff seeks to quiet title as of September 2019, the date that Plaintiff requested that JHP relinquish its rights in the Easements pursuant to the terms of Exhibit B to the 1990 RR Deed and Exhibit 1 to the 1991 RR Correction Deed.

WHEREFORE, the Plaintiff prays for relief as set forth below.

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SECOND CAUSE OF ACTION
(For Declaratory Relief re Termination and Abandonment of the Easements – Against All Defendants)

32. Each of the allegations of paragraphs 1 through 31 are incorporated as if fully set forth herein.

33. An actual controversy has arisen and exists between Plaintiff and Defendants. Plaintiff contends that any rights in the Easements that Defendants may claim have been abandoned or terminated due the abandonment of any railroad use on the JHP Property. Plaintiff further contends that pursuant to the RR Deeds describing the Easements specifying abandonment and termination of the Easements, JHP has relinquished the Easements as a result of the change of use of the JHP Property from railroad purposes and that Plaintiff is free to obstruct the Easements in connection with the redevelopment of the Property and the Project. JHP contends that it maintains its rights in the Easements described in the RR Deeds and that Plaintiff cannot obstruct the Easements in connection with Plaintiff's development of the Property and the Project.

34. Plaintiff seeks a final declaration and determination as to the present dispute regarding estate, ownership, rights and interest in the Easements.

WHEREFORE, Plaintiffs pray for relief as set forth below.

THIRD CAUSE OF ACTION
(For Preliminary and Permanent Injunction – Against all Defendants)

35. Each of the allegations of paragraphs 1 through 34 are incorporated as if fully set forth herein.

36. Plaintiff seeks to restrain Defendants from interfering with Plaintiff's development of the Property and the Project or otherwise violating Plaintiff's rights as

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owner of the Property, including by failing to relinquish all rights to the Easements as requested by Plaintiff pursuant to the RR Deeds.

37. Unless and until enjoined and restrained by order of this court, Defendants' continuing assertion of rights in the abandoned and/or terminated Easements will cause grave and irreparable injury to Plaintiff by jeopardizing Plaintiff's efforts to obtain approvals for and proceed with and complete the Project.

38. Plaintiff has no adequate remedy at law for the continuing conduct of Defendants because the irreversible loss and continuous injury to its land cannot be compensated in damages. Further, it would be impossible for the Plaintiff to determine the precise amount of damages Plaintiff will suffer if the Defendants' conduct is not restrained, as it would result in Defendants being able to restrain Plaintiff's use and redevelopment of the Property in perpetuity and contrary to the express terms of the RR Deeds.

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PRAYER FOR RELIEF

Plaintiffs request the Court to grant relief herein as follows:

1. For judgment quieting Plaintiff's title to the Property free and clear of any rights set forth in the Easements and terminating the Easements.

2. For a judicial declaration that the Easements have been abandoned, terminated and/or otherwise modified based upon the facts and circumstances.

3. For a preliminary, and permanent injunction, enjoining Defendants from continuing to wrongfully assert rights in the Easements.

4. For costs.

5. For such other and further relief as the Court concludes to be just and proper under the circumstances.

Dated: September 30, 2019

KATZOFF & RIGGS LLP



STEPHEN G. PREONAS

Attorneys for Plaintiff
VISITACION INVESTMENT, LLC

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(510) 597-1990

VERIFICATION

I, Greg Vilkin am a manager of Visitacion Investment, LLC, plaintiff in this action and I am authorized to execute this verification on its behalf. I declare that I have reviewed the foregoing Verified Complaint and know its contents. The matters stated in this document are true to my own knowledge except as to the matters which are therein stated on our information or belief and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed September 30, 2019



GREG VILKIN

KATZOFF & RIGGS LLP
1500 PARK AVE., SUITE 300
EMERYVILLE, CA 94608
(510) 597-1990

RECORDING REQUESTED BY

SAN FRANCISCO, CA
RECORDER'S OFFICE
Bruce Jamison Recorder
DOC- E761808
TICOR Title Company
Friday, August 10, 1990 12:48:00PM
Rec 15.00 --- Pg 17.00
Vic 1.00 ---
AFN 20.00 --- Amt
TOTAL => REEL F187 IMAGE 0524

AND WHEN RECORDED MAIL TO

Name Tuntex (U.S.A.), Inc.
Street Address 150 Executive Park Blvd., Suite 4200
City State Zip San Francisco, California 94134
Attn: Stephen C.H. Lin, Ph.D

17

5102-9
5102-1
5102-6

SPACE ABOVE THIS LINE FOR RECORDER'S USE

☐ COMPUTED ON FULL VALUE OF PROPERTY CONVEYED, OR
☐ COMPUTED ON FULL VALUE LESS LIENS & ENCUMBRANCES REMAINING THEREON AT TIME OF SALE
Shown on Separate Statement
pursuant to Section 11932,
Revenue & Taxation Code
Signature of declarant or agent determining tax -- firm name

GRANT DEED

AFNA

FOR VALUE RECEIVED, Southern Pacific Transportation Company ("Grantor"), a Delaware corporation, grants to Tuntex (U.S.A.), Inc., a Delaware corporation ("Grantee") all this certain real property located in the City and County of San Francisco, State of California, and as more particularly described in Exhibit A, attached hereto and by this reference incorporated herein (the "Property");

TOGETHER WITH all rights and easements appurtenant thereto;

SUBJECT TO a lien to secure payment of current taxes and assessments and all easements, rights of way, covenants, conditions and restrictions, leases and other exceptions to title which are of record; and

EXCEPTING AND RESERVING unto Grantor that certain Form of Railroad Easement as more particularly described in Exhibit B, attached hereto and by this reference incorporated herein.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed this 1ST day of August, 1990.

"Grantor"

SOUTHERN PACIFIC
TRANSPORTATION COMPANY

By: _____
Its: Vice President
W.B. Curtis

Attest: _____
Its: ASSISTANT SECRETARY
B.J. Medina

S.F. Assessor's Office AUG 10 1990

STATE OF CALIFORNIA
City and County of San Francisco } ss.

On this 2ND day of AUGUST in the year One Thousand Nine Hundred and Ninety
before me, ROBERT E. JOHNSON, a Notary Public in and for the City and County of San Francisco, State of California, personally appeared
W. B. CURTIS & B. J. MEDINA

known to me (or proved to me on the basis of satisfactory evidence) to be the Its Vice President
& ASST. SECRETARY
of the corporation described in and that executed the within instrument, and also known to me
to be the person S who executed it on behalf of the corporation therein named and
The Y acknowledged to me that such corporation executed the same.

OFFICIAL SEAL
ROBERT E. JOHNSON
NOTARY PUBLIC - CALIFORNIA
CITY & COUNTY OF SAN FRANCISCO
My Comm. Expires Jan. 22, 1993

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, the day and year in this certificate first above written.

Corporation

Robert E. Johnson
Notary Public in and for the City and County of San Francisco, State of California.

My commission Expires January 22, 1993

PK
7-25-90

EXHIBIT "A"

S.F. Recorder's Office AUG 10 1990

LEGAL DESCRIPTION

All that real property situated in the City and County of San Francisco, State of California, described as follows:

PARCEL ONE:

Lot 6, as said lot is shown on the map of Parcel Map Book 16, Page 40, filed July 16, 1980, in the Office of the County Recorder of the City and County of San Francisco, State of California.

PARCEL TWO:

Lot 8, as said lot is shown on the map of Parcel Map Book 16, Page 40, filed July 16, 1980, in the Office of the County Recorder of the City and County of San Francisco, State of California.

Excepting therefrom that portion of said land described as follows:

Commencing at a point in that certain course having a length of 596.75 feet as shown in the easterly line of said Lot 8, distant thereon South 1°16'55" West 190.00 feet from the northerly terminus of said course; thence continuing along said course South 1°16'55" West 408.52 feet to the southerly terminus of said course; thence leaving said course, North 28°08'04" West 70.12 feet to a point in a line that is concentric with and distant 18 feet easterly, measured radially from the existing center line of Southern Pacific Transportation Company's spur track and the existing center line of Southern Pacific Transportation Company's westbound main track (San Francisco-San Luis Obispo); thence along said concentric line as follows: Northerly on a curve to the right, having a radius of 600.00 feet, a central angle of 18°29'24" (tangent to said curve at last mentioned point bears North 13°35'41" West), an arc distance of 193.63 feet to a point of compound curve, and northerly on a curve to the right, having a radius of 5691.69 feet, a central angle of 1°34'15", an arc distance of 156.05 feet; thence leaving said concentric line, South 88°43'05" East 41.39 feet to the point of commencement.

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PARCEL THREE:

Commencing at a point on the southerly line of Sunnydale Avenue, distant thereon 105 feet and 8 inches easterly from the easterly line of Milliken Street; running thence easterly along the said southerly line of Sunnydale Avenue 138 feet and 8 inches; thence at a right angle southerly 224 feet and 5 inches; thence at a right angle westerly 138 feet and 8 inches; and thence at a right angle northerly 224 feet and 5 inches to the point of commencement.

Excepting therefrom that portion lying within San Mateo County.

PARCEL FOUR:

Commencing at a point on the southerly line of Sunnydale Avenue (formerly Tobin Street), distant thereon 244 feet 4 inches easterly from the easterly line of Milliken Street; running thence South 71-1/2° East along the southerly line of Sunnydale Avenue 277 feet 4 inches; thence South 18-1/2° West 224 feet 5 inches; thence North 71-1/2° West 277 feet 4 inches; thence North 18-1/2° East 224 feet 5 inches to the point of commencement.

Excepting therefrom that portion lying within San Mateo County.

EXHIBIT "B" AUG 10 1990

FORM OF RAILROAD EASEMENT

"Grantor excepts from the Property hereby conveyed and reserves unto itself, its successors and assigns:

A perpetual, exclusive easement in, on, under, over and through the locations described in Schedule 1 (Railroad Main Line Easement), Schedule 2 (Drill & Spur Track Easement), and Schedule 3 (Access Roadway Easement) attached hereto, in which areas Grantor (and its lessees, sublessees, licensees, successors or assigns) shall have the right to own, operate, maintain, repair, lease, license, and/or remove existing and/or future railroad, rail and railroad related equipment and facilities and communications lines and facilities of every kind and nature including but not limited to all existing facilities, telephone, telegraph, television and fiber optic lines and related equipment. All improvements presently existing on or hereafter constructed on the easement area, if owned by Grantor, shall remain the personal property of the Grantor and its successors and assigns. Upon abandonment or termination of the easement, or any portion thereof, Grantor shall be obligated to execute and deliver to Grantee or its successors and assigns an instrument in form and substance satisfactory to Grantee, or its successors and assigns, relinquishing the easement described in this paragraph. Grantor shall defend, indemnify and hold Grantee, its successors and assignees, harmless from and against any liability, damage, cost or expense arising from or in connection with Grantor's use of the property covered by the easement reserved herein.

Notwithstanding the exclusive nature of such easement, Grantor shall permit Grantee, its successors and assigns, (a) such rights of passage on, over, and under such easement area for such public or private streets and rights of way ("Rail Crossings") as Grantee may require to provide reasonable access to any improvements located on the Property, and (b) the right to construct (i) improvements over said easement commencing at a minimum height of thirty-five (35) feet above top of rail and (ii) structural support improvements and other improvements reasonably related to a railroad depot within the easement area ("Improvements"), in all cases subject to (a) approval of the location or locations and the design of such Rail Crossings and Improvements by the Grantor, which approval shall not be unreasonably withheld; (b) such conditions as Grantor may reasonably impose to protect its own operations over such easement area or to comply with applicable law; (c) approval of such Rail Crossings or Improvements by the California Public Utility Commission and by such other governmental and regulatory agencies as may be required; (d) acceptance, to the extent applicable, of such Rail Crossings as dedicated public streets by the City of San Francisco; and (e) construction of the physical improvements constituting such Rail Crossings and Improvements at no expense to the Grantor."

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Page 1 of 1

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EXHIBIT "B"
(Schedule 1)

S.F. Recorder's Office AUG 10 1990

MAIN LINE EASEMENT

Those certain parcels of land situated in the City and County of San Francisco, State of California, described as follows:

Parcel No. 1:

Commencing at the northeasterly corner of Lot No. 8, as said Lot is shown on that certain map entitled "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCKS 5087, 5099 and 5101, SAN FRANCISCO, CALIFORNIA", as per map filed July 16, 1980, in Book 16 of Parcel Maps, Page 40, Records of said County, said corner being at the easterly terminus of that certain course shown on said map having a bearing and distance of "N 73°20' W 232.62'"; thence North 72°09'01" West along the northerly line of said Lot No. 8, and also said course, 13.84 feet to point in a line concentric with and distant 25.00 feet easterly, measured radially from the existing center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco), and the True Point of Beginning of the parcel of land herein to be described; thence southerly along said concentric line on a curve to the left, tangent to said curve at last said point bears South 9°30'54" West, having a radius of 5685.096 feet, a central angle of 2°04'27", an arc distance of 205.81 feet to the northerly line of the 0.411 acre parcel of land described in deed dated June 13, 1935, from Southern Pacific Transportation Company to State of California, recorded June 26, 1985, as Instrument 0660213, Reel

S.F. Recorder's Office AUG 10 1990

0867, Page 951, Official Records of said County; thence North 88°46'13" West along last said northerly line, 8.03 feet to a point for the northwesterly corner of last said land; thence southerly along the westerly line of last said land, on a curve to the left, tangent to last said curve at last said point bears South 6°24'50" West, having a radius of 5691.60 feet, a central angle of 1°34'15", an arc distance of 156.05 feet to a point of compound curve; thence continuing southerly along said westerly line on last said curve to the left, having a radius of 600.00 feet, a central angle of 9°52'28", an arc distance of 103.41 feet to a point in said concentric line; thence leaving said westerly line, southerly along said concentric line, on a curve to the left, tangent to last said curve at last said point bears South 3°49'34" West, having a radius of 5685.096 feet, a central angle of 1°51'01", an arc distance of 183.60 feet; thence South 1°28'31" West 12.80 feet to a point in the common County line between the County of San Francisco and the County of San Mateo, last said point being distant thereon, North 88°58'58" West 61.21 feet from its intersection with the westerly line of Tunnel Avenue, 60 feet in width; thence North 88°58'58" West along said County line and also the southerly line of said Lot No. 8, passing at 25.06 feet the said center line of Southern Pacific Transportation Company's Westbound main track, and continuing for a total distance of 100.13 feet; thence North 1°28'35" East 14.47 feet to a point in a line concentric with and distant 75.00 feet westerly, measured radially from last said center line; thence

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northerly along last said concentric line, on a curve to the right, tangent to last said curve at last said point bears North 1°58'33" East, having a radius of 5785.096 feet, a central angle of 6°42'08", an arc distance of 676.72 feet to said northerly line of said Lot No. 8; thence South 72°09'01" East along last said northerly line, passing at 76.11 feet the said center line of Southern Pacific Transportation Company's westbound main track, and continuing for a total distance of 101.45 feet to the True Point of Beginning, containing an area of 1.513 acres, more or less.

Parcel No. 2:

Commencing at the southerly terminus of that certain course having a distance of 109.964 feet as shown on that certain map entitled, "PARCEL MAP, BEING A PORTION OF ASSESSOR'S Block 5087, 5099, and 5101, SAN FRANCISCO, CALIFORNIA", as per map file July 16, 1980, in Book 16 of Parcel Maps, Page 40, Records of said County; thence North 17°58'59" East along said course, 3.2 feet to a chain link fence; thence North 32°17'13" East along said fence, 21.6 feet to a fence post; thence South 17°42'55" West, continuing along said fence, 100.2 feet to another fence post; thence North 69°17'37" West, continuing along said fence, 117.3 feet to another fence post; thence South 9°22'01" West, continuing along said fence, 2.0 feet to the True Point of Beginning of the parcel of land herein to be described; thence continuing South 9°22'01" West along said fence, 22.0 feet; thence North 80°37'59" West, leaving said fence, 22.8 feet; thence North 9°22'01" East 22.0 feet; thence South 80°37'59" East 22.8 feet to the True Point of Beginning.

SN
2 Mar 90
Rev 25 July 90
RHS.

EXHIBIT "B"
(Schedule 2)

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DRILL & SPUR TRACK EASEMENT

Those certain parcels or strips of land situated in the City and County of San Francisco, State of California, described as follows:

PARCEL NO. 1

Beginning at the point of intersection of the westerly line of Tunnel Avenue, 60 feet in width, with the common County line between the County of San Francisco and the County of San Mateo; thence North 88°58'58" West along said County line and also the southerly line of Lot No. 8, as said Lot is shown on that certain map entitled "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCKS 5087, 5099, & 5101, SAN FRANCISCO, CALIFORNIA," as per map filed July 16, 1980 in Book 16 of Maps, Page 40, Records of said County, 39.80 feet to a point in a line concentric and parallel with and distant 15.00 feet westerly, measured radially and at right angles from the center line of Southern Pacific Transportation Company's drill track (which lies easterly of and which diverges southerly from the center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco) and which crosses said County line at a point distant North 88°58'58" West along said County line 24.41 feet from its intersection with said westerly line of Tunnel Avenue); thence northerly along said concentric and parallel line, the curvature and course thereof as follows: northerly on a curve to the left, tangent to said curve at last said point bears North 12°03'07" West, having a radius of 558.14 feet, a central angle of 2°35'41", an arc distance of 25.28 feet to a point, and North 14°38'48" West, tangent to last said curve at last said point, 50.80 feet to a point in a line concentric with and distant 25.00 feet easterly, measured radially, from said center line of Southern Pacific

S.F. Recorder's Office AUG 10 1990

Transportation Company's westbound main track; thence northerly along last said concentric line, on a curve to the right, tangent to last said curve at last said point bears North 2°35'12" East, having a radius of 5685.096 feet, a central angle of 1°14'22", an arc distance of 122.98 feet to a point in the westerly line of the 0.411 acre parcel of land described in deed dated June 13, 1985, from Southern Pacific Transportation Company to the State of California, recorded June 25, 1985, as Instrument D660213, Reel D867, Page 591, Official Records of said County; thence southerly along last said westerly line, on a curve to the left, tangent to last said curve at last said point bears South 5°01'53" East, having a radius of 600.00 feet, a central angle of 8°36'56", an arc distance of 90.22 feet; thence South 28°11'12" East, continuing along last said westerly line, 70.12 feet to the easterly line of last said land; thence leaving last said westerly line, North 1°13'47" East along said easterly line, 1.77 feet to said westerly line of Tunnel Avenue; thence South 4°30'58" East along last said westerly line, 48.41 feet to the Point of Beginning, containing an area of 5018 square feet, more or less.

PARCEL NO. 2

A strip of land, 30 feet wide lying equally 15.00 feet on each side of the following described line:

Commencing at the northeasterly corner of the 0.411 acre parcel of land described in deed dated June 13, 1985, from Southern Pacific Transportation Company to State of California, recorded June 26, 1985, as Instrument D660213, Reel D867, Page 591, Official Records of said County; thence North 6°33'34" West 309.26 feet to a point in the center line of Southern Pacific Transportation Company drill track right of way (which track lies westerly of and which diverges southerly, southwesterly, and southerly from the center line of Southern Pacific Transportation Company's eastbound main track (San Francisco-San Jose) and which

Assessor's Office AUG 10 1990

crosses the common County line between the County of San Francisco and the County of San Mateo at a point distant South 88°58'58" East along said County line, 237.36 feet from its intersection with a line parallel with and distant 105.67 feet easterly, measured at right angles, from the easterly line of Bayshore Boulevard); thence South 15°19'08" West along said center line of Southern Pacific Transportation Company's drill track right of way, 88.81 feet to a point in the northerly line of Lot No. 8, as said Lot is shown on that certain map entitled "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCKS 5087, 5099 & 5101, SAN FRANCISCO, CALIFORNIA," as per map filed July 16, 1980, in Book 16 of Parcel Maps, Page 40, Records of said County, last said point being distant North 72°09'01" West along said northerly line, 68.75 feet from the northeasterly corner of said Lot No. 8, last said point being the True Point of Beginning of the line herein to be described; thence southerly and southwesterly and southerly continuing along said center line of Southern Pacific Transportation Company's drill track right of way, the courses and curvatures thereof as follows: South 15°19'08" West 3.62 feet to a point; southerly on a curve to the right, tangent to said curve at last said point is last described course, having a radius of 3564.239 feet, a central angle of 0°22'10", an arc distance of 22.99 feet to a point; South 15°41'18" West, tangent to last said curve at last said point, 152.89 feet to a point; southerly and southwesterly on a curve to the right, tangent to last said curve at last said point is last described course, having a radius of 382.245 feet, a central angle of 16°38'26", an arc distance of 111.02 feet to a point; South 32°19'44" West, tangent to the last said curve at last said point, 161.72 feet to a point; southwesterly on a curve to the right, tangent to last said curve at last said point is last described course, having a radius of 286.483 feet, a central angle of 35°25'30", an arc distance of 177.35 feet to a point; and South 67°45'14" West, tangent to last said curve at last said point, 544.20 feet.

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Excepting therefrom that portion lying easterly of and coincident with a line concentric with and distant 75.00 feet westerly, measured radially from the center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco).

Also, excepting therefrom that portion lying within said County of San Mateo.

PARCEL NO. 3

A strip of land, 30 feet wide, lying equally 15.00 feet on each side of the following described line:

Commencing at the northeasterly corner of the 0.411 acre parcel of land described in deed dated June 13, 1985, from Southern Pacific Transportation Company to State of California, recorded June 26, 1985, as Instrument 0660213, Reel 0867, Page 591, Official Records of said County; thence North 6°33'34" West 309.26 feet to a point in the center line of Southern Pacific Transportation Company's drill track right of way (which track lies westerly of and which diverges southerly, southwesterly, and southerly from the center line of Southern Pacific Transportation Company's eastbound main track (San Francisco-San Jose) and which crosses the common County line between the County of San Francisco and the County of San Mateo at a point distant South 88°58'58" East along said County line, 237.36 feet from its intersection with a line parallel with and distant 105.67 feet easterly, measured at right angles from the easterly line of Bayshore Boulevard); thence southerly along said center line of Southern Pacific Transportation Company's drill track right of way, the courses and curvatures thereof as follows: South 15°19'08" West 92.43 feet to a point; southerly on a curve to the right, tangent to said curve at last said point is last described course, having a radius of 3564.239 feet, a central angle of 0°22'10" an arc distance of 22.99 feet to a point; South 15°41'18" West, tangent to last said

S.J. Recorder's Office AUG 10 1990

curve at last said point, 152.89 feet to a point; southerly and southwesterly on a curve to the right, tangent to last said curve at last said point is last described course, having a radius of 382.245 feet, a central angle of 16°38'25", an arc distance of 111.02 feet to a point; and South 32°19'44" West, tangent to last said curve at last said point, 53.00 feet to a point in the center line of Southern Pacific Transportation Company's spur track right of way (which track diverges northerly from said center line of said Company's drill track) and the True Point of Beginning of the line herein to be described; thence northerly along said center line of Southern Pacific Transportation Company's spur track right of way, the courses and curvatures thereof as follows: North 25°58'09" East 81.00 feet to a point; northerly on a curve to the left, tangent to last said curve at last said point is last described course, having a radius of 382.245 feet, a central angle of 16°36'08", an arc distance of 110.76 feet to a point; and North 9°22'01" East, tangent to last said curve at last said point, 109.53 feet.

Excepting therefrom that portion of the above described 30 foot wide strip of land, herein above described in "PARCEL NO. 3, lying easterly of and coincident with a line concentric with and distant 75.00 feet westerly, measured radially from the center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco).

S.F. Assessor's Office AUG 10 1990

EXHIBIT "B"
(Schedule 3)

ACCESS ROADWAY EASEMENT

Those certain parcels of land situated in the City and County of San Francisco, State of California, described as follows:

PARCEL NO. 1

Beginning at the northeasterly corner of the 0.411 acre parcel of land described in deed dated June 13, 1985, from Southern Pacific Transportation Company to State of California, recorded June 26, 1985, as Instrument D660213, Reel D867, Page 591, Official Records of said County; thence North 88°46'13" West along the northerly line of said 0.411 acre parcel of land, 33.31 feet to a point in a line concentric with and distant 25.00 feet easterly, measured radially from the center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco), said point being distant South 88°46'13" East along said northerly line, 8.08 feet from the northwesterly corner of said 0.411 acre parcel of land; thence northerly along said concentric line, on a curve to the right, tangent to said curve at last said point bears North 6°26'27" East, having a radius of 5685.096 feet, a central angle of 2°04'27", an arc distance of 205.81 feet to the northerly line of Lot No. 8, as said Lot is shown on that certain map entitled "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCKS 5087, 5099, & 5101, SAN FRANCISCO, CALIFORNIA", as per map filed July 16, 1980, in Book 16 of Parcel Maps, Page 40, Records of said County; thence South 72°09'01" East along last said northerly line, 13.84 feet to the northeasterly corner of said Lot No. 8; thence South 13°42'29" West along the easterly line of said Lot No. 8 and also the westerly line of Tunnel Avenue, 60

S.F. Recorder's Office AUG 10 1990

feet in width, 10.88 feet to an angle point therein; thence continuing along said easterly line and also last said westerly line, South 1°13'47" West 190.00 feet to the Point of Beginning, containing an area of 4646 square feet, more or less.

PARCEL NO. 2

Beginning at the point of intersection of the northerly line of Lot No. 8, as said Lot is shown on that certain map entitled "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCKS 5087, 5099, & 5101, SAN FRANCISCO, CALIFORNIA", as per map filed July 16, 1980, in Book 16 of Parcel Maps, Page 40, Records of said County, with a line concentric with and distant 75.00 feet westerly, measured radially from the center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco), said point being distant North 72°09'01" West along said northerly line, 115.29 feet from the northeasterly corner of said Lot No. 8; thence southerly along said concentric line, on a curve to the left, tangent to said curve at last said point bears South 8°40'41" West, having a radius of 5785.096 feet, a central angle of 0°51'24", an arc distance of 86.50 feet to a line parallel and concentric with and distant 15.00 feet westerly, measured at right angles and radially from the center line of Southern Pacific Transportation Company's tail track (which lies westerly of and which diverges northerly from the center line of Southern Pacific Transportation Company's drill track and which drill track lies westerly of and which diverges southerly, southwesterly, and southerly from the center line of Southern Pacific Transportation Company's eastbound main track (San Francisco-San Jose), and which said drill track crosses the common County line between the County of San

AUG 10 1990

Francisco and the County of San Mateo at a point distant South 88°58'58" East along said County line, 237.36 feet from its intersection with a line parallel with and distant 105.67 feet easterly, measured at right angles from the easterly line of Bayshore Boulevard); thence southerly and southwesterly along said parallel and concentric line, the courses and curvature thereof as follows: South 9°22'01" West 67.82 feet to a point; southerly and southwesterly on a curve to the right, tangent to last said curve at last said point is last described course, having a radius of 367.245 feet, a central angle of 16°36'08", an arc distance of 106.41 feet to a point; and South 25°58'09" West, tangent to last said curve at last said point, 80.17 feet to a line parallel and concentric with and distant 15.00 feet northwesterly, measured at right angles and radially from said center line of Southern Pacific Transportation Company's drill track; thence southwesterly along last said parallel and concentric line, the courses and curvature thereof as follows: South 32°19'44" West 107.88 feet to a point; southwesterly on a curve to the right, tangent to last said curve at last said point is last described course, having a radius of 271.843 feet, a central angle of 35°25'30", an arc distance of 168.08 feet to a point; and South 67°45'14" West, tangent to last said curve at last said point, 356.47 feet to the easterly prolongation of the southerly line of Sunnydale Avenue, 66 feet wide; thence leaving last said parallel and concentric line, North 69°24'23" West along said prolongation, 65.40 feet to a point in the most westerly line of said Lot No. 8, last said point being the southerly terminus of that certain course shown on said map having a distance of "66.00'"; thence North 20°35'37" East along last said westerly line, 43.00 feet to a line parallel with and distant 10.00 feet northerly, measured at right angles from the easterly prolongation of the center line of said Sunnydale Avenue; thence South 69°24'23" East along last said prolongation, 13.70 feet to a point; thence easterly and northeasterly on a

S.F. Recorder's Office AUG 10 1990

curve to the left, tangent to last said curve at last said point is last described course, having a radius of 175.00 feet, a central angle of 42°50'23", an arc distance of 130.85 feet to a point in a line parallel and concentric with and distant 35.00 feet northwesterly, measured at right angles and radially from said center line of Southern Pacific Transportation Company's drill track; thence northeasterly along last said parallel and concentric line, the courses and curvature thereof as follows: North 67°45'14" East, tangent to last said curve at last said point, 246.15 feet to a point; northeasterly on a curve to the left, tangent to last said curve at last said point is last described course, having a radius of 251.843 feet, a central angle of 35°25'30", an arc distance of 155.71 feet to a point; and North 32°19'44" East, tangent to last said curve at last said point, 106.77 feet to a line parallel and concentric with and distant 35.00 feet westerly, measured at right angles and radially from said center line of Southern Pacific Transportation Company's tail track; thence northerly along last said parallel and concentric line, the courses and curvature thereof as follows: North 25°58'09" East 79.06 feet to a point; northeasterly and northerly on a curve to the left tangent to last said curve at last said point is last described course, having a radius of 347.245 feet, a central angle of 16°36'08", an arc distance of 100.62 feet to a point; and North 9°22'01" East, tangent to last said curve at last said point, 67.27 feet to a point in a line concentric with and distant 95.00 feet westerly, measured radially from said center line of Southern Pacific Transportation Company's westbound main track; thence leaving last said parallel and concentric line, northerly along last said concentric line, on a curve to the right, tangent to last said curve at last said point bears North 7°49'17" East, having a radius of 5805.096 feet, a central angle of 0°53'19", an arc distance of 90.03 feet to said northerly line of said Lot No. 8; thence South 72°09'01" East along last said northerly line, 20.26 feet to the Point of Beginning, containing an area of 0.519 of an acre, more or less.

SAN FRANCISCO RECORDER'S OFFICE
Bruce Bellson, Recorder
DOC - E962735

Thursday, August 22, 1991 09:40:37a
Rec 15.00 --- Pg 17.00
Scp 18.00 --- Mi 1.00
Cert 30.00 ---
TOTAL 63.00 163.00
REEL F445 IMAGE 0298

WHEN RECORDED MAIL TO:

Mr. Robert A. Colbert
Tuntex (U.S.A.) Inc.
150 Executive Park Boulevard
Suite 4200
San Francisco, CA 94134

DEED CORRECTING DESCRIPTION OF RAIL EASEMENT

THIS DEED CORRECTING DESCRIPTION OF RAIL EASEMENT (this "Correcting Grant"), is executed as of this 23RD day of JULY, 1991, by Southern Pacific Transportation Company, a Delaware corporation ("SPTCo") and Tuntex Properties, Inc. (Brisbane), formerly known as Oyster Point Properties, Inc., a California corporation ("Tuntex") on the basis of the following facts, understandings and intentions:

A. In furtherance of that certain Agreement of Purchase and Sale (the "Sale Agreement") dated as of December 28, 1989 by and among Tuntex, Tuntex (U.S.A.) Inc., a Delaware corporation, and SPTCo, SPTCo conveyed by grant deed certain property (the "Property") described with particularity in the Sale Agreement, reserving therefrom certain easements (the "Easements");

B. Subsequent to the execution of the Sale Agreement and conveyance of the Property, Oyster Point Properties, Inc., a California corporation, changed its name to "Tuntex Properties, Inc. (Brisbane)", without effecting any change in the corporate structure or identity;

C. In that certain executed letter, dated December 29, 1989, (the "Executed Letter"), SPTCo and Tuntex acknowledged and agreed that the legal description of the Easements, as set forth in Exhibit "B" to the grant deed executed and recorded on August 10, 1990 as Instrument No. C761808 in the Official Records of San Francisco County (the "Original Grant Deed") was not prepared by a surveyor, and thus it would be necessary to substitute therefor a legal description based on a survey;

D. Pursuant to the terms of the Executed Letter, SPTCo, at its sole cost and expense, caused a surveyor registered under the laws of the State of California to prepare a new legal description of the Easements attached hereto as Exhibit 1 (the "New Legal Description") and incorporated herein by this reference;

E. Pursuant to the terms of the Executed Letter, SPTCo and Tuntex agreed that, upon Tuntex's approval of the New Legal Description, SPTCo and Tuntex would execute and record in the Official Records of San Francisco County an instrument correcting the description of the Easements by substituting the New Legal Description for the description of the Easements set forth in the Original Grant Deed; and

EXH. 4

7. SPTCo and Tuntex have agreed that the substitution of the description of the Easements set forth in the Original Grant Deed with the New Legal Description shall be effected by the parties' execution and recording of this Correcting Deed.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES OF THE PARTIES AND OTHER VALUABLE CONSIDERATION by the execution and recording hereof, SPTCo and Tuntex hereby correct the Original Grant Deed by:

1. Deleting the legal description of the Easements set forth in the Original Grant Deed; and

2. Substituting therefor the New Legal Description attached hereto as Exhibit 1 and incorporated herein by this reference.

IN WITNESS WHEREOF, SPTCo and Tuntex have executed this Correcting Deed this 30 day of July, 1991.

"SPTCo"

SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation

By: _____

Its: Asst Vice President

"Tuntex"

TUNTEX (U.S.A.) INC, a Delaware corporation

By: _____

Its: Executive Manager

JO:ng

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E962735

State of California)
) ss
City and County of San Francisco)

On July 30, 1991, before me personally appeared J. Eric Li (here insert name and title of the officer), personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

OFFICIAL SEAL
C.A. HEH
NOTARY PUBLIC-CALIFORNIA
SAN MATEO COUNTY
My Comm. Expires Oct 25, 1992

Signature C M Freda (Seal)

4.3

STATE OF CALIFORNIA
City and County of San Francisco } ss.

E962735

On this 23rd day of JULY in the year One Thousand Nine Hundred and Ninety ONE
before me, JOSEPH F. JUBILADO, a Notary Public in and for the City and County of San Francisco, State of California, personally appeared

S. D. STEEL

known to me (or proved to me on the basis of satisfactory evidence) to be the
VICE PRESIDENT
of the corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named and he acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in my office in the City and County of San Francisco, the day and year in this certificate first above written.

OFFICIAL NOTARY SEAL
JOSEPH F. JUBILADO
Notary Public — California
SAN FRANCISCO COUNTY
My Comm. Expires JUN 01 1995

Joseph F. Jubilado
Notary Public in and for the City and County of San Francisco, State of California.

Corporation

My Commission Expires June 1, 1995

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EXHIBIT "1"

E962735

FORM OF RAILROAD EASEMENT

"Grantor excepts from the Property hereby conveyed and reserves unto itself, its successors and assigns:

A perpetual, exclusive easement in, on, under, over and through the locations described in Schedule 1 (Railroad Main Line Easement), Schedule 2 (Drill & Spur Track Easement), and Schedule 3 (Access Roadway Easement) attached hereto, in which areas Grantor (and its lessees, sublessees, licensees, successors or assigns) shall have the right to own, operate, maintain, repair, lease, license, and/or remove existing and/or future railroad, rail and railroad related equipment and facilities and communications lines and facilities of every kind and nature including but not limited to all existing facilities, telephone, telegraph, television and fiber optic lines and related equipment. All improvements presently existing on or hereafter constructed on the easement area, if owned by Grantor, shall remain the personal property of the Grantor and its successors and assigns. Upon abandonment or termination of the easement, or any portion thereof, Grantor shall be obligated to execute and deliver to Grantee or its successors and assigns an instrument in form and substance satisfactory to Grantee, or its successors and assigns, relinquishing the easement described in this paragraph. Grantor shall defend, indemnify and hold Grantee, its successors and assignees, harmless from and against any liability, damage, cost or expense arising from or in connection with Grantor's use of the property covered by the easement reserved herein.

Notwithstanding the exclusive nature of such easement, Grantor shall permit Grantee, its successors and assigns, (a) such rights of passage on, over, and under such easement area for such public or private streets and rights of way ("Rail Crossings") as Grantee may require to provide reasonable access to any improvements located on the Property, and (b) the right to construct (i) improvements over said easement commencing at a minimum height of thirty-five (35) feet above top of rail and (ii) structural support improvements and other improvements reasonably related to a railroad depot within the easement area ("Improvements"), in all cases subject to (a) approval of the location or locations and the design of such Rail Crossings and Improvements by the Grantor, which approval shall not be unreasonably withheld; (b) such conditions as Grantor may reasonably impose to protect its own operations over such easement area or to comply with applicable law; (c) approval of such Rail Crossings or Improvements by the California Public Utility Commission and by such other governmental and regulatory agencies as may be required; (d) acceptance, to the extent applicable, of such Rail Crossings as dedicated public streets by the City of San Francisco; and (e) construction of the physical improvements constituting such Rail Crossings and Improvements at no expense to the Grantor."

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EXHIBIT "I"

E962735

FORM OF RAILROAD EASEMENT

"Grantor excepts from the Property hereby conveyed and reserves unto itself, its successors and assigns:

A perpetual, exclusive easement in, on, under, over and through the locations described in Schedule 1 (Railroad Main Line Easement), Schedule 2 (Drill & Spur Track Easement), and Schedule 3 (Access Roadway Easement) attached hereto, in which areas Grantor (and its lessees, sublessees, licensees, successors or assigns) shall have the right to own, operate, maintain, repair, lease, license, and/or remove existing and/or future railroad, rail and railroad related equipment and facilities and communications lines and facilities of every kind and nature including but not limited to all existing facilities, telephone, telegraph, television and fiber optic lines and related equipment. All improvements presently existing on or hereafter constructed on the easement area, if owned by Grantor, shall remain the personal property of the Grantor and its successors and assigns. Upon abandonment or termination of the easement, or any portion thereof, Grantor shall be obligated to execute and deliver to Grantee or its successors and assigns an instrument in form and substance satisfactory to Grantee, or its successors and assigns, relinquishing the easement described in this paragraph. Grantor shall defend, indemnify and hold Grantee, its successors and assignees, harmless from and against any liability, damage, cost or expense arising from or in connection with Grantor's use of the property covered by the easement reserved herein.

Notwithstanding the exclusive nature of such easement, Grantor shall permit Grantee, its successors and assigns, (a) such rights of passage on, over, and under such easement area for such public or private streets and rights of way ("Rail Crossings") as Grantee may require to provide reasonable access to any improvements located on the Property, and (b) the right to construct (i) improvements over said easement commencing at a minimum height of thirty-five (35) feet above top of rail and (ii) structural support improvements and other improvements reasonably related to a railroad depot within the easement area ("Improvements"), in all cases subject to (a) approval of the location or locations and the design of such Rail Crossings and Improvements by the Grantor, which approval shall not be unreasonably withheld; (b) such conditions as Grantor may reasonably impose to protect its own operations over such easement area or to comply with applicable law; (c) approval of such Rail Crossings or Improvements by the California Public Utility Commission and by such other governmental and regulatory agencies as may be required; (d) acceptance, to the extent applicable, of such Rail Crossings as dedicated public streets by the City of San Francisco; and (e) construction of the physical improvements constituting such Rail Crossings and Improvements at no expense to the Grantor."

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Page 1 of 1

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Rec. 4 PM 90

E962735

EXHIBIT "1"
(Schedule 1)

MAIN LINE EASEMENT

Those certain parcels of land situated in the City and County of San Francisco, State of California, described as follows:

Parcel No. 1:

Commencing at the northeasterly corner of Lot No. 8, as said Lot is shown on that certain map entitled "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCKS 5087, 5099 and 5101, SAN FRANCISCO, CALIFORNIA", as per map filed July 16, 1980, in Book 16 of Parcel Maps, Page 40, Records of said County, said corner being at the easterly terminus of that certain course shown on said map having a bearing and distance of "N 73°20' W 232.62'"; thence North 72°09'01" West along the northerly line of said Lot No. 8, and also said course, 13.84 feet to a point in a line concentric with and distant 25.00 feet easterly, measured radially from the existing center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco), and the True Point of Beginning of the parcel of land herein to be described; thence southerly along said concentric line on a curve to the left; tangent to said curve at last said point bears South 8°30'54" West, having a radius of 5685.096 feet, a central angle of 2°04'27", an arc distance of 205.81 feet to the northerly line of the 0.411 acre parcel of land described in deed dated June 13, 1985, from Southern Pacific Transportation Company to State of California, recorded June 26, 1985, as Instrument D660213, Reel 0567, Page 951, Official Records of said County;

thence North 88°40'13" West along last said northerly line, 8.03 feet to a point for the northwesterly corner of last said land; thence southerly along the westerly line of last said land, on a curve to the left, tangent to last said curve at last said point bears South 6°24'50" West, having a radius of 5691.60 feet, a central angle of 1°34'15", an arc distance of 156.05 feet to a point of compound curve; thence continuing southerly along said westerly line on last said curve to the left, having a radius of 600.00 feet, a central angle of 9°52'28", an arc distance of 103.41 feet to a point in said concentric line; thence leaving said westerly line, southerly along said concentric line, on a curve to the left, tangent to last said curve at last said point bears South 3°43'34" West, having a radius of 5685.096 feet, a central angle of 1°51'01", an arc distance of 183.60 feet; thence South 1°28'31" West 12.80 feet to a point in the common County line between the County of San Francisco and the County of San Mateo, last said point being distant thereon, North 88°58'58" West 61.21 feet from its intersection with the westerly line of Tunnel Avenue, 60 feet in width; thence North 88°58'58" West along said County line and also the southerly line of said Lot No. 8, passing at 25.06 feet the said center line of Southern Pacific Transportation Company's Westbound main track, and continuing for a total distance of 100.13 feet; thence North 1°28'35" East 14.47 feet to a point in a line concentric with and distant 75.00 feet westerly, measured radially from last said center line; thence northerly along last said concentric line, on a curve to the right, tangent to last said curve at last said point bears North 1°56'33" East, having a radius of 5785.096 feet, a central angle of 6°42'08", an arc distance of 676.72 feet to said northerly line of said Lot No. 8; thence South 72°09'01" East along last said northerly line, passing at 75.11 feet the

said center line of Southern Pacific Transportation Company's westbound main track, and continuing for a total distance of 101.45 feet to the True Point of Beginning, containing an area of 1.513 acres, more or less.

Parcel No. 2:

Commencing at the northerly terminus of that certain course having a distance of 109.964 feet as shown on that certain map entitled, "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099, and 5101, SAN FRANCISCO, CALIFORNIA", as per map filed July 16, 1980, in Book 16 of Parcel Maps, Page 40, Records of said County; thence South 17°58'59" West along said course, 3.2 feet to a chain link fence; thence South 32°17'13" West along said fence, 21.6 feet to a fence post; thence South 17°42'55" West, continuing along said fence, 100.2 feet to another fence post; thence South 69°17'37" East, continuing along said fence, 117.3 feet to another fence post; thence North 9°22'01" East, continuing along said fence, 2.0 feet to the True Point of Beginning of the parcel of land herein to be described; thence continuing North 9°22'01" East along said fence, 22.0 feet; thence South 80°37'59" East, leaving said fence, 22.8 feet; thence South 9°22'01" West 22.0 feet; thence North 80°37'59" West 22.8 feet to the True Point of Beginning.

SN
2 Mar 90
Rev 25 June 90
RHS.

E962735

EXHIBIT "1"
(Schedule 2)

DRILL & SPUR TRACK EASEMENT

Those certain parcels or strips of land situated in the City and County of San Francisco, State of California, described as follows:

PARCEL NO. 1

Beginning at the point of intersection of the westerly line of Tunnel Avenue, 60 feet in width, with the common County line between the County of San Francisco and the County of San Mateo; thence North 88°58'58" West along said County line and also the southerly line of Lot No. 8, as said Lot is shown on that certain map entitled "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCKS 5087, 5099, & 5101, SAN FRANCISCO, CALIFORNIA," as per map filed July 16, 1980 in Book 16 of Maps, Page 40, Records of said County, 39.80 feet to a point in a line concentric and parallel with and distant 15.00 feet westerly, measured radially and at right angles from the center line of Southern Pacific Transportation Company's drill track (which lies easterly of and which diverges southerly from the center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco) and which crosses said County line at a point distant North 88°58'58" West along said County line 24.41 feet from its intersection with said westerly line of Tunnel Avenue); thence northerly along said concentric and parallel line, the curvature and course thereof as follows: northerly on a curve to the left, tangent to said curve at last said point bears North 12°03'07" West, having a radius of 558.14 feet, a central angle of 2°35'41", an arc distance of 25.28 feet to a point, and North 14°38'48" West, tangent to last said curve at last said point, 50.80 feet to a point in a line concentric with and distant 25.00 feet easterly, measured radially, from said center line of Southern Pacific

Transportation Company's westbound main track; thence northerly along last said concentric line, on a curve to the right, tangent to last said curve at last said point bears North 2°35'12" East, having a radius of 5685.096 feet, a central angle of 1°14'22", an arc distance of 122.08 feet to a point in the westerly line of the 0.411 acre parcel of land described in deed dated June 13, 1985, from Southern Pacific Transportation Company to the State of California, recorded June 25, 1985, as Instrument 0660213, Reel 0867, Page 591, Official Records of said County; thence southerly along last said westerly line, on a curve to the left, tangent to last said curve at last said point bears South 5°01'53" East, having a radius of 600.00 feet, a central angle of 8°36'56", an arc distance of 90.22 feet; thence South 28°11'12" East, continuing along last said westerly line, 70.12 feet to the easterly line of last said land; thence leaving last said westerly line, North 1°13'47" East along said easterly line, 1.77 feet to said westerly line of Tunnel Avenue; thence South 4°30'58" East along last said westerly line, 48.41 feet to the Point of Beginning, containing an area of 5018 square feet, more or less.

PARCEL NO. 2

A strip of land, 30 feet wide lying equally 15.00 feet on each side of the following described line:

Commencing at the northeasterly corner of the 0.411 acre parcel of land described in deed dated June 13, 1985, from Southern Pacific Transportation Company to State of California, recorded June 26, 1985, as Instrument 0660213, Reel 0867, Page 591, Official Records of said County; thence North 6°33'34" West 309.26 feet to a point in the center line of Southern Pacific Transportation Company drill track right of way (which track lies westerly of and which diverges southerly, southwesterly, and southerly from the center line of Southern Pacific Transportation Company's eastbound main track (San Francisco-San Jose) and which

crosses the common County line between the County of San Francisco and the County of San Mateo at a point distant South 88°58'58" East along said County line, 237.36 feet from its intersection with a line parallel with and distant 105.67 feet easterly, measured at right angles, from the easterly line of Bayshore Boulevard); thence South 15°19'08" West along said center line of Southern Pacific Transportation Company's drill track right of way, 88.81 feet to a point in the northerly line of Lot No. 8, as said Lot is shown on that certain map entitled "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCKS 5087, 5099 & 5101, SAN FRANCISCO, CALIFORNIA," as per map filed July 16, 1980, in Book 16 of Parcel Maps, Page 40, Records of said County, last said point being distant North 72°09'01" West along said northerly line, 68.75 feet from the northeasterly corner of said Lot No. 8, last said point being the True Point of Beginning of the line herein to be described; thence southerly and southwesterly and southerly continuing along said center line of Southern Pacific Transportation Company's drill track right of way, the courses and curvatures thereof as follows: South 15°19'08" West 3.62 feet to a point; southerly on a curve to the right, tangent to said curve at last said point is last described course, having a radius of 3564.239 feet, a central angle of 0°22'10", an arc distance of 22.99 feet to a point; South 15°41'18" West, tangent to last said curve at last said point, 152.89 feet to a point; southerly and southwesterly on a curve to the right, tangent to last said curve at last said point is last described course, having a radius of 382.245 feet, a central angle of 16°38'26", an arc distance of 111.02 feet to a point; South 32°19'44" West, tangent to the last said curve at last said point, 161.72 feet to a point; southwesterly on a curve to the right, tangent to last said curve at last said point is last described course, having a radius of 286.483 feet, a central angle of 35°25'30", an arc distance of 177.35 feet to a point; and South 67°45'14" West, tangent to last said curve at last said point, 544.20 feet.

Excepting therefrom that portion lying easterly of and coincident with a line concentric with and distant 75.00 feet westerly, measured radially from the center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco).

Also, excepting therefrom that portion lying within said County of San Mateo.

PARCEL NO. 3

A strip of land, 30 feet wide, lying equally 15.00 feet on each side of the following described line:

Commencing at the northeasterly corner of the 0.411 acre parcel of land described in deed dated June 13, 1985, from Southern Pacific Transportation Company to State of California, recorded June 26, 1985, as Instrument D660213, Reel D867, Page 591, Official Records of said County; thence North 6°33'34" West 309.26 feet to a point in the center line of Southern Pacific Transportation Company's drill track right of way (which track lies westerly of and which diverges southerly, southwesterly, and southerly from the center line of Southern Pacific Transportation Company's eastbound main track (San Francisco-San Jose) and which crosses the common County line between the County of San Francisco and the County of San Mateo at a point distant South 88°58'58" East along said County line, 237.36 feet from its intersection with a line parallel with and distant 105.67 feet easterly, measured at right angles from the easterly line of Bayshore Boulevard); thence southerly along said center line of Southern Pacific Transportation Company's drill track right of way, the courses and curvatures thereof as follows: South 15°19'08" West 92.43 feet to a point; southerly on a curve to the right, tangent to said curve at last said point is last described course, having a radius of 3564.239 feet, a central angle of 0°22'10" an arc distance of 22.99 feet to a point; South 15°41'18" West, tangent to last said

curve at last said point, 152.89 feet to a point; southerly and southwesterly on a curve to the right, tangent to last said curve at last said point is last described course, having a radius of 382.245 feet, a central angle of 16°38'26", an arc distance of 111.02 feet to a point; and South 32°19'44" West, tangent to last said curve at last said point, 53.00 feet to a point in the center line of Southern Pacific Transportation Company's spur track right of way (which track diverges northerly from said center line of said Company's drill track) and the True Point of Beginning of the line herein to be described; thence northerly along said center line of Southern Pacific Transportation Company's spur track right of way, the courses and curvatures thereof as follows: North 25°58'09" East 81.60 feet to a point; northerly on a curve to the left, tangent to last said curve at last said point is last described course; having a radius of 382.245 feet; a central angle of 16°36'08", an arc distance of 110.76 feet to a point; and North 9°22'01" East, tangent to last said curve at last said point, 109.53 feet.

Excepting therefrom that portion of the above described 30 foot wide strip of land, herein above described in "PARCEL NO. 3, lying easterly of and coincident with a line concentric with and distant 75.00 feet westerly, measured radially from the center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco).

D962735

EXHIBIT "1"
(Schedule 3)

ACCESS ROADWAY EASEMENT

Those certain parcels of land situated in the City and County of San Francisco, State of California, described as follows:

PARCEL NO. 1

Beginning at the northeasterly corner of the 0.411 acre parcel of land described in deed dated June 13, 1985, from Southern Pacific Transportation Company to State of California, recorded June 26, 1985, as Instrument D660213, Reel D867, Page 591, Official Records of said County; thence North 88°46'13" West along the northerly line of said 0.411 acre parcel of land, 33.31 feet to a point in a line concentric with and distant 25.00 feet easterly, measured radially from the center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco), said point being distant South 88°46'13" East along said northerly line, 8.08 feet from the northwesterly corner of said 0.411 acre parcel of land; thence northerly along said concentric line, on a curve to the right, tangent to said curve at last said point bears North 6°26'27" East, having a radius of 5685.096 feet, a central angle of 2°04'27", an arc distance of 205.81 feet to the northerly line of Lot No. 8, as said Lot is shown on that certain map entitled "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCKS 5087, 5099, & 5101, SAN FRANCISCO, CALIFORNIA", as per map filed July 16, 1980, in Book 16 of Parcel Maps, Page 40, Records of said County; thence South 72°09'01" East along last said northerly line, 13.84 feet to the northeasterly corner of said Lot No. 8; thence South 13°42'29" West along the easterly line of said Lot No. 8 and also the westerly line of Tunnel Avenue, 60

feet in width, 10.88 feet to an angle point therein; thence continuing along said easterly line and also last said westerly line, South 1°13'47" West 190.00 feet to the Point of Beginning, containing an area of 4646 square feet, more or less.

PARCEL NO. 2

Beginning at the point of intersection of the northerly line of Lot No. 8, as said Lot is shown on that certain map entitled "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCKS 5087, 5099, & 5101, SAN FRANCISCO, CALIFORNIA", as per map filed July 16, 1980, in Book 16 of Parcel Maps, Page 40, Records of said County, with a line concentric with and distant 75.00 feet westerly, measured radially from the center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco), said point being distant North 72°09'01" West along said northerly line, 115.29 feet from the northeasterly corner of said Lot No. 8; thence southerly along said concentric line, on a curve to the left, tangent to said curve at last said point bears South 8°40'41" West, having a radius of 5785.096 feet, a central angle of 0°51'24", an arc distance of 86.50 feet to a line parallel and concentric with and distant 15.00 feet westerly, measured at right angles and radially from the center line of Southern Pacific Transportation Company's tail track (which lies westerly of and which diverges northerly from the center line of Southern Pacific Transportation Company's drill track and which drill track lies westerly of and which diverges southerly, southwesterly, and southerly from the center line of Southern Pacific Transportation Company's eastbound main track (San Francisco-San Jose), and which said drill track crosses the common County line between the County of San

Francisco and the County of San Mateo at a point distant South 88°58'58" East along said County line, 237.36 feet from its intersection with a line parallel with and distant 105.67 feet easterly, measured at right angles from the easterly line of Bayshore Boulevard); thence southerly and southwesterly along said parallel and concentric line, the courses and curvature thereof as follows: South 9°22'01" West 67.82 feet to a point; southerly and southwesterly on a curve to the right, tangent to last said curve at last said point is last described course, having a radius of 367.245 feet, a central angle of 16°36'08", an arc distance of 106.41 feet to a point; and South 25°58'09" West, tangent to last said curve at last said point, 80.17 feet to a line parallel and concentric with and distant 15.00 feet northwesterly, measured at right angles and radially from said center line of Southern Pacific Transportation Company's drill track; thence southwesterly along last said parallel and concentric line, the courses and curvature thereof as follows: South 32°19'44" West 107.88 feet to a point; southwesterly on a curve to the right, tangent to last said curve at last said point is last described course, having a radius of 271.843 feet, a central angle of 35°25'30", an arc distance of 168.08 feet to a point; and South 67°45'14" West, tangent to last said curve at last said point, 356.47 feet to the easterly prolongation of the southerly line of Sunnydale Avenue, 66 feet wide; thence leaving last said parallel and concentric line, North 69°24'23" West along said prolongation, 65.40 feet to a point in the most westerly line of said Lot No. 8, last said point being the southerly terminus of that certain course shown on said map having a distance of "66.00'"; thence North 20°35'37" East along last said westerly line, 43.00 feet to a line parallel with and distant 10.00 feet northerly, measured at right angles from the easterly prolongation of the center line of said Sunnydale Avenue; thence South 69°24'23" East along last said prolongation, 13.70 feet to a point; thence easterly and northeasterly on a

curve to the left, tangent to last said curve at last said point is last described course, having a radius of 175.00 feet, a central angle of 42°50'23", an arc distance of 130.85 feet to a point in a line parallel and concentric with and distant 35.00 feet northwesterly, measured at right angles and radially from said center line of Southern Pacific Transportation Company's drill track; thence northeasterly along last said parallel and concentric line, the courses and curvature thereof as follows: North 67°45'14" East, tangent to last said curve at last said point, 246.15 feet to a point; northeasterly on a curve to the left, tangent to last said curve at last said point is last described course, having a radius of 251.843 feet, a central angle of 35°25'30", an arc distance of 155.71 feet to a point; and North 32°19'44" East, tangent to last said curve at last said point, 106.11 feet to a line parallel and concentric with and distant 35.00 feet westerly, measured at right angles and radially from said center line of Southern Pacific Transportation Company's tail track; thence northerly along last said parallel and concentric line, the courses and curvature thereof as follows: North 25°58'09" East 79.06 feet to a point; northeasterly and northerly on a curve to the left tangent to last said curve at last said point is last described course, having a radius of 347.245 feet, a central angle of 16°36'08", an arc distance of 100.62 feet to a point; and North 9°22'01" East, tangent to last said curve at last said point, 67.27 feet to a point in a line concentric with and distant 95.00 feet westerly, measured radially from said center line of Southern Pacific Transportation Company's westbound main track; thence leaving last said parallel and concentric line, northerly along last said concentric line, on a curve to the right, tangent to last said curve at last said point bears North 7°49'17" East, having a radius of 5805.096 feet, a central angle of 0°53'13", an arc distance of 90.03 feet to said northerly line of said Lot No. 8; thence South 72°09'01" East along last said northerly line, 20.26 feet to the Point of Beginning, containing an area of 0.619 of an acre, more or less.

20159K016863000
San Francisco Assessor-Recorder
Carmen Chu, Assessor-Recorder
DOC 2015-K016863-00
Acct 5002-Old Republic Title Company
Thursday, FEB 05, 2015 11:46:49
Ttl Pd$13,939.00 Nbr-0005097538
okc/RE/1-14

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

Patrick McNerney
14 Mint Plaza, Fifth Floor
San Francisco, CA 94103

Mail Tax Statements to:

Patrick McNerney
14 Mint Plaza, Fifth Floor
San Francisco, CA 94103

CRTC
02270154-27 DP
Blk 5087, lots 4 & 5
2201 Bayshore Blvd.

Space Above Line for Recorder's Use Only

(1567-58)

DOCUMENTARY TRANSFER TAX $ 13,875.00
XX Computed on the full value of the property conveyed
___ Computed on the full value less liens and encumbrances remaining at the time of sale
___ Not a Sale (Rev. & Tax. Code Section 11927(a))

Signature of Declarant or Agent Determining Tax

QUITCLAIM DEED

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (formerly known as Southern Pacific Transportation Company, a Delaware corporation), Grantor, in consideration of the sum of Ten Dollars ($10.00), and other valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, does hereby REMISE, RELEASE and forever QUITCLAIM unto **PATRICK McNERNEY**, an individual, as his sole and separate property, Grantee, whose address is 14 Mint Plaza, Fifth Floor, San Francisco, California 94103 and unto his heirs and assigns forever, all of Grantor's right, title, interest, estate, claim and demand, both at law and in equity, of, in, and to the real estate (hereinafter the "Property") situated in the City and County of San Francisco, State of California, identified and more particularly described as "Fee Parcel" in **Exhibit A**, hereto attached and hereby made a part hereof, together with any and all of Grantor's right, title and interest in and to portions of that certain Form of Railroad Easement reserved by Southern Pacific Transportation Company in that certain Grant Deed dated August 1, 1990, and recorded on August 10, 1990 in the Official Records of San Francisco County, California, as Instrument No. E761808, as modified by that certain Deed Correcting Description of Rail Easement dated July 23, 1991, and recorded on August 22, 1991 in the Official Records of San Francisco County, California, identified and more particularly described as "Schedule 1", "Schedule 2" and "Schedule 3" in the attached **Exhibit A** ("Railroad Easement").

Exh. 6

EXCEPTING FROM THIS QUITCLAIM AND RESERVING UNTO GRANTOR, its successors and assigns, forever, all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered underlying the Property, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable to Grantor, its successors and assigns, but without entering upon or using the surface of the Property, and in such manner as not to damage the surface of the Property, or to interfere with the use thereof by Grantee, its successors or assigns.

Except as may be otherwise provided in a written assignment or other written agreement between Grantor and Grantee, Grantor reserves all income (including, without limitation, rentals, license fees and royalties) from any existing license and other existing rights to use the Property and renewals thereof granted by Grantor or Grantor's predecessors in interest. Grantee agrees that if Grantee receives any such income, Grantee will promptly forward the income to Grantor.

Covenants.

The Property is quitclaimed by Grantor subject to the following covenants, conditions and restrictions which Grantee by the acceptance of this Deed covenants for itself, its successors and assigns, faithfully to keep, observe and perform:

Fence Covenant. Grantee, at its sole cost and expense, shall install, within ninety (90) days after the recording of this Deed, and thereafter maintain fencing or other barriers to prevent access to or encroachment on the railroad right-of-way of Grantor adjacent to the easterly boundary of the Property. The fencing or barrier must be of a design and type satisfactory to Grantor, and in compliance with applicable building codes. Grantee shall submit the plans for the fencing or barrier construction to:

Union Pacific Railroad Company
Assistant Vice President-Real Estate (Folder No. 1567-58)
1400 Douglas Street, Mail Stop 1690
Omaha, Nebraska 68179

for review and approval. Grantor shall complete such review and make appropriate response to Grantee within twenty (20) days after receipt of such plans by Grantor. Grantor shall not unreasonably withhold its approval of such plans. Such approval does not constitute a guarantee or warranty that such plans comply with applicable governmental laws, rules, regulations or ordinances, or that the fence as constructed will be structurally sound.

Railroad Proximity Covenant.

(a) Grantee acknowledges that the property abutting the easterly boundary line of the Property is dedicated and used for railroad purposes, that railroad operations may create noise, vibrations, emissions, fumes and odors twenty-four (24) hours a day, and that the amount, nature and intensity of railroad operations may increase or change (collectively, the

"Permitted Effects"). Grantee accepts the Property subject to the existence of the Permitted Effects. By acceptance of the Property, Grantee agrees that, at Grantee's sole cost and expense, as part of the development of the Property, Grantee shall design and install and/or construct and thereafter maintain improvements to reduce or limit the Permitted Effects and to comply with all governmental requirements, if any, which may be imposed as a condition to the development and use of the Property because of the Permitted Effects.

(b) Grantee shall not, and hereby waives all rights to, (i) institute legal proceedings against Grantor to reduce or lessen the Permitted Effects, and (ii) directly or indirectly participate in petition drives, lobbying efforts or other activities seeking the enactment of federal, state or local laws or ordinances to reduce or lessen the Permitted Effects. Any party breaching such covenant shall reimburse Grantor for all costs incurred by Grantor to comply with any such orders, laws or ordinances, including, without limitation, attorney fees and court costs.

(c) If Grantee sells or leases all or any portion of the Property, Grantee shall require all purchasers and tenants to acknowledge the location of the railroad operations abutting the Property and the existence of the Permitted Effects, and to agree in writing, for the benefit of Grantor, to comply with the above covenants.

Covenants To Run With Land. The foregoing covenants, conditions and restrictions shall run with the Property, the burdens of which will be binding on the successors and assigns of Grantee, and the benefits of which will inure to the successors and assigns of Grantor. A breach of the foregoing covenants, conditions and restrictions, or the continuance thereof, may, at the option of Grantor, its successors or assigns, be enjoined, abated or remedied by appropriate proceedings.

Environmental.

"As Is" Sale. Grantee acknowledges and agrees that the Property and the Railroad Easement have been sold and quitclaimed to and accepted by Grantee in an "as is" condition with all faults, and that the Property and the property over which the Railroad Easement is located ("Railroad Easement Area") have been used for, among other things, railroad operating right-of-way and for other commercial or industrial purposes. Grantor does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the Property, Railroad Easement Area or Railroad Easement or any of such related matters; in particular, but without limitation, Grantor makes no representations or warranties with respect to the use, condition, title, occupation or management of the Property, Railroad Easement Area or Railroad Easement, compliance with applicable statutes, laws, codes, ordinances, regulations or requirements relating to leasing, zoning, subdivision, planning, building, fire, safety, health or environmental matters (including but not limited to the existence of Hazardous Materials, in, on, under or emanating to or from the Property), compliance with covenants, conditions and restrictions (whether or not of record), other local, municipal, regional, state or federal requirements, or other statutes, laws, codes, ordinances, regulations or requirements (collectively, "Condition of the Property"). Grantee acknowledges and agrees that the Property and Railroad Easement have been sold and quitclaimed on the basis of Grantee's own

investigation of the physical and environmental conditions of the Property and Railroad Easement Area, including the subsurface conditions and Grantee assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation. For purposes of this Deed, "Hazardous Materials" means any flammable or explosive materials, petroleum or petroleum products, oil, crude oil, natural gas or synthetic gas usable for fuel, radioactive materials, asbestos, hazardous waste or substances or toxic waste or substances, including, without limitation, any substances now or hereafter defined as or included in the definition of "hazardous substances", "hazardous waste", "hazardous materials", "toxic materials" or "toxic substances" under any applicable federal, state or local law or regulation now or hereafter in effect.

Release. GRANTEE, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES GRANTOR, GRANTOR'S EMPLOYEES, AGENTS, OR ANY OTHER PERSON ACTING ON BEHALF OF GRANTOR, OF AND FROM ANY CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, DAMAGES, COSTS, EXPENSES, PENALTIES, FINES OR COMPENSATION WHATSOEVER, DIRECT OR INDIRECT, WHICH GRANTEE NOW HAS OR WHICH GRANTEE MAY HAVE IN THE FUTURE ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE CONDITION OF THE PROPERTY OR RAILROAD EASEMENT AREA, INCLUDING, WITHOUT LIMITATION, THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY AND RAILROAD EASEMENT AREA (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY AND RAILROAD EASEMENT AREA BY ANY HAZARDOUS MATERIALS), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING APPLIES REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS. WITH RESPECT TO THE FOREGOING RELEASE, GRANTEE EXPRESSLY WAIVES THE BENEFITS AND PROTECTIONS OF SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA, WHICH READS AS FOLLOWS:

> **1542. Certain Claims Not Affected by General Release. 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.**

Indemnity. FROM AND AFTER CLOSING, GRANTEE SHALL, TO THE MAXIMUM EXTENT PERMITTED BY LAW, INDEMNIFY, DEFEND AND SAVE HARMLESS GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, FINES, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND

EXPENSES, INCLUDING ATTORNEY'S FEES, IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER, ADJACENT OR EMANATING FROM OR TO THE PROPERTY BY ANY HAZARDOUS MATERIALS), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING APPLIES REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.

General Allocation of Environmental Responsibility. With respect to any existing or future presence of Hazardous Materials in, under or emanating to or from the Property or Railroad Easement Area, Grantee, at no cost to Grantor, agrees to be solely responsible for conducting any investigation, monitoring, remediation, removal, response or other action required by any governmental agency, court order, law or regulation or which may otherwise be necessary to make the Property or Railroad Easement Area suitable for Grantee's use of the Property or Railroad Easement Area.

IN WITNESS WHEREOF, the Grantor has caused this deed to be duly executed as of the 21st day of January, 2015.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

Attest:

Barbara Holder
Assistant Secretary

By: Tony K Love
Title: Assistant Vice President – Real Estate

(Seal)

Grantee hereby accepts this Quitclaim Deed and agrees for himself, his heirs and assigns, to be bound by the covenants set forth herein.

Dated this 2ND day of ~~January~~ FEBRUARY, 2015.

PATRICK McNERNEY

STATE OF NEBRASKA)
) **ss.**
COUNTY OF DOUGLAS)

On January 21, 2015, before me, Gregg A Larsen, Notary Public in and for said County and State, personally appeared TONY K. LOVE and Barbara Holder who are the Assistant Vice President – Real Estate and the Assistant Secretary, respectively, of Union Pacific Railroad Company, a Delaware corporation, and who are personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

GENERAL NOTARY - State of Nebraska
GREGG A. LARSEN
My Comm. Exp. Aug. 26, 2016

Gregg A Larsen
Notary Public

(Seal)

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On this 2nd day of ~~January~~ February, 2015, before me, June Y Williams, Notary Public, personally appeared PATRICK McNERNEY, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.

June Y Williams
Notary Public

(Seal)

JUNE V. WILLIAMS
COMM. #1997709
NOTARY PUBLIC-CALIFORNIA
SAN FRANCISCO COUNTY
My Comm. Expires Nov. 11, 2016

Union Pacific Railroad Company

San Francisco County, California

Exhibit "A"

FEE PARCEL

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

THOSE PORTIONS OF PARCEL 4 AND 5 AS SHOWN ON THAT CERTAIN "PARCEL MAP" FILED JULY 16, 1980 IN BOOK 16 OF PARCEL MAPS, PAGE 40, IN THE OFFICE OF THE COUNTY RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO DESCRIBED AS FOLLOWS:

PARCEL 1:

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID LOT NO. 4; THENCE ALONG THE NORTHERLY LINE OF SAID LOT NO. 4 SOUTH 74°37'31" EAST (SHOWN AS "SOUTH 75°48'30" EAST" ON SAID PARCEL MAP) 55.07 FEET TO A POINT IN A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE EXISTING CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO); THENCE SOUTHERLY ALONG SAID CONCENTRIC LINE ON A CURVE TO THE LEFT, TANGENT TO SAID CURVE AT LAST SAID POINT BEARS SOUTH 15°18'45" WEST, HAVING A RADIUS OF 5785.096 FEET, THROUGH A CENTRAL ANGLE OF 1°17'04" AN ARC DISTANCE OF 129.70 FEET TO THE WESTERLY LINE OF SAID LOT NO. 5; THENCE CONTINUING SOUTHERLY ALONG SAID CONCENTRIC LINE THROUGH A CENTRAL ANGLE OF 5°21'01" AN ARC DISTANCE OF 540.10 FEET TO THE SOUTHERLY LINE OF SAID LOT NO. 5; THENCE ALONG SAID SOUTHERLY LINE OF SAID LOT NO. 5 NORTH 72°09'01" WEST (SHOWN AS "NORTH 73°20' WEST" ON SAID PARCEL MAP) 117.46 FEET TO SOUTHEASTERLY LINE OF SAID LOT NO. 4; THENCE ALONG SAID SOUTHEASTERLY LINE SOUTH 32°17'13" WEST 29.95 FEET; THENCE NORTH 17°58'59" EAST (SHOWN AS "SOUTH 16°48'00" WEST" ON SAID PARCEL MAP) 309.26 FEET; THENCE SOUTH 71°57'37" EAST 19.979 FEET; THENCE NORTH 17°58'59" EAST 304.33 FEET; THENCE NORTH 74°37'31" WEST 20.00 FEET; THENCE NORTH 17°58'59" EAST 80.00 FEET TO THE POINT OF BEGINNING.

PORTION OF ASSESSOR'S LOTS 004 AND 005, BLOCK 5087

SCHEDULE 1
(MAIN LINE EASTMENT)

THOSE CERTAIN PARCELS OF LAND SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (NOT INCLUDED)

PARCEL NO. 2: (SIGNAL CABINET AREA)

COMMENCING AT THE NORTHERLY TERMINUS OF THAT CERTAIN COURSE HAVING A DISTANCE OF 109.964 FEET AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099, AND 5101, SAN FRANCISCO, CALIFORNIA", AS PER MAP FILED JULY 16, 1980, IN BOOK 16 OF PARCEL MAPS, PAGE 40, RECORDS OF SAID COUNTY; THENCE SOUTH 17°58'59" WEST ALONG SAID COURSE, 3.2 FEET TO A CHAIN LINK FENCE; THENCE SOUTH 32°17'13" WEST ALONG SAID FENCE, 21.6 FEET TO A FENCE POST; THENCE SOUTH 17°42'55" WEST, CONTINUING ALONG SAID FENCE, 100.2 FEET TO ANOTHER FENCE POST; THENCE SOUTH 69°17'37" EAST, CONTINUING ALONG SAID FENCE, 117.3 FEET TO ANOTHER FENCE POST; THENCE NORTH 9°22'01" EAST, CONTINUING ALONG SAID FENCE, 2.0 FEET TO THE TRUE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN TO BE DESCRIBED; THENCE CONTINUING NORTH 9°22'01" EAST ALONG SAID FENCE, 22.0 FEET; THENCE SOUTH 80°37'59" EAST, LEAVING SAID FENCE, 22.8 FEET; THENCE SOUTH 9°22'01" WEST 22.0 FEET; THENCE NORTH 80°37'59" WEST 22.8 FEET TO THE TRUE POINT OF BEGINNING.

SCHEDULE 2
(DRILL & SPUR TRACK EASEMENT)

THOSE CERTAIN PARCELS OR STRIPS OF LAND SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (NOT INCLUDED)

PARCEL NO. 2: (DRILL AND SPUR TRACK AREA)

A STRIP OF LAND, 30 FEET WIDE LYING EQUALLY 15.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEASTERLY CORNER OF THE 0.411 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED JUNE 13, 1985, FROM SOUTHERN PACIFIC TRANSPORTATION COMPANY TO STATE OF CALIFORNIA, RECORDED JUNE 26, 1985, AS INSTRUMENT D660213, REEL D867, PAGE 591, OFFICIAL RECORDS OF SAID COUNTY; THENCE NORTH 6°33'34" WEST 309.26 FEET TO A POINT IN THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY DRILL TRACK RIGHT OF WAY (WHICH TRACK LIES WESTERLY OF AND WHICH DIVERGES SOUTHERLY, SOUTHWESTERLY, AND SOUTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S EASTBOUND MAIN TRACK (SAN FRANCISCO - SAN JOSE) AND WHICH CROSSES THE COMMON COUNTY LINE BETWEEN THE COUNTY OF SAN FRANCISCO AND THE COUNTY OF SAN MATEO AT TA POINT DISTANT SOUTH 88°58'58" EAST ALONG SAID COUNTY LINE, 237.36 FEET FROM ITS INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT 105.67 FEET EASTERLY, MEASURED AT RIGHT ANGLES, FROM THE EASTERLY LINE OF BAYSHORE BOULEVARD); THENCE SOUTH 15°19'08" WEST ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY, 88.81 FEET TO A POINT IN THE NORTHERLY LINE OF LOT NO. 8, AS SAID LOT IS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099 & 5101, SAN FRANCISCO, CALIFORNIA," AS PER MAP FILED JULY 16, 1980, IN BOOK 16 OF PARCEL MAPS, PAGE 40, RECORDS OF SAID COUNTY, LAST SAID POINT BEING DISTANT NORTH 72°09'01" WEST ALONG SAID NORTHERLY LINE, 68.75 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT NO. 8, LAST SAID POINT BEING TRUE POINT OF BEGINNING OF

THE LINE HEREIN TO BE DESCRIBED; THENCE SOUTHERLY AND SOUTHWESTERLY AND SOUTHERLY CONTINUING ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY, THE COURSES AND CURVATURES THEREOF AS FOLLOWS: SOUTH 15°19'08" WEST 3.62 FEET TO A POINT; SOUTHERLY ON A CURVE TO THE RIGHT, TANGENT TO SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 3564.239 FEET, A CENTRAL ANGLE OF 0°22'10", AN ARC DISTANCE OF 22.99 FEET TO A POINT; SOUTH 15°41'18' WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 152.89 FEET TO A POINT; SOUTHERLY AND SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 382.245 FEET, A CENTRAL ANGLE OF 16°38'26", AN ARC DISTANCE OF 111.02 FEET TO A POINT; SOUTH 32°19'44" WEST, TANGENT TO THE LAST SAID CURVE AT LAST SAID POINT, 161.72 FEET TO A POINT; SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 286.483 FEET, A CENTRAL ANGLE OF 35°25'30", AN ARC DISTANCE OF 177.35 FEET TO A POINT; AND SOUTH 67°45'14" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 544.20 FEET.

EXCEPTING THEREFROM THAT PORTION LYING EASTERLY OF AND COINCIDENT WITH A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO).

ALSO, EXCEPTING THEREFROM THAT PORTION LYING WITHIN SAID COUNTY OF SAN MATEO.

PARCEL NO. 3: (DRILL AND SPUR TRACK AREA)

A STRIP OF LAND, 30 FEET WIDE, LAYING EQUALLY 15.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEASTERLY CORNER OF THE 0.411 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED JUNE 13, 1985, FROM SOUTHERN PACIFIC TRANSPORTATION COMPANY TO STATE OF CALIFORNIA, RECORDED JUNE 26, 1985, AS INSTRUMENT D660213, REAL D867, PAGE 591, OFFICIAL RECORDS OF SAID COUNTY; THENCE NORTH 6°33'34" WEST 309.26 FEET TO A POINT IN THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY (WHICH TRACK LIES WESTERLY OF AND WHICH DIVERGES SOUTHERLY, SOUTHWESTERLY, AND SOUTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S EASTBOUND MAIN TRACK (SAN FRANCISCO - SAN JOSE) AND WHICH CROSSES THE COMMON COUNTY LINE BETWEEN THE COUNTY OF SAN FRANCISCO AND THE COUNTY OF SAN MATEO AT A POINT DISTANT SOUTH 88°58'58" EAST ALONG SAID COUNTY LINE, 237.36 FEET FROM ITS INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT 105.67 FEET EASTERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY LINE OF BAYSHORE BOULEVARD); THENCE SOUTHERLY ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY, THE COURSES AND CURVATURES THEREOF AS FOLLOWS: SOUTH 15°19'08" WEST 92.43 FEET TO A POINT; SOUTHERLY ON A CURVE TO THE RIGHT, TANGENT TO SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 3564.239 FEET, A CENTRAL ANGLE OF 0°22'10' AND ARC DISTANCE OF 22.99 FEET TO A POINT; SOUTH 15°41'18" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 152.89 FEET TO A POINT; SOUTHERLY AND SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 382.245 FEET, A CENTRAL ANGLE OF 16°38'26", AN ARC DISTANCE OF 111.02 FEET TO A POINT; AND SOUTH 32°19'44" WEST, TANGENT TO LAST SAID CURVE AT

LAST SAID POINT, 53.00 FEET TO A POINT IN THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S SPUR TRACK RIGHT OF WAY (WHICH TRACK DIVERGES NORTHERLY FROM SAID CENTER LING OF SAID COMPANY'S DRILL TRACK) AND THE TRUE POINT OF BEGINNING OF THE LINE HEREIN TO BE DESCRIBED; THENCE NORTHERLY ALONG SAID CENTER OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S SPUR TRACK RIGHT OF WAY, THE COURSES AND CURVATURES THEREOF AS FOLLOWS: NORTH 25°58'09" EAST 81.00 FEET TO A POINT; NORTHERLY ON A CURVE TO THE LEFT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 382.245 FEET, A CENTRAL ANGLE OF 16°36'08", AND ARC DISTANCE OF 110.76 FEET TO A POINT; AND NORTH 9°22'01' EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 109.53 FEET.

EXCEPTING THEREFROM THAT PORTION OF THE ABOVE DESCRIBED 30 FOOT WIDE STRIP OF LAND, HEREIN ABOVE DESCRIBED IN "PARCEL NO. 3, LYING EASTERLY OF AND COINCIDENT WITH A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO).

SCHEDULE 3
(ACCESS ROADWAY EASEMENT)

THOSE CERTAIN PARCELS OF LAND SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (NOT INCLUDED)

PARCEL NO. 2: (ROADWAY AREA)

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF LOT NO. 8, AS SAID LOT IS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099, &5101, SAN FRANCISCO, CALIFORNIA", AS PER MAP FILED JULY 16, 1980, IN BOOK 16 OF PARCEL MAPS, PAGE 40, RECORDS OF SAID COUNTY, WITH A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO), SAID POINT BEING DISTANT NORTH 72°09'01" WEST ALONG SAID NORTHERLY LINE, 115.29 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT NO. 8; THENCE SOUTHERLY ALONG SAID CONCENTRIC LINE, ON A CURVE TO THE LEFT, TANGENT TO SAID CURVE AT LAST SAID POINT BEARS SOUTH 8°40'41" WEST, HAVING A RADIUS OF 5785.096 FEET, A CENTRAL ANGLE OF 0°51'24", AN ARC DISTANCE OF 86.50 FEET TO A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 15.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S TAIL TRACK (WHICH LIES WESTERLY OF AND WHICH DIVERGES NORTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK AND WHICH DRILL TRACK LIES WESTERLY OF AND WHICH DIVERGES SOUTHERLY, SOUTHWESTERLY, AND SOUTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S EASTBOUND MAIN TRACK (SAN FRANCISCO - SAN JOSE), AND WHICH SAID DRILL TRACK CROSSES THE COMMON COUNTY LINE BETWEEN COUNTY OF SAN FRANCISCO AND COUNTY OF SAN MATEO AT A POINT DISTANT SOUTH 88°58'58" EAST ALONG SAID COUNTY LINE, 237.36 FEET FROM ITS INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT 105.67 FEET EASTERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY LINE OF BAYSHORE BOULEVARD); THENCE SOUTHERLY AND SOUTHWESTERLY ALONG SAID PARALLEL AND

CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: SOUTH 9°22'01" WEST 67.82 FEET TO A POINT; SOUTHERLY AND SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 367.245 FEET, A CENTRAL ANGLE OF 16°36'08", AN ARC DISTANCE OF 106.41 FEET TO A POINT; AND SOUTH 25°58'09" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 80.17 FEET TO A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 15.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK; THENCE SOUTHWESTERLY ALONG LAST SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: SOUTH 32°19'44" WEST 107.88 FEET TO A POINT; SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 271.843 FEET, A CENTRAL ANGLE OF 35°25'30", AN ARC DISTANCE OF 168.08 FEET TO A POINT; AND SOUTH 67°45'14" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 356.47 FEET TO THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF SUNNYDALE AVENUE, 66 FEET WIDE; THENCE LEAVING LAST SAID PARALLEL AND CONCENTRIC LINE, NORTH 69°24'23" WEST ALONG SAID PROLONGATION, 65.40 FEET TO A POINT IN THE MOST WESTERLY LINE OF SAID LOT NO. 8, LAST SAID POINT BEING THE SOUTHERLY TERMINUS OF THAT CERTAIN COURSE SHOWN ON SAID MAP HAVING A DISTANCE OF "66.00'"; THENCE NORTH 20°35'37" EAST ALONG LAST SAID WESTERLY LINE, 43.00 FEET TO A LINE PARALLEL WITH AND DISTANT 10.00 FEET NORTHERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY PROLONGATION OF THE CENTER LINE OF SAID SUNNYDALE AVENUE; THENCE SOUTH 69°24'23" EAST ALONG LAST SAID PROLONGATION, 13.70 FEET TO A POINT; THENCE EASTERLY AND NORTHEASTERLY ON A CURVE TO THE LEFT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 175.00 FEET, A CENTRAL ANGLE OF 42°50'23", AN ARC DISTANCE OF 130.85 FEET TO A POINT IN A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 35.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK; THENCE NORTHEASTERLY ALONG LAST SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: NORTH 67°45'14" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 246.15 FEET TO A POINT; NORTHEASTERLY ON A CURVE TO THE LEFT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 251.843 FEET, A CENTRAL ANGLE OF 35°25'30", AN ARC DISTANCE OF 155.71 FEET TO A POINT; AND NORTH 32°19'44" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 106.77 FEET TO A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 35.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S TAIL TRACK; THENCE NORTHERLY ALONG LAST SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: NORTH 25°58'09" EAST 79.06 FEET TO A POINT; NORTHEASTERLY AND NORTHERLY ON A CURVE TO THE LEFT TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 347.245 FEET, A CENTRAL ANGLE OF 16°36'08", AND ARC DISTANCE OF 100.62 FEET TO A POINT; AND NORTH 9°22'01" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 67.27 FEET TO A POINT IN A LINE CONCENTRIC WITH AND DISTANT 95.00 FEET WESTERLY, MEASURED RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK; THENCE LEAVING LAST SAID PARALLEL AND CONCENTRIC LINE, NORTHERLY ALONG LAST SAID CONCENTRIC LINE, ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT BEARS NORTH 7°49'17" EAST, HAVING A RADIUS OF 5805.096 FEET, A CENTRAL ANGLE OF 0°53'19", AN ARC DISTANCE OF 90.03 FEET TO SAID NORTHERLY LINE OF SAID LOT NO. 8; THENCE SOUTH 72°09'01" EAST ALONG LAST SAID NORTHERLY LINE, 20.26 FEET TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 0.519 OF AN ACRE, MORE OR LESS.

INGRESS/EGRESS AREA

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

THAT PORTION OF PARCEL 4, A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AS SHOWN ON THAT CERTAIN "PARCEL MAP" FILED JULY 16, 1980 IN BOOK 16 OF PARCEL MAPS AT PAGE 40, IN THE OFFICE OF THE COUNTY RECORDERS OF THE CITY AND COUNTY OF SAN FRANCISCO, LYING SOUTHERLY OF THE EASTERLY PROLONGATION OF THE NORTHERLY LINE OF LOT NO. 7 OF SAID PARCEL MAP.

Union Pacific Railroad Co.
Real Estate Department
Omaha, NE

LD 0156758
January 16, 2015

RECORDING REQUESTED BY:

Old Republic Title Company

Escrow No.:
APN: 5087; Portions of 005 and 004 ✓
Situs: APN 5087; portion of Lot 004 and 005 ✓
No Property address

When Recorded Mail Document and Tax Statements to:

424 Jessie Historic Properties, LLC
14 Mint Plaza, 5th Floor
San Francisco, CA 94103

20169K3282380[illegible]8
San Francisco [illegible]essor-Recorder
Carmen Chu, Assessor-Recorder
DOC 2016-K328238-00
Acct 5002-Old Republic Title Company
Wednesday, SEP 14, 2016 08:44:57
Ttl Pd $39.00 Nbr-0005457639
oar/RE/1-8

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

Grant Deed

The undersigned grantor(s) declare(s):
Documentary Transfer Tax is $0.00 transfer from individual name to single member LLC
(X) computed on full value of property conveyed, or
( ) computed on full value less of liens and encumbrances remaining at time of sale.
( ) Unincorporated area: (X) City of San Francisco

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
Patrick McNerney, an individual, as his sole and separate property

hereby GRANT(S) to
424 Jessie Historic Properties, LLC, a California limited liability company

that property in City of San Francisco, San Francisco County, State of California, described as:
See "Exhibit A" attached hereto and made a part hereof.

Date: August 17, 2016

Patrick McNerney

cription: San Francisco,CA Document - Year.DocID 2016.328238 Page: 1 of 8

EXH. - 7

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

State of California
County of San Francisco

On 9.12.16 before me, June Y Williams a Notary Public, personally appeared Patrick McNerney, 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: June Y Williams

Name: June Y Williams
(Typed or Printed)

(Seal)

JUNE Y. WILLIAMS
COMM. #1997789
NOTARY PUBLIC-CALIFORNIA
SAN FRANCISCO COUNTY
My Comm. Expires Nov. 11, 2016

Exhibit "A"

FEE PARCEL

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

THOSE PORTIONS OF PARCEL 4 AND 5 AS **SHOWN ON** THAT **CERTAIN "PARCEL MAP" FILED** JULY 16, 1980 **IN BOOK 16 OF PARCEL MAPS,** PAGE 40, **IN THE OFFICE** OF **THE COUNTY RECORDER OF THE** CITY AND **COUNTY OF SAN FRANCISCO** DESCRIBED **AS FOLLOWS:**

PARCEL 1:

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID LOT NO. 4; THENCE ALONG THE NORTHERLY LINE OF SAID LOT NO. 4 SOUTH 74°37'31" EAST (SHOWN AS "SOUTH 75°48'30" EAST" ON SAID PARCEL MAP) 55.07 FEET TO A POINT IN A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE EXISTING CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO); THENCE SOUTHERLY ALONG SAID CONCENTRIC LINE ON A CURVE TO THE LEFT, TANGENT TO SAID CURVE AT LAST SAID POINT BEARS SOUTH 15°18'45" WEST, HAVING A RADIUS OF 5785.096 FEET, THROUGH A CENTRAL ANGLE OF 1°17'04" AN ARC DISTANCE OF 129.70 FEET TO THE WESTERLY LINE OF SAID LOT NO. 5; THENCE CONTINUING SOUTHERLY ALONG SAID CONCENTRIC LINE THROUGH A CENTRAL ANGLE OF 5°21'01" AN ARC DISTANCE OF 540.10 FEET TO THE SOUTHERLY LINE OF SAID LOT NO. 5; THENCE ALONG SAID SOUTHERLY LINE OF SAID LOT NO. 5 NORTH 72°09'01" WEST (SHOWN AS "NORTH 73°20' WEST" ON SAID PARCEL MAP) 117.46 FEET TO SOUTHEASTERLY LINE OF SAID LOT NO. 4; THENCE ALONG SAID SOUTHEASTERLY LINE SOUTH 32°17'13" WEST 29.95 FEET; THENCE NORTH 17°58'59" EAST (SHOWN AS "SOUTH 16°48'00" WEST" ON SAID PARCEL MAP) 309.26 FEET; THENCE SOUTH 71°57'31" EAST 19.979 FEET; THENCE NORTH 17°58'59" EAST 304.33 FEET; THENCE NORTH 74°37'31" WEST 20.00 FEET; THENCE NORTH 17°58'59" EAST 80.00 FEET TO THE POINT OF BEGINNING.

PORTION OF ASSESSOR'S LOTS 004 AND 005, BLOCK 5087

SCHEDULE 1
(MAIN LINE EASTMENT)

THOSE CERTAIN PARCELS OF LAND SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (NOT INCLUDED)

PARCEL NO. 2: (SIGNAL CABINET AREA)

COMMENCING AT THE NORTHERLY TERMINUS OF THAT CERTAIN COURSE HAVING A DISTANCE OF 109.964 FEET AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099, AND 5101, SAN FRANCISCO, CALIFORNIA", AS PER MAP FILED JULY 16, 1980, IN BOOK 16 OF PARCEL MAPS, PAGE 40, RECORDS OF SAID COUNTY; THENCE SOUTH 17°58'59" WEST ALONG SAID COURSE, 3.2 FEET TO A CHAIN LINK FENCE; THENCE SOUTH 32°17'13" WEST ALONG SAID FENCE, 21.6 FEET TO A FENCE POST; THENCE SOUTH 17°42'55" WEST, CONTINUING ALONG SAID FENCE, 100.2 FEET TO ANOTHER FENCE POST; THENCE SOUTH 69°17'37" EAST, CONTINUING ALONG SAID FENCE, 117.3 FEET TO ANOTHER FENCE POST; THENCE NORTH 9°22'01" EAST, CONTINUING ALONG SAID FENCE, 2.0 FEET TO THE TRUE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN TO BE DESCRIBED; THENCE CONTINUING NORTH 9°22'01" EAST ALONG SAID FENCE, 22.0 FEET; THENCE SOUTH 80°37'59" EAST, LEAVING SAID FENCE, 22.8 FEET; THENCE SOUTH 9°22'01" WEST 22.0 FEET; THENCE NORTH 80°37'59" WEST 22.8 FEET TO THE TRUE POINT OF BEGINNING.

SCHEDULE 2
(DRILL & SPUR TRACK EASEMENT)

THOSE CERTAIN PARCELS OR STRIPS OF LAND SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (NOT INCLUDED)

PARCEL NO. 2: (DRILL AND SPUR TRACK AREA)

A STRIP OF LAND, 30 FEET WIDE LYING EQUALLY 15.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEASTERLY CORNER OF THE 0.411 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED JUNE 13, 1985, FROM SOUTHERN PACIFIC TRANSPORTATION COMPANY TO STATE OF CALIFORNIA, RECORDED JUNE 26, 1985, AS INSTRUMENT D660213, REEL D867, PAGE 591, OFFICIAL RECORDS OF SAID COUNTY; THENCE NORTH 6°33'34" WEST 309.26 FEET TO A POINT IN THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY DRILL TRACK RIGHT OF WAY (WHICH TRACK LIES WESTERLY OF AND WHICH DIVERGES SOUTHERLY, SOUTHWESTERLY, AND SOUTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S EASTBOUND MAIN TRACK (SAN FRANCISCO - SAN JOSE) AND WHICH CROSSES THE COMMON COUNTY LINE BETWEEN THE COUNTY OF SAN FRANCISCO AND THE COUNTY OF SAN MATEO AT TA POINT DISTANT SOUTH 88°58'58" EAST ALONG SAID COUNTY LINE, 237.36 FEET FROM ITS INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT 105.67 FEET EASTERLY, MEASURED AT RIGHT ANGLES, FROM THE EASTERLY LINE OF BAYSHORE BOULEVARD); THENCE SOUTH 15°19'08" WEST ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY, 88.81 FEET TO A POINT IN THE NORTHERLY LINE OF LOT NO. 8, AS SAID LOT IS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099 & 5101, SAN FRANCISCO, CALIFORNIA," AS PER MAP FILED JULY 16, 1980, IN BOOK 16 OF PARCEL MAPS, PAGE 40, RECORDS OF SAID COUNTY, LAST SAID POINT BEING DISTANT NORTH 72°09'01" WEST ALONG SAID NORTHERLY LINE, 68.75 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT NO. 8, LAST SAID POINT BEING TRUE POINT OF BEGINNING OF

THE LINE HEREIN TO BE DESCRIBED; THENCE SOUTHERLY AND SOUTHWESTERLY AND SOUTHERLY CONTINUING ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY, THE COURSES AND CURVATURES THEREOF AS FOLLOWS: SOUTH 15°19'08" WEST 3.62 FEET TO A POINT; SOUTHERLY ON A CURVE TO THE RIGHT, TANGENT TO SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 3564.239 FEET, A CENTRAL ANGLE OF 0°22'10", AN ARC DISTANCE OF 22.99 FEET TO A POINT; SOUTH 15°41'18' WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 152.89 FEET TO A POINT; SOUTHERLY AND SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 382.245 FEET, A CENTRAL ANGLE OF 16°38'26", AN ARC DISTANCE OF 111.02 FEET TO A POINT; SOUTH 32°19'44" WEST, TANGENT TO THE LAST SAID CURVE AT LAST SAID POINT, 161.72 FEET TO A POINT; SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 286.483 FEET, A CENTRAL ANGLE OF 35°25'30", AN ARC DISTANCE OF 177.35 FEET TO A POINT; AND SOUTH 67°45'14" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 544.20 FEET.

EXCEPTING THEREFROM THAT PORTION LYING EASTERLY OF AND COINCIDENT WITH A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO).

ALSO, EXCEPTING THEREFROM THAT PORTION LYING WITHIN SAID COUNTY OF SAN MATEO.

PARCEL NO. 3: (DRILL AND SPUR TRACK AREA)

A STRIP OF LAND, 30 FEET WIDE, LAYING EQUALLY 15.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEASTERLY CORNER OF THE 0.411 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED JUNE 13, 1985, FROM SOUTHERN PACIFIC TRANSPORTATION COMPANY TO STATE OF CALIFORNIA, RECORDED JUNE 26, 1985, AS INSTRUMENT D660213, REAL D867, PAGE 591, OFFICIAL RECORDS OF SAID COUNTY; THENCE NORTH 6°33'34" WEST 309.26 FEET TO A POINT IN THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY (WHICH TRACK LIES WESTERLY OF AND WHICH DIVERGES SOUTHERLY, SOUTHWESTERLY, AND SOUTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S EASTBOUND MAIN TRACK (SAN FRANCISCO - SAN JOSE) AND WHICH CROSSES THE COMMON COUNTY LINE BETWEEN THE COUNTY OF SAN FRANCISCO AND THE COUNTY OF SAN MATEO AT A POINT DISTANT SOUTH 88°58'58" EAST ALONG SAID COUNTY LINE, 237.36 FEET FROM ITS INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT 105.67 FEET EASTERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY LINE OF BAYSHORE BOULEVARD); THENCE SOUTHERLY ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY, THE COURSES AND CURVATURES THEREOF AS FOLLOWS: SOUTH 15°19'08" WEST 92.43 FEET TO A POINT; SOUTHERLY ON A CURVE TO THE RIGHT, TANGENT TO SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 3564.239 FEET, A CENTRAL ANGLE OF 0°22'10' AND ARC DISTANCE OF 22.99 FEET TO A POINT; SOUTH 15°41'18" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 152.89 FEET TO A POINT; SOUTHERLY AND SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 382.245 FEET, A CENTRAL ANGLE OF 16°38'26", AN ARC DISTANCE OF 111.02 FEET TO A POINT; AND SOUTH 32°19'44" WEST, TANGENT TO LAST SAID CURVE AT

LAST SAID POINT, 53.00 FEET TO A POINT IN THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S SPUR TRACK RIGHT OF WAY (WHICH TRACK DIVERGES NORTHERLY FROM SAID CENTER LING OF SAID COMPANY'S DRILL TRACK) AND THE TRUE POINT OF BEGINNING OF THE LINE HEREIN TO BE DESCRIBED; THENCE NORTHERLY ALONG SAID CENTER OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S SPUR TRACK RIGHT OF WAY, THE COURSES AND CURVATURES THEREOF AS FOLLOWS: NORTH 25°58'09" EAST 81.00 FEET TO A POINT; NORTHERLY ON A CURVE TO THE LEFT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 382.245 FEET, A CENTRAL ANGLE OF 16°36'08", AND ARC DISTANCE OF 110.76 FEET TO A POINT; AND NORTH 9°22'01' EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 109.53 FEET.

EXCEPTING THEREFROM THAT PORTION OF THE ABOVE DESCRIBED 30 FOOT WIDE STRIP OF LAND, HEREIN ABOVE DESCRIBED IN "PARCEL NO. 3, LYING EASTERLY OF AND COINCIDENT WITH A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO).

SCHEDULE 3
(ACCESS ROADWAY EASEMENT)

THOSE CERTAIN PARCELS OF LAND SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (NOT INCLUDED)

PARCEL NO. 2: (ROADWAY AREA)

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF LOT NO. 8, AS SAID LOT IS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099, &5101, SAN FRANCISCO, CALIFORNIA", AS PER MAP FILED JULY 16, 1980, IN BOOK 16 OF PARCEL MAPS, PAGE 40, RECORDS OF SAID COUNTY, WITH A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO), SAID POINT BEING DISTANT NORTH 72°09'01" WEST ALONG SAID NORTHERLY LINE, 115.29 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT NO. 8; THENCE SOUTHERLY ALONG SAID CONCENTRIC LINE, ON A CURVE TO THE LEFT, TANGENT TO SAID CURVE AT LAST SAID POINT BEARS SOUTH 8°40'41" WEST, HAVING A RADIUS OF 5785.096 FEET, A CENTRAL ANGLE OF 0°51'24", AN ARC DISTANCE OF 86.50 FEET TO A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 15.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S TAIL TRACK (WHICH LIES WESTERLY OF AND WHICH DIVERGES NORTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK AND WHICH DRILL TRACK LIES WESTERLY OF AND WHICH DIVERGES SOUTHERLY, SOUTHWESTERLY, AND SOUTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S EASTBOUND MAIN TRACK (SAN FRANCISCO - SAN JOSE), AND WHICH SAID DRILL TRACK CROSSES THE COMMON COUNTY LINE BETWEEN COUNTY OF SAN FRANCISCO AND COUNTY OF SAN MATEO AT A POINT DISTANT SOUTH 88°58'58" EAST ALONG SAID COUNTY LINE, 237.36 FEET FROM ITS INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT 105.67 FEET EASTERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY LINE OF BAYSHORE BOULEVARD); THENCE SOUTHERLY AND SOUTHWESTERLY ALONG SAID PARALLEL AND

CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: SOUTH 9°22'01" WEST 67.82 FEET TO A POINT; SOUTHERLY AND SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 367.245 FEET, A CENTRAL ANGLE OF 16°36'08", AN ARC DISTANCE OF 106.41 FEET TO A POINT; AND SOUTH 25°58'09" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 80.17 FEET TO A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 15.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK; THENCE SOUTHWESTERLY ALONG LAST SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: SOUTH 32°19'44" WEST 107.88 FEET TO A POINT; SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 271.843 FEET, A CENTRAL ANGLE OF 35°25'30", AN ARC DISTANCE OF 168.08 FEET TO A POINT; AND SOUTH 67°45'14" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 356.47 FEET TO THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF SUNNYDALE AVENUE, 66 FEET WIDE; THENCE LEAVING LAST SAID PARALLEL AND CONCENTRIC LINE, NORTH 69°24'23" WEST ALONG SAID PROLONGATION, 65.40 FEET TO A POINT IN THE MOST WESTERLY LINE OF SAID LOT NO. 8, LAST SAID POINT BEING THE SOUTHERLY TERMINUS OF THAT CERTAIN COURSE SHOWN ON SAID MAP HAVING A DISTANCE OF "66.00'"; THENCE NORTH 20°35'37" EAST ALONG LAST SAID WESTERLY LINE, 43.00 FEET TO A LINE PARALLEL WITH AND DISTANT 10.00 FEET NORTHERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY PROLONGATION OF THE CENTER LINE OF SAID SUNNYDALE AVENUE; THENCE SOUTH 69°24'23" EAST ALONG LAST SAID PROLONGATION, 13.70 FEET TO A POINT; THENCE EASTERLY AND NORTHEASTERLY ON A CURVE TO THE LEFT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 175.00 FEET, A CENTRAL ANGLE OF 42°50'23", AN ARC DISTANCE OF 130.85 FEET TO A POINT IN A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 35.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK; THENCE NORTHEASTERLY ALONG LAST SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: NORTH 67°45'14" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 246.15 FEET TO A POINT; NORTHEASTERLY ON A CURVE TO THE LEFT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 251.843 FEET, A CENTRAL ANGLE OF 35°25'30", AN ARC DISTANCE OF 155.71 FEET TO A POINT; AND NORTH 32°19'44" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 106.77 FEET TO A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 35.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S TAIL TRACK; THENCE NORTHERLY ALONG LAST SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: NORTH 25°58'09" EAST 79.06 FEET TO A POINT; NORTHEASTERLY AND NORTHERLY ON A CURVE TO THE LEFT TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 347.245 FEET, A CENTRAL ANGLE OF 16°36'08", AND ARC DISTANCE OF 100.62 FEET TO A POINT; AND NORTH 9°22'01" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 67.27 FEET TO A POINT IN A LINE CONCENTRIC WITH AND DISTANT 95.00 FEET WESTERLY, MEASURED RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK; THENCE LEAVING LAST SAID PARALLEL AND CONCENTRIC LINE, NORTHERLY ALONG LAST SAID CONCENTRIC LINE, ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT BEARS NORTH 7°49'17" EAST, HAVING A RADIUS OF 5805.096 FEET, A CENTRAL ANGLE OF 0°53'19", AN ARC DISTANCE OF 90.03 FEET TO SAID NORTHERLY LINE OF SAID LOT NO. 8; THENCE SOUTH 72°09'01" EAST ALONG LAST SAID NORTHERLY LINE, 20.26 FEET TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 0.519 OF AN ACRE, MORE OR LESS.

INGRESS/EGRESS AREA

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

THAT PORTION OF PARCEL 4, A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AS SHOWN ON THAT CERTAIN "PARCEL MAP" FILED JULY 16, 1980 IN BOOK 16 OF PARCEL MAPS AT PAGE 40, IN THE OFFICE OF THE COUNTY RECORDERS OF THE CITY AND COUNTY OF SAN FRANCISCO, LYING SOUTHERLY OF THE EASTERLY PROLONGATION OF THE NORTHERLY LINE OF LOT NO. 7 OF SAID PARCEL MAP.

RECEIVED DATE: For Staff Use only	
ISSUE BY DATE: For Staff Use only	

SAN FRANCISCO
PLANNING
DEPARTMENT

APPLICATION PACKET FOR
Preliminary Project Assessment

Planning Department
1650 Mission Street
Suite 400
San Francisco, CA
94103-9425

T: 415.558.6378
F: 415.558.6409

Planning Department staff are available to advise you in the preparation of this application. Call (415) 558-6377 for further information.

WHAT IS A PRELIMINARY PROJECT ASSESSMENT?

The Preliminary Project Assessment (PPA) is a preliminary process that evaluates moderate to large projects before development applications are filed. This early viewing of the project provides sponsors with feedback and procedural instructions, and also allows staff to coordinate at the beginning in the development process. The PPA application is not a development application. Issuance of a PPA letter is not a development approval or denial.

WHEN IS A PRELIMINARY PROJECT ASSESSMENT NECESSARY?

A PPA is required for any project that is

1) creating 7 or more dwelling units, and/or

2) changes of use of 25,000 square feet or more, and/or

3) constructing a new non-residential building or addition of 10,001 square feet or more.

The Department may also request other complex projects not meeting these thresholds to undergo a PPA.

HOW DOES THE PROCESS WORK?

PPA applications must be submitted in person at the Planning Information Center, 1660 Mission Street, first floor, with the required materials along with a check payable to the Planning Department. (Please consult the current fee schedule, available at the Planning Information Center.) The application will not be accepted by mail, messenger or at the Planning Department reception desk. Applicants may request a 30-minute meeting with the assigned planners to present and explain the proposal to Department staff. The purpose of this meeting is not for planners to provide feedback on the project, but to give applicants the opportunity to clearly present the project to the Department. The Department will issue a PPA letter to the applicant within 90 days. Revising or submitting new materials may result in a restart of the 90-day timetable. The letter includes procedural requirements (applications, approvals, etc.) and general comments on design and other significant issues. The letter is valid for a period of 18 months. Sponsors may elect to schedule one project review meeting with Department staff within 30 days of the issuance of the PPA letter.

An Environmental Evaluation ("EE") application will be accepted for filing concurrently with PPA applications, rather than only after PPA letter issuance. To the extent appropriate, EE applications submitted prior to the PPA letter issuance should be amended to address input from the PPA letter.

WHO MAY APPLY FOR A PRELIMINARY PROJECT ASSESSMENT?

Any property owner or authorized agent of a property owner may file a PPA application.

INSTRUCTIONS:

1. Please fill out the attached Application for a PPA. If the applicant in this case is the authorized agent of the property owner, rather than the owner, a letter signed by the owner and creating or acknowledging that agency must be attached and included in the application for the PPA.

2. In all cases the application must be accompanied by **two** sets of 11 x 17 inch plans sufficient for proper PPA review, as well as an electronic copy of the completed application and plans. A **plot plan** is required, showing accurately the subject lot and adjacent lots, and existing and proposed structures on both the subject property and on immediately adjoining properties, open spaces, driveways, parking areas, trees, and land contours where relevant. Where the size or use of floor areas is material to the project, **floor plans** will also be required. Drawings of building **elevations** must be provided, even if they lack facade details.

   Basic 3D representations of the project are also helpful. The Department staff can assist in determining what plans are required. The plans must be dimensioned or include an accurate scale, and should also include a north arrow and a legend for relevant symbols and/or notes.

3. **Photographs**, unmounted, large enough to show the nature of the property, but not over 8 1/2 x 14 inches are helpful in reviewing PPA applications.

4. All plans and other exhibits submitted with this application will be retained as part of the permanent public record in this PPA.

5. **Planning Code Fees**: Please refer to the Planning Department Fee Schedule for fees related to this application. The F eeSchedule may be obtained from the Planning Department's website at www.sfgov.org/planning or in person at the Public Information Counter (PIC) located at 1660 Mission Street, San Francisco, CA 94103. For questions related to the Fee Schedule, please call the PIC at 415.558.6377. The PPA fee will be credited to a subsequent development application fee for the same project. However, time and materials will be charged if staff costs exceed the initial fee.

To file your Preliminary Project Assessment application, submit in person at the Planning Information Center, 1660 Mission Street, first floor, with the required materials along with a check payable to the Planning Department. The application will not be accepted at the PIC if incomplete, and will not be accepted by mail, messenger or at the Planning Department reception desk.

1. Owner/Applicant Information

PROPERTY OWNER'S NAME:		
Martin Building Company		
ADDRESS:	ZIP CODE:	TELEPHONE:
14 Mint Plz, 5th Floor, San Francisco	94103	(415)442.4800
PROPERTY OWNER'S EMAIL:		
julie@martinbuilding.com		

APPLICANT'S NAME:		
Same as Above ☐ Reuben, Junius and Rose: Andrew Junius		
ADDRESS:	ZIP CODE:	TELEPHONE:
One Bush Street, Suite 600, San Francisco	94104	(415)567-9000
APPLICANT'S EMAIL:		

CONTACT FOR PROJECT INFORMATION:		
Same as Above Owner ☐ or Applicant ☐		
ADDRESS:	ZIP CODE:	TELEPHONE:
		( )
CONTACT PERSON EMAIL:		

Request a meeting with PPA planner(s)? YES ☑ NO ☐

2. Location and Classification

STREET ADDRESS OF PROJECT:	ZIP CODE:
2201 Bayshore Blvd	94134
CROSS STREETS:	
Blanken Ave	

ASSESSORS BLOCK/LOT:	LOT DIMENSIONS:	LOT AREA (SQ FT):	ZONING DISTRICT:	HEIGHT/BULK DISTRICT:
5087 / 004/5	~86'x	49,532	MUG*	

*Project Sponsor will request a change in zoning from M-1 to MUG

3. Project Description

Please Check

New Construction ■ Demolition ☐ Alteration ☐ Change of Use ☐ Change of Hours ☐ Other ☐

Describe what is to be done:

Construction of two new residential buildings, with the south building being 7 stories above grade with 2 below grade parking levels, and the north building being 6 stories above grade with 2 below grade storage levels.

Additions to Building: Rear ☐ Front ☐ Height ☐ Side Yard ☐

Present or Previous Use:

Proposed Use:

4. Project Summary Table

If you are unsure of the final size of the project, provide maximum estimates. TOTALS DO NOT AUTO CALCULATE.

	EXISTING USES:	EXISTING USES TO BE RETAINED:	NET NEW CONSTRUCTION AND/OR ADDITION:	PROJECT TOTALS:
GROSS SQUARE FOOTAGE (GSF)				
Residential	0	0	187,915	187,915
Retail	0	0	0	
Office	0	0	0	
Industrial/PDR *Production, Distribution, & Repair*	0	0	0	
Parking	0	0	60,142	60,142
Other (Specify Use)	0	0	18,320	18,320
TOTAL GSF	0	0	266,377	266,377
PROJECT FEATURES				
Dwelling Units	0	0	205	205
Hotel Rooms	0	0	0	0
Parking Spaces	0	0	156	156
Loading Spaces	0	0	1	1
Number of Buildings	0	0	2	2
Height of Building(s)	0	0	57' & 68'	57' & 68'
Number of Stories	0	0	6 & 7, respectively	6 & 7, respectively

Please describe any additional project features that are not included in this table:
(Attach a separate sheet if more space is needed)

Project includes a solarium on the 7th floor of the South Building.

*Residential area includes circulation, MEP, lobby, etc.
**Other Use listed above is tenant storage in North Building

The Project was included in the Visitaction Valley and Schlage Lock Plan area and proposed for re-zoning, but it was omitted when the Plan's re-zoning legislation was passed in 2014. To allow development on the site consistent with the purposes and policies of the Visitacion Valley and Schlage Lock Plan, the Project will require re-zoning from M-1 to MUD, from 40-X height and bulk district to 57-X and 68-X, and from Zone 1 to Zone 2 of the Visitaction Valley/Schlage Lock SUD.

5. Additional Project Information

Please answer each question to the best of your ability. If the answer is unknown, please state so and provide a brief explanation. Please note that providing more information about the proposed project may result in additional and/or more detailed feedback from the Department.

1. Would the project involve a major alteration of a structure constructed 45 or more years ago or a structure in an historic district? ☐ YES ☑ NO

2. Would the project involve demolition of a structure constructed 45 or more years ago or a structure located in an historic district? ☐ YES ☑ NO

3. Would the project result in excavation or soil disturbance/modification? ☑ YES ☐ NO

   If yes, how many feet below grade would be excavated? South Building: Approx. 14' / North Building: Approx 20'

   What type of foundation would be used (if known)? _____

4. Is the project site located in an area of potential geotechnical hazard as identified in the San Francisco General Plan or on a steep slope or would the project be located on a site with an average slope of 20% or more? ☐ YES ☑ NO

5. Would the project result in ground disturbance of 5,000 gross square feet or more? ☑ YES ☐ NO

6. Would the project result in a construction of a structure 80 feet or higher? ☐ YES ☑ NO

7. Would the project impact any public property or right(s)-of-way? ☐ YES ☑ NO

8. For any project site that is located on the Maher map or is suspected of containing hazardous materials (based on a previous use such as gas station, auto repair, dry cleaners, or heavy manufacturing, or a site with underground storage tanks): ☑ YES ☐ NO
   Would the project involve soil disturbance of any amount (including grading or minor excavation for utilities) or a change of use from industrial to commercial/residential?

   If yes, please describe and provide the amount of soil disturbance in cubic yards. 11,188 cuyd
   AND
   If yes, please describe.

9. Is the project related to a larger project, series of projects, or program? ☑ YES ☐ NO

   If yes, please describe.

   Related to, but not a part of, the Visitacion Valley/Schlage Lock Plan

10. Is the project in a Community Plan Area (for example, Market/Octavia)? If yes, please identify the area. ☑ YES ☐ NO

    Visitacion Valley

Estimated Construction Costs

TYPE OF APPLICATION:
Preliminary Project Assessment

OCCUPANCY CLASSIFICATION:
R-2, S-2

BUILDING TYPE:
Type I

TOTAL GROSS SQUARE FEET OF CONSTRUCTION:
See table.

BY PROPOSED USES:
See table.

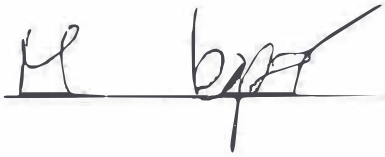
ESTIMATED CONSTRUCTION COST:
Appx. $30 million.

ESTIMATE PREPARED BY:
Project Sponsor

FEE ESTABLISHED:
$4,853

Applicant's Affidavit

Under penalty of perjury the following declarations are made:
a: The undersigned is the owner or authorized agent of the owner of this property.
b: The information presented is true and correct to the best of my knowledge.
c: The other information or applications may be required.

Signature: 

Date: May 8, 2015

Print name, and indicate whether owner, or authorized agent:

Mark Loper, Reuben, Junius & Rose, LLP

Owner / Authorized Agent (circle one)

Application Submittal Checklist

Applications listed below submitted to the Planning Department must be accompanied by this checklist and all required materials. The checklist is to be completed and **signed by the applicant or authorized agent and a Department staff person.**

APPLICATION MATERIALS	CHECKLIST
Application, with all blanks completed	☐
300-foot radius map, if applicable	■
Address labels (original), if applicable	■
Address labels (copy of the above), if applicable	■
Site Plan	☐
Floor Plan	☐
Elevations	☐
Section 303 Requirements (shown on info. sheet)	■
Prop. M Findings	■
Photographs	☐
Check payable to Planning Dept.	☐
Application signed by owner or agent	☐
Letter of authorization for agent	☐
Electronic copy of required materials	☐

NOTES:

☐ Required Material. Write "N/A" if you believe the item is not applicable, (e.g. letter of authorization is not required if application is signed by property owner.)

■ Typically would not apply. Nevertheless, in a specific case, staff may require the item.

Some applications will require additional materials not listed above. The above checklist does not include material needed for Planning review of a building permit. The "Application Packet" for Building Permit Applications lists those materials.

No application will be accepted by the Department unless the appropriate items on this checklist is completed. Receipt of this checklist, the accompanying application, and required materials by the Department serves to open a Planning file for the proposed project. After the file is established it will be assigned to a planner. At that time, the planner assigned will review the application to determine whether it is complete or whether additional information is required in order for the Department to make a decision on the proposal.

Acknowledgement and Signatures

OTHER APPLICATIONS THAT MAY BE REQUIRED:

By signing below, I acknowledge: That I have read and completed this form in its entirety; that I understand that receipt of these materials by the Department does not mean that the application has been accepted as complete; that all of the information provided in this application is accurate.

Signature: _____ Date: May 8, 2015

Print name, and indicate whether owner, or authorized agent:

Mark Loper, Reuben, Junius & Rose, LLP

Owner / Authorized Agent (circle one)

For Department Use Only

Application received by Planning Department:

By: _____ Date: _____

SAN FRANCISCO
PLANNING
DEPARTMENT

FOR MORE INFORMATION:
Call or visit the San Francisco Planning Department

Central Reception
1650 Mission Street, Suite 400
San Francisco, CA 94103-2479

TEL: **415.558.6378**
FAX: **415.558.6409**
WEB: **http://www.sfplanning.org**

Planning Information Center (PIC)
1660 Mission Street, First Floor
San Francisco, CA 94103-2479

TEL: **415.558.6377**
Planning staff are available by phone and at the PIC counter
No appointment is necessary.

MARTIN BUILDING CO

May 5, 2015

Department of City Planning
City and County of San Francisco
1650 Mission Street
San Francisco, California 941030-2414

Re:	**Property Address:**	**2201 Bayshore Boulevard**
	Block/Lot:	**Block 5087, Lot 004 and portion of Lot 005**
	Applicant:	**Martin Building Company**
	Subject:	**Project Applications and Processing**

Dear Planning Department

Martin Building Company, owner of the above referenced property, hereby authorizes Reuben, Junius & Rose, LLP and its affiliated entities, employees, and agents, to take all necessary action, including but not limited to the signing of documents and the filing of applications, required to obtain entitlements and/or complete environmental review for a project at the above-referenced property.

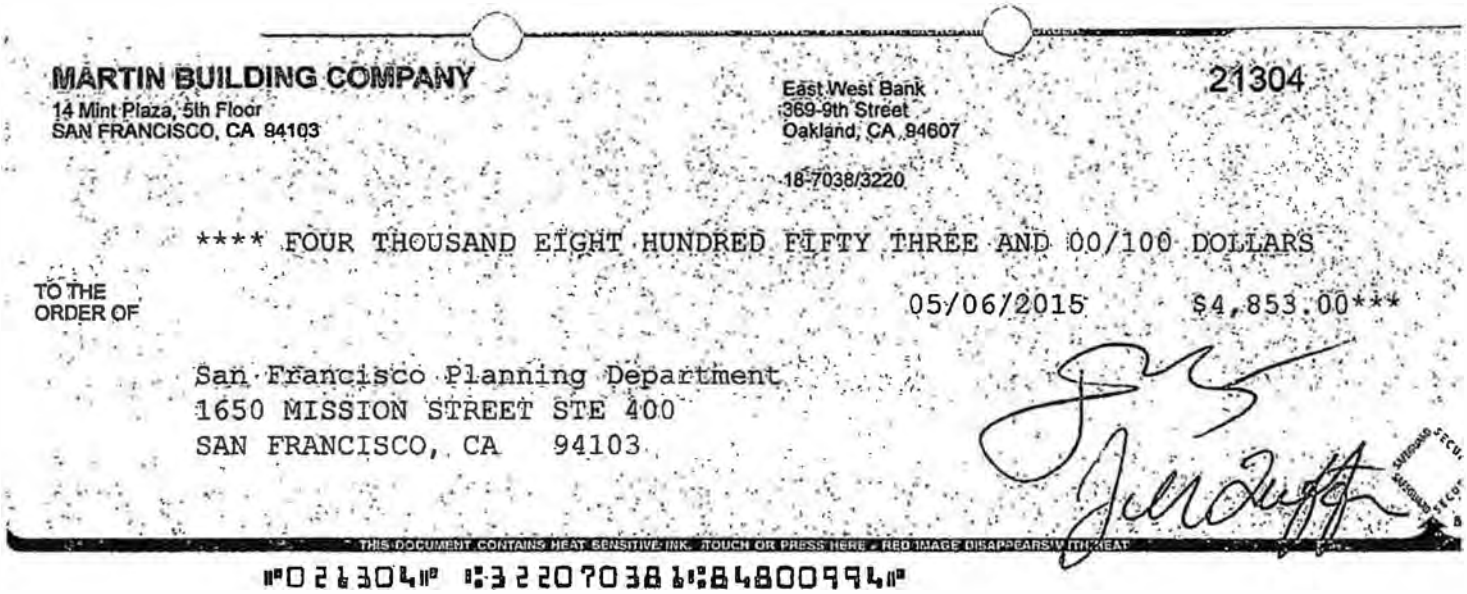
Sincerely,

Martin Building Company
Julie Heinzler, AIA

By: _____

Title: Director of Architecture

14 MINT PLAZA FIFTH FLOOR SAN FRANCISCO CALIFORNIA 94103
TELEPHONE 415.442.4800 FACSIMILE 415.442.4811 WWW.MARTINBUILDING.COM



MARTIN BUILDING COMPANY
14 Mint Plaza, 5th Floor
SAN FRANCISCO, CA 94103

East West Bank
369-9th Street
Oakland, CA 94607

18-7038/3220

21304

**** FOUR THOUSAND EIGHT HUNDRED FIFTY THREE AND 00/100 DOLLARS

TO THE ORDER OF

05/06/2015 $4,853.00***

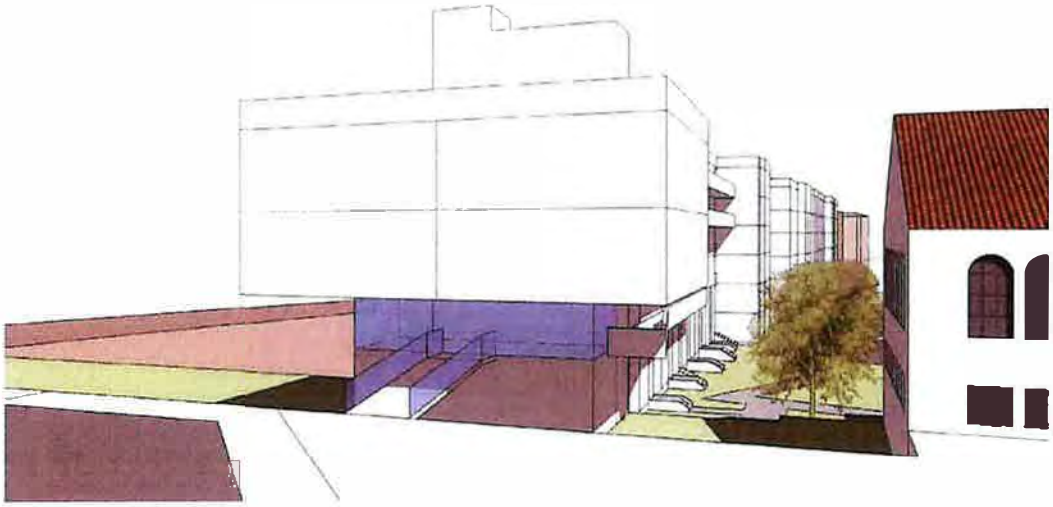
San Francisco Planning Department
1650 MISSION STREET STE 400
SAN FRANCISCO, CA 94103

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⑈021304⑈ ⑆322070381⑆84800994⑈

DATE:05/06/2015 CK#:21304 TOTAL:$4,853.00*** BANK:East West checking(mbcckng)
PAYEE:San Francisco Planning Department(sfplan)

Job(Prop)	Categ(Acct)	Invoice - Date	Description	Amount
2201baysh(mbc)	1525 (5050)	05/04/15-05/04/2015		4,853.00
				4,853.00



BLANKEN AVENUE
APPLICATION FOR PRELIMINARY PROJECT ASSESSMENT
MAY 6, 2015

PROJECT VOLUNTARILY INCREASES ON-SITE
AFFORDABILITY PROVISION TO 20%

BLANKEN AVENUE | SAN FRANCISCO, CA

BAR architects
900 Battery Street, Suite 300 | San Francisco, CA 94111 | 415 293 5700 | www.bararch.com
martin

05.06.15

SOUTH BUILDING STATISTICS

LEVEL	GSF	STUDIO	1 BR	2BR	TOTAL
ROOF	1,133 SF	-	-	-	-
LEVEL 7	24,003 SF	1	10	11	22
LEVEL 6	24,003 SF	1	12	12	25
LEVEL 5	24,003 SF	1	12	12	25
LEVEL 4	24,003 SF	1	12	12	25
LEVEL 3	24,003 SF	1	12	12	25
LEVEL 2	20,023 SF	1	6	8	15
LEVEL 1	23,459 SF	-	5	17	22
BASEMENT 1	30,071 SF	-	-	-	-
BASEMENT 2	30,071 SF	-	-	-	-
SOUTH TOTAL	201,313 SF	6	69	84	159

NORTH BUILDING STATISTICS

LEVEL	GSF	STUDIO	1 BR	2BR	TOTAL
ROOF	301 SF	-	-	-	-
LEVEL 6	7,286 SF	-	6	2	8
LEVEL 5	9,286 SF	-	6	4	10
LEVEL 4	9,286 SF	-	6	4	10
LEVEL 3	7,646 SF	-	6	2	8
LEVEL 2	5,305 SF	-	-	2	2
LEVEL 1	2,574 SF	-	-	8	8
BASEMENT 1	9,160 SF	-	-	-	-
BASEMENT 2	9,160 SF	-	-	-	-
NORTH TOTAL	45,054 SF	-	24	22	46

PROJECT TOTAL: 246,177 SF	6	93	106	205
UNIT MIX %	3.0%	45.3%	51.7%	100%

TOTAL RESIDENTIAL UNIT GSF: 180,351 GSF (EXCLUDING CIRCULATION, MEP, COMMON, ETC.)
TOTAL PARKING
SOUTH BASEMENT LEVEL 1
PARKING SPACES: 41 SPACES (INCLUDING 3 ACCESSIBLE)
PARKING STACKERS: 46 STACKER SPACES
SOUTH BASEMENT LEVEL 2
PARKING SPACES: 68 SPACES
CAR-SHARE SPACES: 2 CAR-SHARE SPACES

GRAND TOTAL: 154 SPACES (0.75/UNIT, EXCLUDING CAR SHARE)
156 SPACES, INCLUDING CAR SHARE SPACES

BICYCLE SPACES:
CLASS-1 128 SPACES (1 SPACE FOR EVERY UNIT UP TO 100, THEN 1 SPACE FOR EVERY 4 UNITS)
CLASS-2 10 SPACES (205 DU / 20 SPACES per DU = 10.25 (ROUND DOWN TO 10))

OPEN SPACE STATISTICS (CONTRIBUTING AREA):
205 DU * 80 SF/DU = 16,400 SF REQUIRED

	COMMON
RAYMOND OPEN SPACE:	2,519 SF
SOLARIUM:	1,452 SF
ROOF DECK SOUTH:	10,950 SF
ROOF DECK NORTH:	1,567 SF
TOTAL	16,488 SF

80.4 SF OF OPEN SPACE / UNIT (80 SF / UNIT REQUIRED)

PROPERTY SUMMARY

PARCEL# (BLOCK/LOT):	5087-004, 5087-005 (PARTIAL). PARTIAL LOT 005 TO BE COMBINED WITH LOT 004.
PROJECT LOT AREA:	35,993 SF (PER SURVEY)
NEIGHBORHOOD:	VISITACION VALLEY
ADDRESS:	BLANKEN AVENUE, SAN FRANCISCO, CA 94134

PROPOSED ZONING SUMMARY

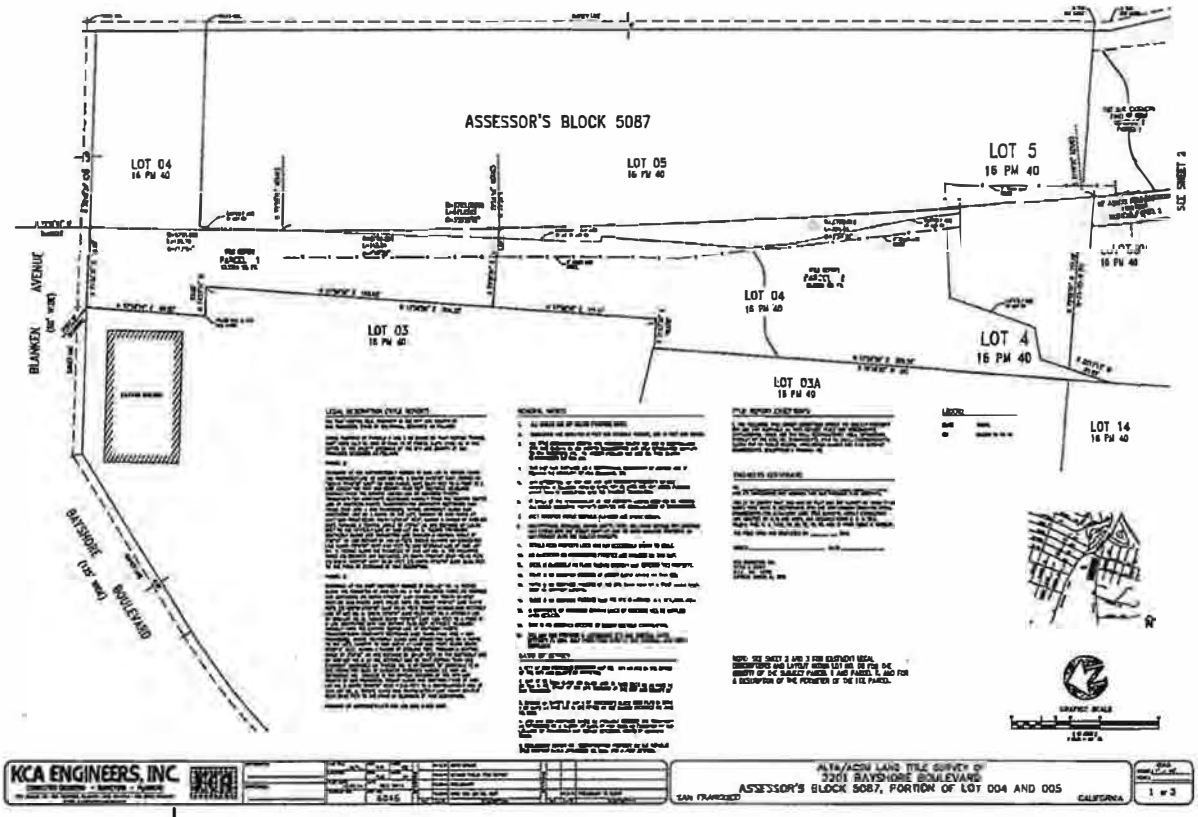
ZONING DISTRICT:	SEC.840	MUG - MIXED USE GENERAL*
HEIGHT & BULK DISTRICT:	SCHLAGE LOCK D40	57-X, 68-X.
REAR YARD:	SEC.134 1	25% LOT DEPTH, BUT IN NO CASE LESS THAN 15 FEET
REAR YARD MODIFICATION	SEC 329	APPLIES
STREET FRONTAGE:	SEC.145.1	REQUIRED
STREET FRONTAGE -	SEC.145.1.c.1	MINIMUM 25 FEET SETBACK ON GROUND FLOOR, 15 FEET ON FLOORS ABOVE ABOVE GRADE PARKING
STREET FRONTAGE -	SEC.145.1.c.2	PARKING AND LOADING ACCESS RESTRICTIONS
STREET FRONTAGE -	SEC.145.1.c.3	REQUIREMENTS APPLY ACTIVE USES REQUIRED
STREET FRONTAGE -	SEC145 .1.c.4.A	MINIMUM FLOOR-TO-FLOOR HEIGHT OF 17 FEET AT NON-RESIDENTIAL GROUND FLOOR CEILING HEIGHT
FLOOR AREA RATIO:	SEC.124	3.0 TO 1 (RESIDENTIAL SF EXEMPT)
COMMERCIAL OFF-STREET PARKING:	SEC.843.11	NONE REQUIRED. LIMITS SET FORTH IN SEC 151.1
OFF-STREET FREIGHT LOADING:	SEC 152.	ONE REQUIRED. NONE REQUIRED IF COMMERCIAL GROSS FLOOR AREA IS LESS THAN 10,000 SF AND RESIDENTIAL IS LESS THAN 100,000 SF (OFF STREET LOADING REQUIRED)
RESIDENTIAL DENSITY	SEC.840.24	NO DENSITY LIMIT
RESIDENTIAL UNIT MIX	SEC.840.25	40% OF ALL DWELLING UNITS MUST CONTAIN TWO OR MORE BEDROOMS OR 30% THREE BEDROOMS
RESIDENTIAL OPEN SPACE	SEC.840.11	80 SQ. FT. PER UNIT IF PRIVATE. 54 SQ. FT. IF PUBLICLY ACCESSIBLE
RESIDENTIAL PARKING:	SEC.840.08	NONE REQUIRED. LIMITS SET FORTH IN SEC 151.1 - FOR DWELLING UNITS AT LEAST 1,000 SQ. FT. IN SIZE WITH TWO OR MORE BEDROOMS. 1 CAR IS PERMITTED FOR EACH UNIT. FOR OTHER UNITS, UP TO 0.75 CARS FOR EACH UNIT IS PERMITTED.
CAR-SHARE PARKING	SEC 166 d 1	2 CAR-SHARE SPACE REQUIRED
BICYCLE PARKING	SEC.155.2	ONE CLASS 1 SPACE FOR EACH UNIT UP TO 100 SPACES, AND ONE ADDITIONAL SPACE FOR EVERY FOUR UNITS OVER 100 UNITS. ONE CLASS 2 SPACE FOR EACH 20 UNITS.

*PROJECT SPONSOR WILL REQUEST A CHANGE IN ZONING FROM M-1 TO MUG IN ORDER TO MAKE ITS ZONING CONSISTENT WITH SURROUNDING PROPERTIES, WHICH WERE RE-ZONED IN 2014 PURSUANT TO THE VISITACIONVALLEY/SCHLAGE LOCK PLAN

SUSTAINABILITY
THIS PROJECT WILL PURSUE LEED FOR HOMES PLATINUM.

UNIT AVERAGE SIZES (GROSS)

STUDIO	500 GSF
1-BEDROOM	735 GSF
2-BEDROOM	1,004 GSF



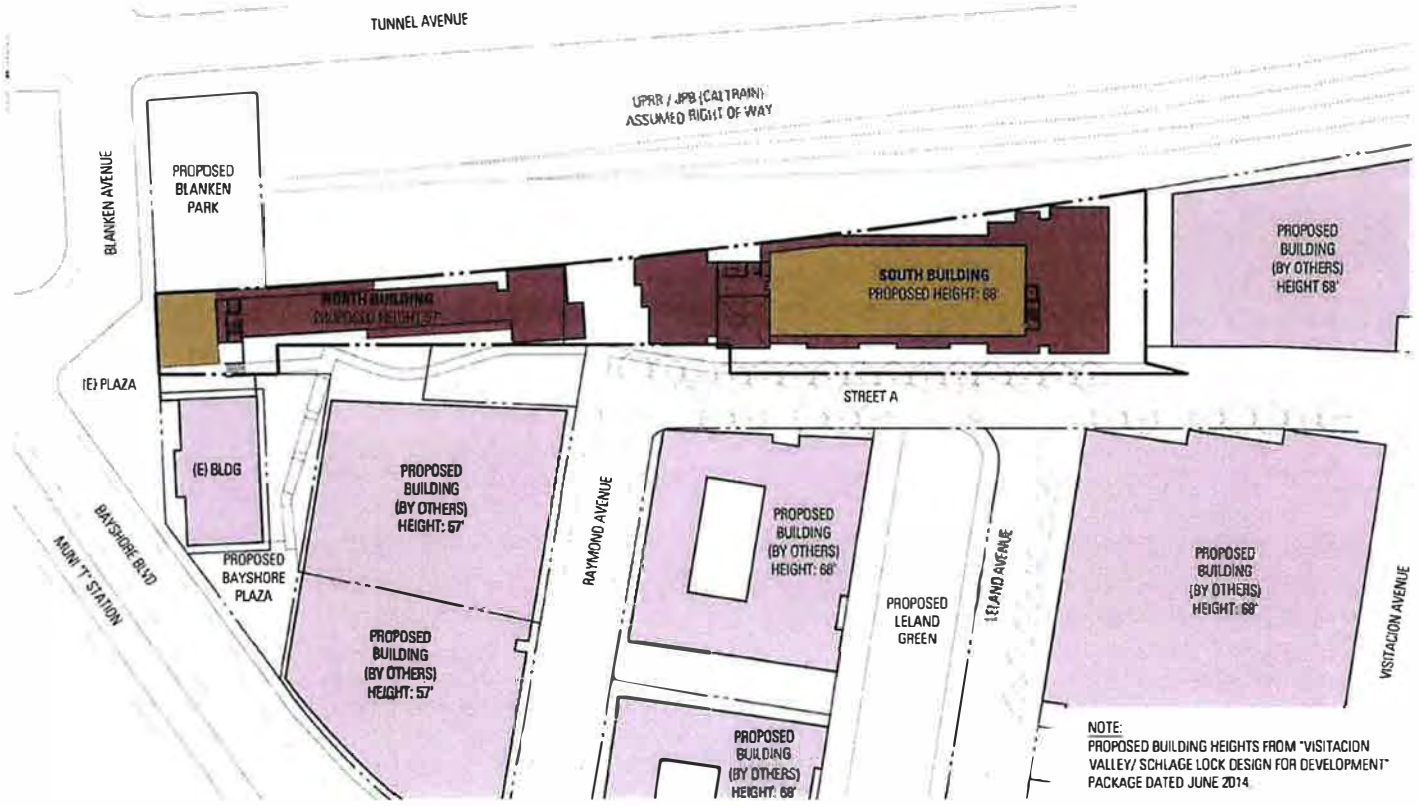
BLANKEN AVENUE | SAN FRANCISCO, CA

SITE PLAN

BAR architects
301 Battery Street, Suite 300 | San Francisco, CA 94111 | 415 293 5700 | www.bararch.com

14053 | 05.08.15 | 0' 15' 30' 60' 90'

3

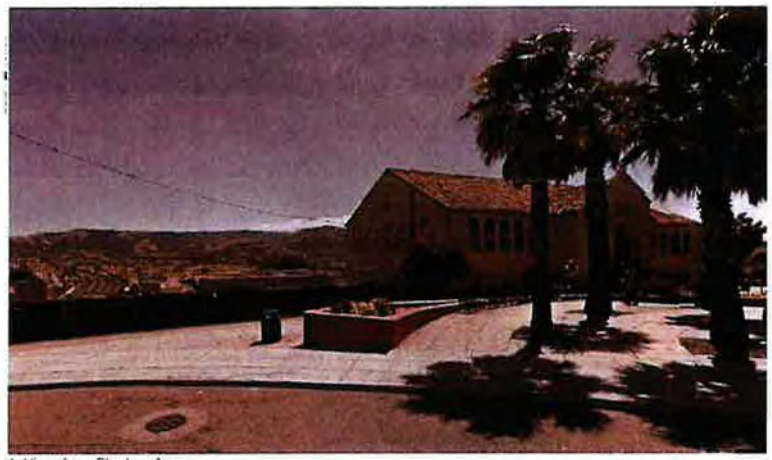


BLANKEN AVENUE | SAN FRANCISCO, CA

SITE PLAN

BAR architects
901 Battery Street, Suite 300 | San Francisco, CA 94111 | 415 293 5700 | www.bararch.com

N | 14093 | 05.06.15 | 0 15' 30' 60' 90



1. View from Blanken Avenue



Site Aerial & Context



2. View from Tunnel Avenue



3. View from Bayshore Boulevard

BLANKEN AVENUE | SAN FRANCISCO, CA

SITE PHOTOS

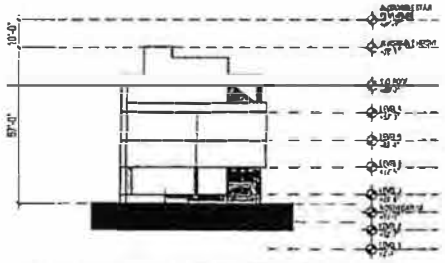
BARarchitects
901 Battery Street, Suite 300 | San Francisco, CA 94111 | 415 293 5700 | www.bararch.com

05.06.15

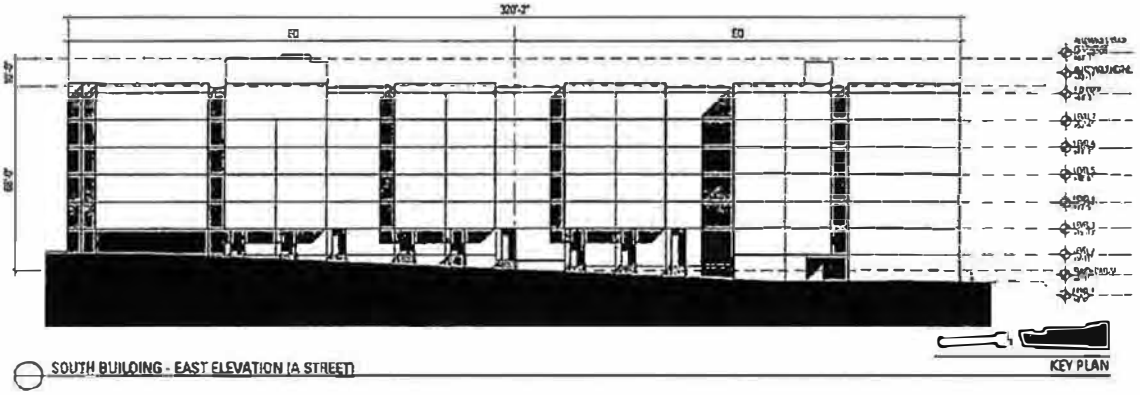
5

BUILDING HEIGHT DIAGRAMS

- HEIGHT & BULK DISTRICT: NORTH BUILDING 57-X; SOUTH BUILDING 68-X
- BUILDING HEIGHT COMPLIES WITH SECTION 260 REQUIREMENTS
- PER 260(B)(1)(B), ELEVATOR, STAIR AND MECHANICAL PENTHOUSES SHALL BE LIMITED TO THE TOP 10 FEET OF SUCH FEATURES WHERE THE HEIGHT LIMIT IS 65 FEET OR LESS. HOWEVER, FOR ELEVATOR PENTHOUSES, THE EXEMPTION SHALL BE LIMITED TO THE TOP 16 FEET AND LIMITED TO THE FOOTPRINT OF THE ELEVATOR SHAFT, REGARDLESS OF THE HEIGHT LIMIT OF THE BUILDING
- HEIGHT MEASURED: NORTH BUILDING CURB HEIGHT AT BLANKEN AVENUE (PROJECT +19'-1") PER 260(a)(1)(B) & 260(a)(3); SOUTH BUILDING CURB HEIGHT AT A STREET (PROJECT +4'-1") PER 260(a)(1)(B)



NORTH BUILDING - NORTH ELEVATION (BLANKEN AVE)



SOUTH BUILDING - EAST ELEVATION (A STREET)

KEY PLAN

BLANKEN AVENUE | SAN FRANCISCO, CA

BUILDING HEIGHT DIAGRAM

BARarchitects
901 Battery Street, Suite 300 | San Francisco, CA 94111 | 415.293.5700 | www.bararch.com
martinbuilding

14093 | 05.06.15 | 0' 8' 16' 32' 48'

OPEN SPACE (SECTION 135 & 140.11)
CODE REQUIRED

80 SF/DU PROVIDED AS COMMON (MIN. 15'X15' & MIN. AREA OF 300 SF)

MINIMUM OPEN SPACE REQUIRED 205 DU X 80 SF/DU = 16,400 SF

	CONTRIBUTING	NON-CONTRIBUTING
COMMON USABLE OPEN SPACE PROVIDED:	16,468 SF	7,757 SF
SUB-TOTAL	16,4[illegible] SF	7,757 SF
COMBINED TOTAL:	21,[illegible] SF	

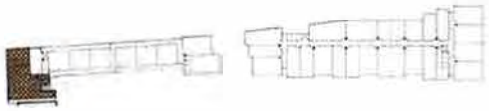
LEGEND

COMMON CONTRIBUTING

COMMON NON CONTRIBUTING



OPEN SPACE PLAN - ROOF LEVEL



OPEN SPACE PLAN - BLANKEN PLAZA LEVEL



OPEN SPACE PLAN - LEVEL 7



OPEN SPACE PLAN - GROUND FLOOR



BLANKEN AVENUE | SAN FRANCISCO, CA

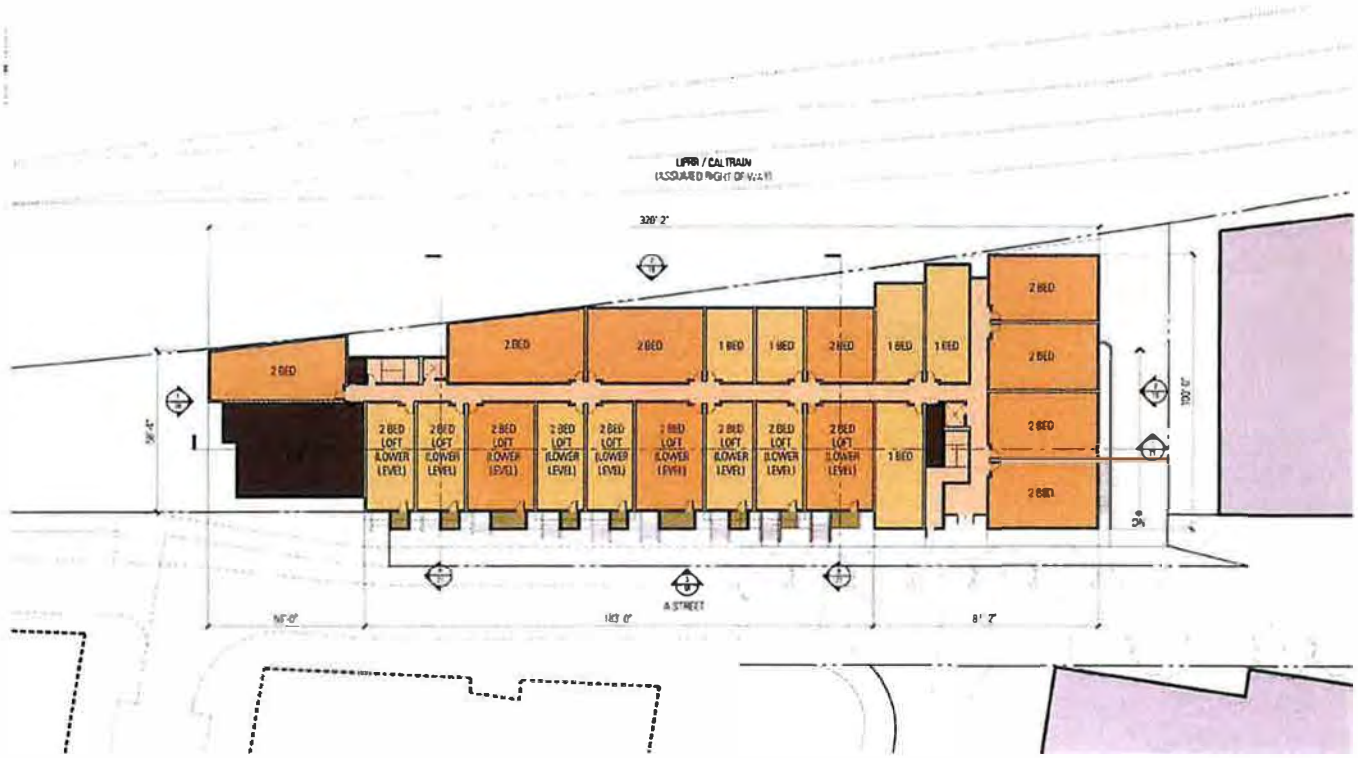
KEY PLAN

SOUTH BUILDING BASEMENT LEVELS

BAR architects
901 Battery Street, Suite 300 | San Francisco, CA 94111 | 415.293.5700 | www.barchitects.com

14080 | 05.06.15 | 0' 8' 16' 32' 48'

8



GROUND FLOOR PLAN

BLANKEN AVENUE | SAN FRANCISCO, CA



KEY PLAN

SOUTH BUILDING
GROUND FLOOR PLAN

BAR architects
901 Battery Street, Suite 300 | San Francisco, CA 94111 | 415 293 5700 | www.bararch.com

14093 | 05.06.15 | 0' 8' 16' 32' 48'



BLANKEN AVENUE | SAN FRANCISCO, CA

KEY PLAN

SOUTH BUILDING
SECOND & TYPICAL FLOOR PLAN

BAR architects
901 Battery Street, Suite 300 | San Francisco, CA 94111 | 415 293 5700 | www.bararch.com
martin

14093 | 05.06.15 | 0' 8' 16' 32' 48'



BLANKEN AVENUE | SAN FRANCISCO, CA

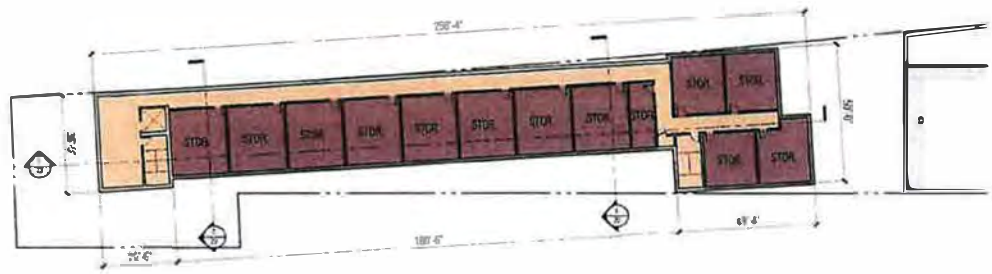
KEY PLAN

SOUTH BUILDING
SEVENTH FLOOR & ROOF PLAN

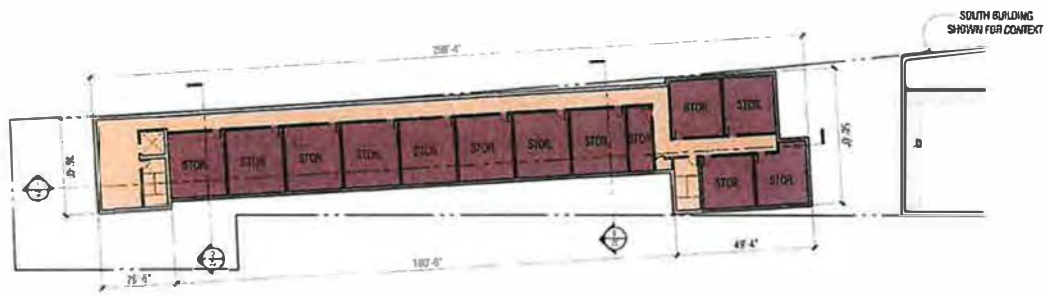
BAR architects
901 Mariners Island, Suite 300 | San Francisco, CA 94111 | 415 293 5700 | www.bararch.com

14060 | 05.06.15 | 0 8 16 32 48

11



BASEMENT PLAN 2



BASEMENT PLAN 1

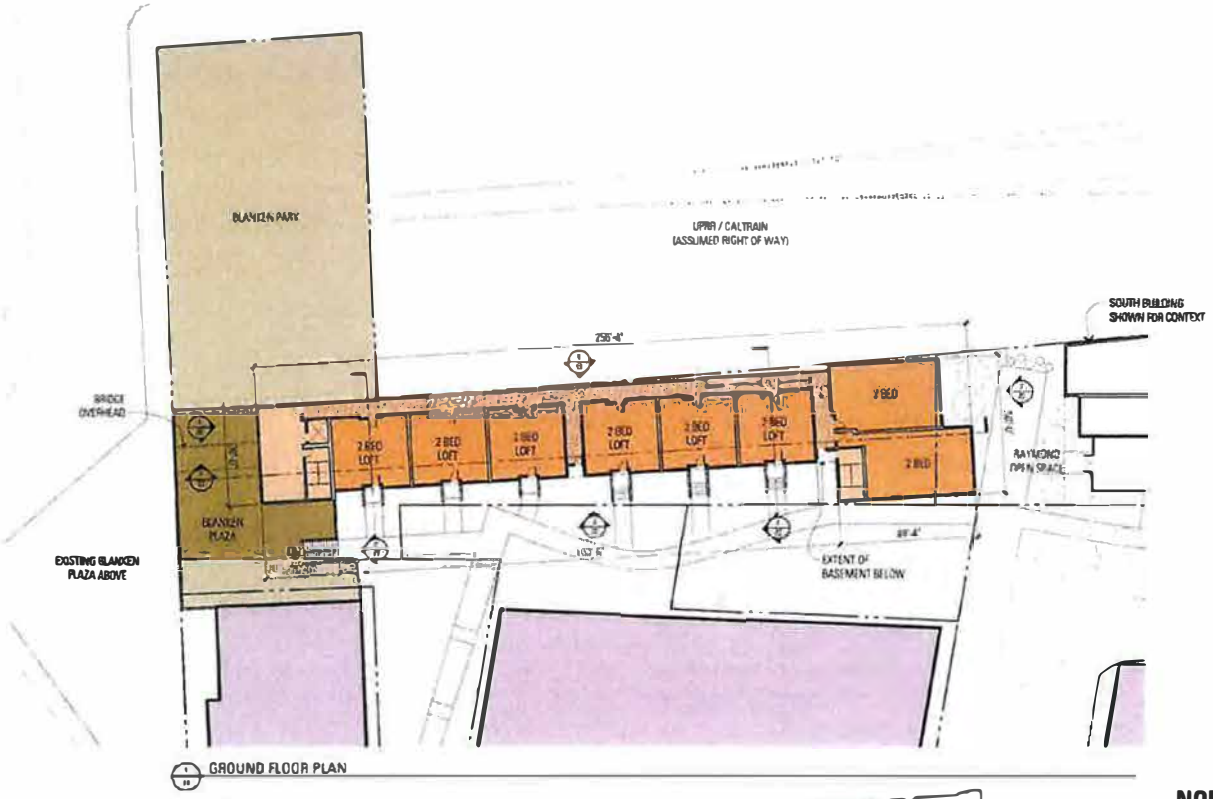
BLANKEN AVENUE | SAN FRANCISCO, CA

KEY PLAN

NORTH BUILDING BASEMENT LEVELS

BAR architects
901 Battery Street, Suite 300 | San Francisco, CA 94111 | 415 293 5700 | www.bararch.com martin

14093 | 05 06 15 | 0' 8' 16' 32' 48'



BLANKEN AVENUE | SAN FRANCISCO, CA

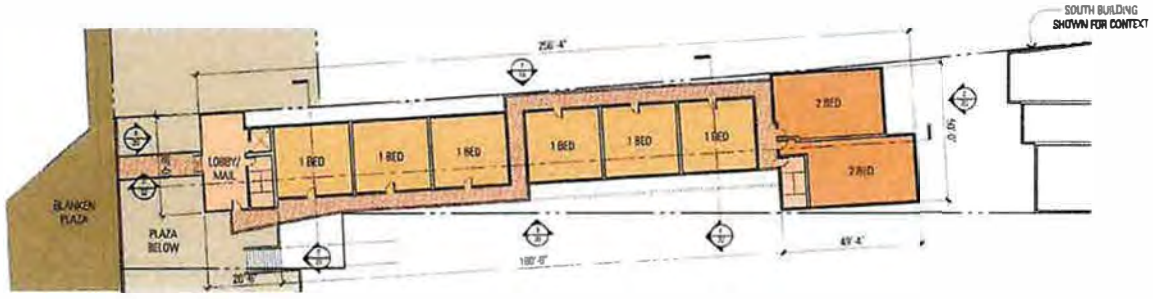
KEY PLAN

NORTH BUILDING
GROUND FLOOR PLAN

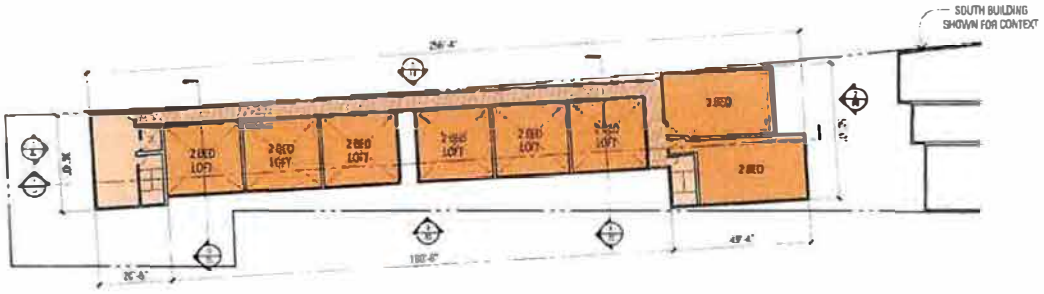
BAR architects
301 Battery Street, Suite 300 | San Francisco, CA 94111 | 415 293 5700 | www.bararch.com
martin

14093 | 05.06.15 | 0' 8' 16' 32' 48'

13



THIRD FLOOR PLAN



SECOND FLOOR PLAN

BLANKEN AVENUE | SAN FRANCISCO, CA

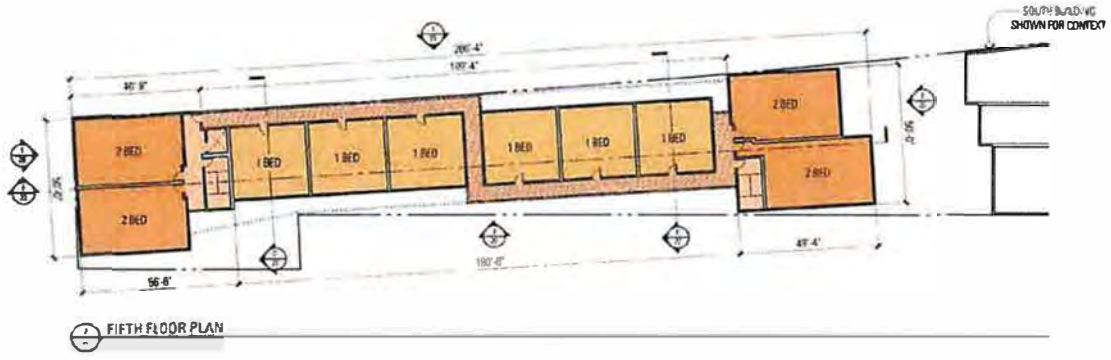
KEY PLAN

NORTH BUILDING
SECOND & THIRD FLOOR

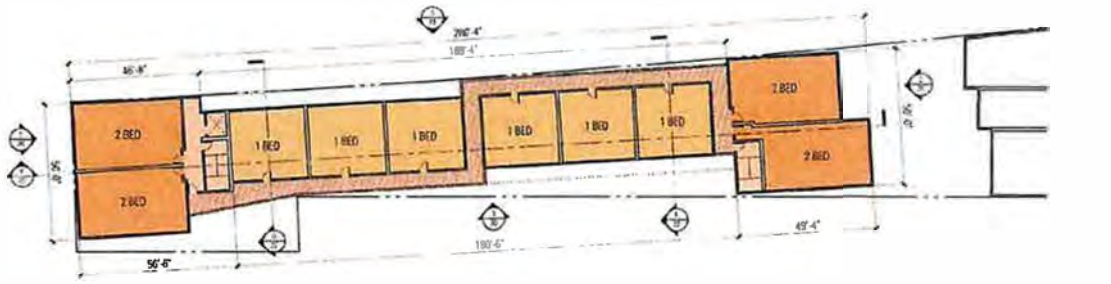
BAR architects
901 Battery Street, Suite 300 | San Francisco CA 94111 | 415 293 5700 | www.bararch.com
martin

14083 | 05.06.15 | 0' 8' 16' 32' 48'

14



FIFTH FLOOR PLAN



FOURTH FLOOR PLAN

BLANKEN AVENUE | SAN FRANCISCO, CA



KEY PLAN

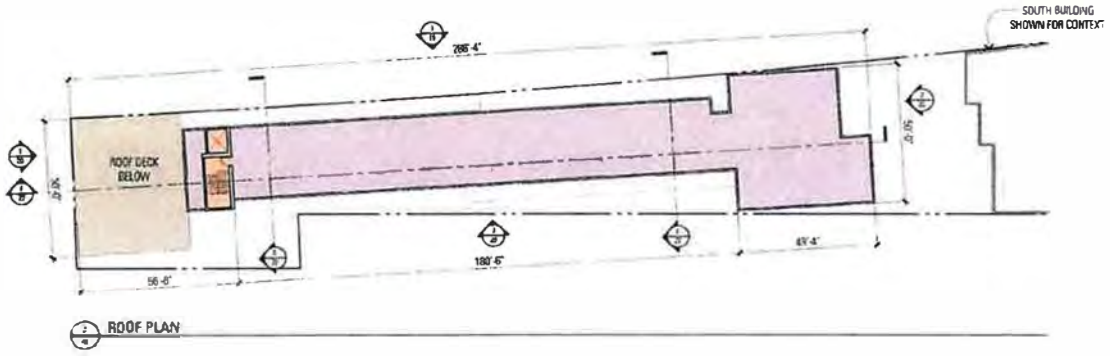
NORTH BUILDING
FOURTH & FIFTH FLOOR

BAR architects
301 Battery Street, Suite 300 | San Francisco, CA 94111 | 415 293 5700 | www.bararch.com

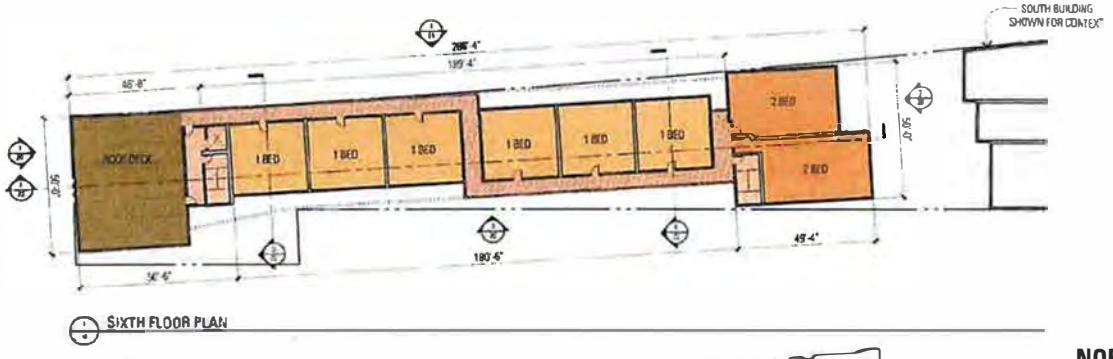
martin

14003 | 05.26.15

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ROOF PLAN



SIXTH FLOOR PLAN

BLANKEN AVENUE | SAN FRANCISCO, CA

KEY PLAN

NORTH BUILDING
SIXTH FLOOR & ROOF PLAN

BAR architects
901 Battery Street, Suite 300 | San Francisco, CA 94111 | 415 293 5700 | www.bararch.com

14093 | 05.06.15 | 0' 8' 16' 32' 64'

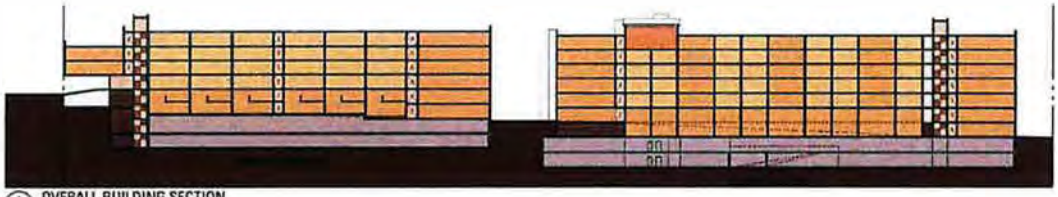
16



OVERALL EAST ELEVATION



OVERALL WEST ELEVATION



OVERALL BUILDING SECTION

BLANKEN AVENUE | SAN FRANCISCO, CA

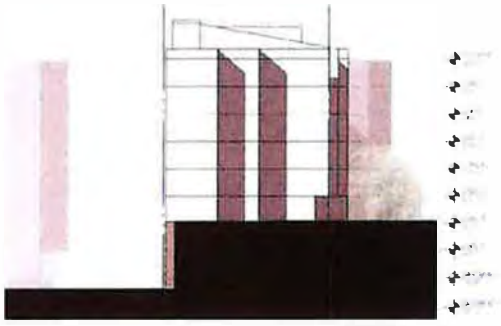


KEY PLAN

OVERALL SITE ELEVATIONS & SECTION

BARarchitects
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14093 | 05.06.15 | 0 15 30 60 90



SOUTH BUILDING - NORTH ELEVATION



SOUTH BUILDING - SOUTH ELEVATION



SOUTH BUILDING - WEST ELEVATION

BLANKEN AVENUE | SAN FRANCISCO, CA



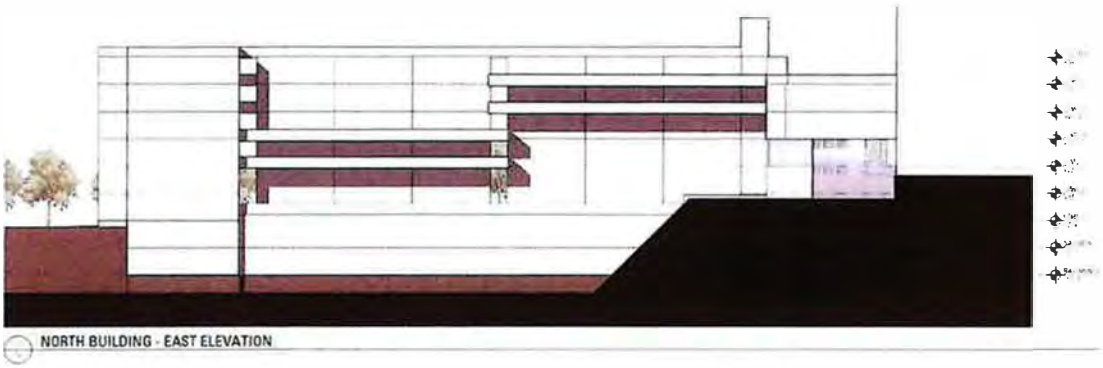
KEY PLAN

SOUTH BUILDING ELEVATIONS

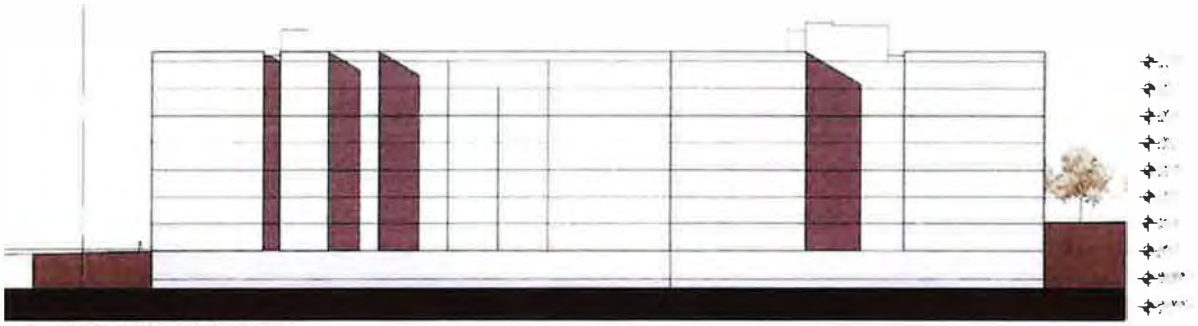
BAR architects
901 Battery Street, Suite 300 | San Francisco, CA 94111 | 415 293 5700 | www.bararch.com

martin

14053 | 05.06.15 | 0' 8' 16' 32' 48'



NORTH BUILDING - EAST ELEVATION



SOUTH BUILDING - EAST ELEVATION

BLANKEN AVENUE | SAN FRANCISCO, CA



KEY PLAN

NORTH & SOUTH BUILDING ELEVATIONS

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14093 | 05.06.15

0' 8' 16' 32' 48'



NORTH BUILDING - NORTH ELEVATION



NORTH BUILDING - SOUTH ELEVATION



NORTH BUILDING - WEST ELEVATION

BLANKEN AVENUE | SAN FRANCISCO, CA



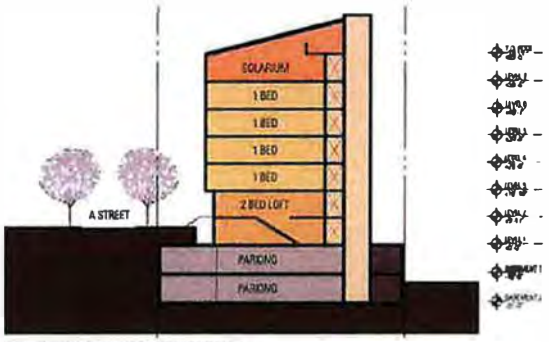
KEY PLAN

NORTH BUILDING ELEVATIONS

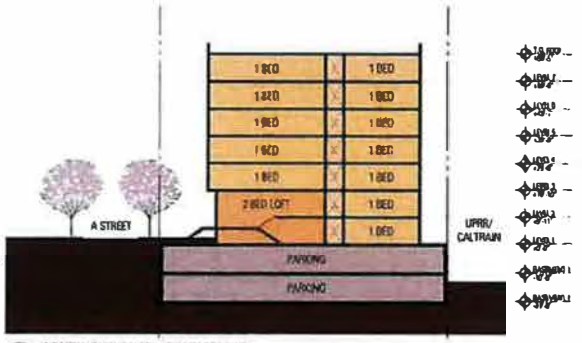
BAR architects
901 Battery Street, Suite 300 | San Francisco, CA 94111 | 415 293 5700 | www.bararch.com

martin

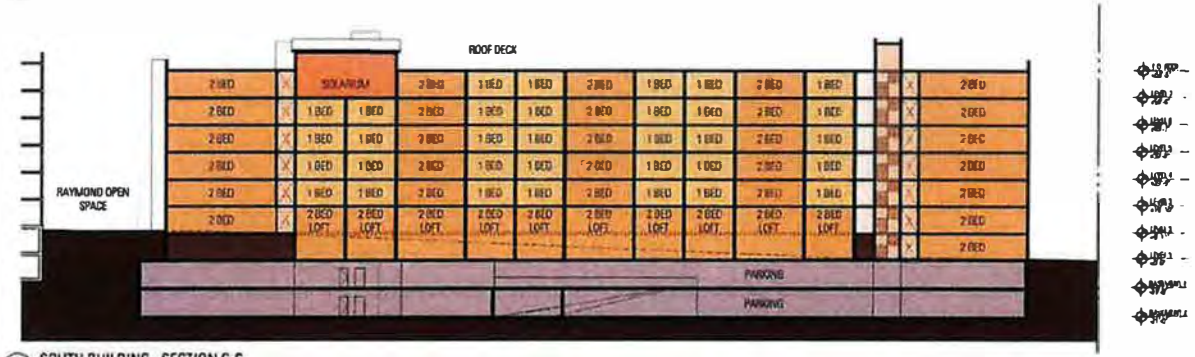
18093 | 05 06 15 | 0 8 16 32 48



SOUTH BUILDING - SECTION A-A



SOUTH BUILDING - SECTION B-B



SOUTH BUILDING - SECTION C-C

BLANKEN AVENUE | SAN FRANCISCO, CA



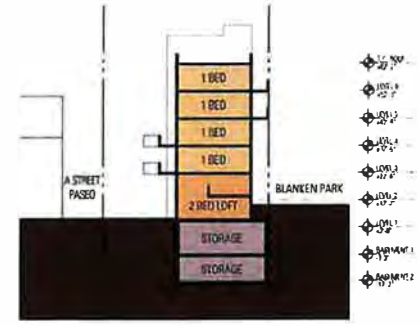
KEY PLAN

SOUTH BUILDING SECTIONS

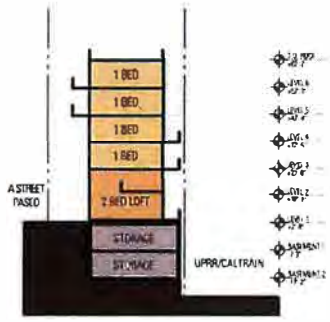
BAR architects
301 Battery St, 3rd Fl, Suite 300 | San Francisco, CA 94111 | 415 293 5700 | www.bararch.com
martin

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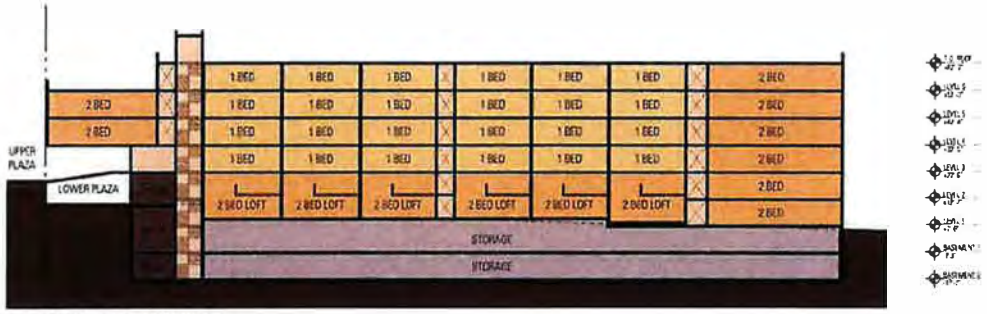
21



NORTH BUILDING - SECTION D-D



NORTH BUILDING - SECTION E-E



NORTH BUILDING - SECTION F-F

BLANKEN AVENUE | SAN FRANCISCO, CA

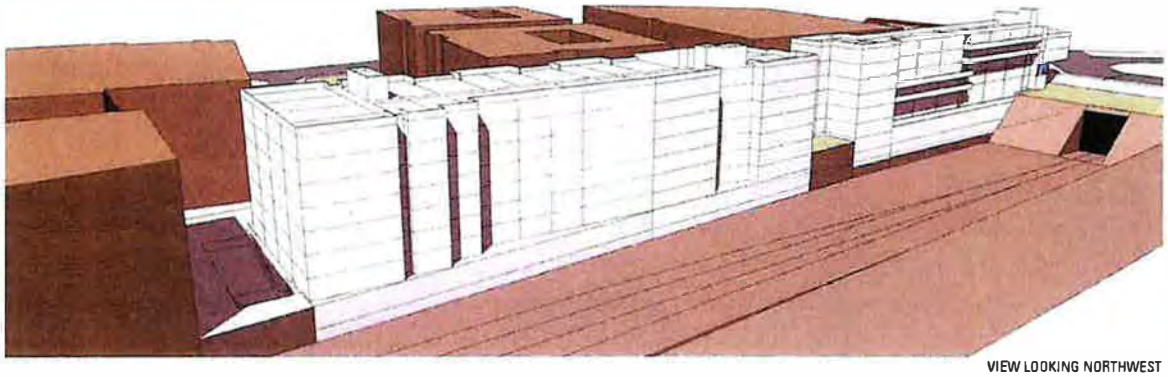
KEY PLAN

NORTH BUILDING SECTIONS

BARarchitects
901 Battery Street, Suite 350 | San Francisco, CA 94111 | 415.293.5700 | www.bararch.com

14050 | 05.06.15 | 0 8 16 32 48

22



VIEW LOOKING NORTHWEST



VIEW LOOKING EAST

BLANKEN AVENUE | SAN FRANCISCO, CA

BIRDS EYE VIEW

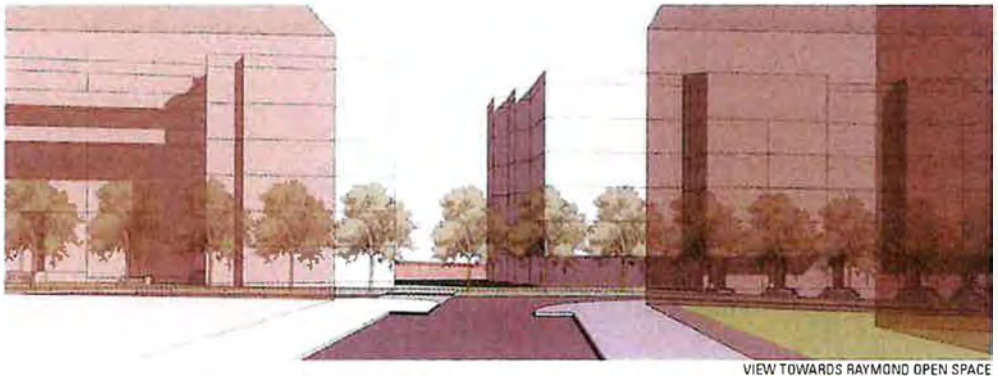
BAR architects
900 Front Street, Suite 300 | San Francisco, CA 94111 | 415 293 5700 | www.bararch.com

marin

14033 | 05.06.15



VIEW FROM EXISTING BLANKEN PLAZA



VIEW TOWARDS RAYMOND OPEN SPACE

BLANKEN AVENUE | SAN FRANCISCO, CA

PERSPECTIVE VIEWS

SAN FRANCISCO
PLANNING DEPARTMENT

MEMO

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

DATE: August 7, 2015

TO: Andrew Junius

FROM: Kate Conner, Planning Department

RE: PPA Case No. 2015-006509PPA for 2201 Bayshore Boulevard

Please find the attached Preliminary Project Assessment (PPA) for the address listed above. You may contact the staff contact, Erika S. Jackson, at (415) 558-6363 or erika.jackson@sfgov.org, to answer any questions you may have, or to schedule a follow-up meeting.

Kate Conner, Senior Planner

SAN FRANCISCO
PLANNING DEPARTMENT

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CA 94103-2479

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Planning
Information:
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Preliminary Project Assessment

Date:	August 7, 2015
Case No.:	**2015-006509PPA**
Project Address:	2201 Bayshore Boulevard
Block/Lot:	5087/004-005
Zoning:	M-1 Schlage Lock Visitacion Valley SUD 40-X
Area Plan:	Visitacion Valley/Schlage Lock Area Plan
Project Sponsor:	Andrew Junius 415-567-9000
Staff Contact:	Erika S. Jackson – 415-558-6363 erika.jackson@sfgov.org

DISCLAIMERS:

This Preliminary Project Assessment (PPA) letter provides feedback to the project sponsor from the Planning Department regarding the proposed project described in the PPA application submitted on May 8, 2015, as summarized below. This PPA letter identifies Planning Department review requirements for the proposed project, including those related to environmental review, approvals, neighborhood notification and public outreach, the Planning Code, project design, and other general issues of concern for the project. Please be advised that the PPA application does not constitute an application for development with the Planning Department. The PPA letter also does not represent a complete review of the proposed project, does not grant a project approval of any kind, and does not in any way supersede any required Planning Department approvals listed below.

The Planning Department may provide additional comments regarding the proposed project once the required applications listed below are submitted. While some approvals are granted by the Planning Department, some are at the discretion of other bodies, such as the Planning Commission or Historic Preservation Commission. Additionally, it is likely that the project will require approvals from other City agencies such as the Department of Building Inspection, Public Works, the Municipal Transportation Agency, Department of Public Health, San Francisco Public Utilities Commission, and others. The information included herein is based on the PPA application and plans, the Planning Code, General Plan, Planning Department policies, and local/state/federal regulations as of the date of this document, all of which are subject to change.

PROJECT DESCRIPTION:

The proposal is to construct two new residential buildings totaling approximately 188,000 square feet with a total of 205 dwelling units and 156 parking spaces. The south building is proposed to be 68 feet tall with 7 stories above grade and 2 below grade parking levels. The north building is proposed to be 57 feet tall with 6 stories above grade and 2 below grade storage levels. The project also proposes to change

the Zoning District from M-1 to MUG, and change the Height and Bulk District from 40-X to 57-X and 68-X.

ENVIRONMENTAL REVIEW:

In order to begin formal environmental review, please submit an **Environmental Evaluation Application (EEA)**. The EEA can be submitted at the same time as the PPA Application. The environmental review may be done in conjunction with the required approvals listed below, but must be completed before any project approval may be granted. **Note that until an entitlement application is submitted to the Current Planning Division, only the proposed Project Description will be reviewed by the assigned Environmental Coordinator.** EEAs are available in the Planning Department lobby at 1650 Mission Street, Suite 400, at the Planning Information Center at 1660 Mission Street, and online at www.sfplanning.org under the "Publications" tab. See "Environmental Applications" on page 2 of the current Fee Schedule for a calculation of environmental application fees.[1]

On December 18, 2008 the San Francisco Planning Commission and former San Francisco Redevelopment Agency certified the Final Environmental Impact Report for the Visitacion Valley Redevelopment Program (*Visitacion Valley Redevelopment Program EIR*, File No. 2006.1308E). The *Visitacion Valley Redevelopment Program EIR* analyzed the Redevelopment Program for an approximately 46-acre project site in San Francisco's Visitacion Valley neighborhood. The project site is comprised of two Redevelopment Zones: Redevelopment Zone 1 encompasses approximately 20 acres located east of Bayshore Boulevard, including the former Schlage Lock property, former Southern Pacific Transportation Company property, and other industrial parcels. Redevelopment Zone 2 encompasses an approximately 26-acre area featuring a mix of commercial, light industrial, residential, and mixed-use parcels fronting Bayshore Boulevard and both sides of Leland Avenue.

On May 27, 2014, the Planning Department prepared an Addendum to the Visitacion Valley Redevelopment Program EIR (*Addendum 1*, File No. 2006.1308E) in response to revisions to the proposed Redevelopment Program (Modified Project). The Modified Project included increased height limits and revised net growth projections for new residential units, new neighborhood-serving commercial space, and new cultural, institutional and educational development within Redevelopment Zone 1. The Modified Project did not include any changes to Redevelopment Zone 2.

The proposed project site is located within Redevelopment Zone 1. If it is determined that the proposed project was not analyzed in *Addendum 1*, a second addendum to the *Visitacion Valley Redevelopment Program EIR* may be prepared for the proposed project. However, if after performing the background studies it is determined that new impacts would occur that were not identified in the *Visitacion Valley Redevelopment Program EIR* and/or additional mitigation measures are necessary, an addendum cannot be prepared; an Initial Study would be required.

Below is a list of topic areas addressed through the environmental review process. Some of these would require additional study based on the preliminary review of the project as it is proposed in the PPA application.

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1 San Francisco Planning Department. *Schedule for Application Fees*. Available online at: http://www.sf-planning.org/Modules/ShowDocument.aspx?documentid=513.

- **Historic Resources.** The project site contains one or more buildings previously determined to be eligible for national, state, or local listing as a historic resource. The property was surveyed as part of the *Visitacion Valley Redevelopment Program EIR*. Therefore, the proposed project is subject to review by the Department's Historic Preservation staff. To assist in this review, the project sponsor must hire a qualified professional to prepare a Historic Resource Evaluation (HRE) report. The professional must be selected from the Planning Department's Historic Resource Consultant Pool. Please contact Tina Tam, Senior Preservation Planner, via email (tina.tam@sfgov.org) for a list of three consultants from which to choose. The selected consultant must scope the HRE in consultation with Department Historic Preservation staff. Please contact the HRE scoping team at HRE@sfgov.org to arrange the HRE scoping. Following an approved scope, the historic resource consultant should submit the draft HRE report for review to Environmental Planning after the project sponsor has filed the EE Application and updated it as necessary to reflect feedback received in the PPA letter. Historic Preservation staff will not begin reviewing the project until a complete draft HRE is received.

- **Archeological Resources.** The proposed project would include soil-disturbing activities associated with building construction, including excavation that would reach a depth of approximately 17 to 21 feet below grade, in Redevelopment Zone 1. The project site is also located within an Archeologically Sensitive Area. As such, the proposed project could be subject to *Visitacion Valley Redevelopment Program EIR Cultural and Historical Resources Mitigation Measure 10-2: Disturbance of Known Archeological Resources.* The proposed project will require Preliminary Archeological Review (PAR) by a Planning Department archeologist. The PAR will assess the archeological sensitivity of the project site based on in-house source material and will consider the potential for archeological impacts resulting from proposed soils disturbance. Please provide detailed information, including sections, of proposed soils-disturbing activities, such as grading, excavation, installation of foundations, soils improvement, and site remediation with the EEA, and submit any available geotechnical/soils or Phase II hazardous materials reports prepared for the project to assist in this review.

  In accordance with *Cultural and Historical Resources Mitigation Measure 10-2*, the project sponsor shall retain the services of a qualified archeological consultant, subject to the review and approval by the Department Archeologist. The project sponsor must contact the Department Archeologist to obtain the names and contact information for the next three archeological consultants on the QACL. The archeological consultant shall determine, in consultation with the Department, project locations and activities that may affect archeological resource sites, identify measures needed to address the potential effect. These measures may include preparation of an Archeological Testing Program (ATP), conducting an Archeological Monitoring Program (AMP) and/or Archeological Data Recovery Program (ADRP), and other appropriate measures such as those described in *Cultural and Historical Resources Mitigation Measure 10-2* and *Visitacion Valley Redevelopment Program EIR Cultural and Historical Resources Mitigation Measure 10-3: Disturbance of Unknown Archeological Resources.*
  In addition, *Visitacion Valley Redevelopment Program EIR Cultural and Historical Resources Mitigation Measure 10-5: Disturbance of Paleontological Resource* could apply to the proposed project. This measure is intended to avoid any potential adverse effect on accidentally discovered buried or submerged paleontological resources. Should a paleontological resource be encountered on the project site, the project sponsor must immediately suspend any project-related soil-disturbing activities and retain the service of a qualified paleontological consultant to identify and evaluate the resource. Based on

this assessment, the paleontological consultant would determine the appropriate action necessary to prevent any significant adverse effects on the resource, in consultation with the Department.

- **Transportation.** Based on the Planning Department's Transportation Impact Analysis Guidelines for Environmental Review,[2] the project would require additional transportation analysis to determine whether the project may result in a significant impact. Therefore, the Planning Department requires that a consultant listed in the Planning Department's Transportation Consultant Pool prepare a Transportation Impact Study. You are required to pay additional fees for the study; please contact Virnaliza Byrd at (415) 575-9025 to arrange payment. Once you pay the fees, please contact Manoj Madhavan at (415) 575-9095 or manoj.madhavan@sfgov.org so that he can provide you with a list of three consultants from the pre-qualified Transportation Consultant Pool. Upon selection of a transportation consultant, the Department will assign a transportation planner who will direct the scope of the consultant-prepared study.

  Additionally, the project site is located near a high-injury pedestrian intersection as mapped by Vision Zero.[3] Planning staff have reviewed the proposed site plans and offer the following recommendations, some of which address the safety of persons walking and cycling to and from project site and vicinity:

  - Show the project site in context of the surrounding street network, and clarify that Leland Avenue and Raymond Avenue are proposed and have not yet been constructed.
  - Clarify whether the proposed Bayshore Plaza would be included in this project.
  - Provide a circulation plan for the proposed project that includes: Sidewalk widths, driveway location (existing and proposed with widths), pedestrian and bicycle access points to the building, circulation on the project site (i.e. between the proposed buildings).

- **Noise.** The proposed project could be subject to *Visitacion Valley Redevelopment Program EIR Noise Mitigation Measure 13-1: Project-Facilitated Remediation-, Demolition-, and Construction-Period Noise. Noise Mitigation Measure 13-1* requires that project sponsors incorporate remediation, demolition, and construction noise abatement measures into contractor agreements as a condition of demolition and construction permit issuance. Noise generated by construction-related activities would also be regulated by the San Francisco Noise Ordinance (San Francisco Police Code, Article 29), which includes restrictions on the type of construction equipment used and the hours during which construction may occur. Detailed information on construction equipment, phasing, and duration of each construction phase may be required as part of the environmental evaluation to assess the project's construction noise levels and methods to reduce such noise, as feasible.

  The proposed project would include locating new residential development on a project site within approximately 110 feet of the Caltrain line; therefore, *Visitacion Valley Redevelopment Program EIR Noise Mitigation Measure 13-2: Project-Facilitated Groundborne Vibration Levels* would apply to the project. This measure requires that the project sponsor conduct a vibration study demonstrating that groundborne vibrations associated with rail operations would not exceed applicable Federal

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2 This document is available at: http://www.sf-planning.org/index.aspx?page=1886.

3 This document is available at: http://www.sfmta.com/sites/default/files/projects/2015/vision-zero-san-francisco.pdf.

Transportation Authority (FTA) thresholds or can be reduced to acceptable levels through building design or construction design measures.

Visitacion Valley Redevelopment Program EIR Noise Mitigation Measure 13-3: Potential Exposure of New, Project-Facilitated Noise-Sensitive Development to Ambient Noise Levels Exceeding Standards could also be required for the proposed project. *Noise Mitigation Measure 13-3,* which is intended to reduce potential conflicts between existing noise-generating uses and new sensitive receptors, requires that a noise analysis be prepared for new development including a noise-sensitive use, prior to issuance of a residential building permit. The analysis must include, at a minimum, a site survey to identify potential noise-generation uses within 900 feet of, and that have a direct line-of-sight to, the project site. At least one 24-hour noise measurement (with average and maximum noise level readings taken so as to able to accurately describe maximum levels reached during nighttime hours) shall be included in the analysis. The analysis shall be prepared by person(s) qualified in acoustical analysis and/or engineering and shall demonstrate with reasonable certainty that Title 24 standards can be met, and that there are no particular circumstances about the project site that appear to warrant heightened concern about noise levels in the vicinity. In addition, the study shall provide noise reduction measures, such as those described in *Noise Mitigation Measure 13-3.*

- **Air Quality.** The proposed excavation exceeds the Bay Area Air Quality Management District's (BAAQMD) screening levels for construction-related criteria air pollutants.[4] Therefore, an analysis of the project's criteria air pollutant emissions is likely to be required. Please provide detailed information related to construction equipment, phasing and duration of each phase, and volume of excavation as part of the EEA.

  In addition, project-related demolition, excavation, grading and other construction activities may cause wind-blown dust that could contribute particulate matter into the local atmosphere. To reduce construction dust impacts, the proposed project will be required to adhere to the dust control requirements set forth in the Construction Dust Ordinance contained in San Francisco Health Code Article 22B and San Francisco Building Code Section 106.A.3.2.6. The proposed project is also required to prepare a Construction Dust Control Plan for review and approval by the Department of Public Health (DPH).

  The project site is not located within an Air Pollutant Exposure Zone, as mapped and defined by Health Code Article 38. The Air Pollutant Exposure Zone identifies areas with poor air quality based on an inventory and modeling assessment of air pollution, exposures, and health vulnerability from mobile, stationary, and area source emissions within San Francisco. Given that the project site is not within an Air Pollutant Exposure Zone, additional measures or analysis related to local health risks are not likely to be required. However, if the project would include new sources of toxic air contaminants including, but not limited to, emissions from diesel generators or boilers, or any other stationary sources, the project would result in toxic air contaminants that may affect both on-site and off-site sensitive receptors. Detailed information related to any proposed stationary sources must be provided with the EEA.

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4 BAAQMD, *CEQA Air Quality Guidelines,* May 2011, Chapter 3.

Equipment exhaust measures during construction, such as those listed in *Visitacion Valley Redevelopment Program EIR Air Quality Mitigation Measure 9-1-C: Remediation- and Construction-Related Air Quality Impacts* will likely be required. *Visitacion Valley Redevelopment Program EIR Air Quality Mitigation Measure 9-2: Long-Term Regional Emissions Impacts*, which establishes strategies for reducing overall emissions from traffic and area sources, would likely apply to the proposed project.

- **Greenhouse Gases.** *The City and County of San Francisco's Strategies to Address Greenhouse Gas Emissions* presents a comprehensive assessment of policies, programs, and ordinances that represents San Francisco's Qualified Greenhouse Gas (GHG) Reduction Strategy. Projects that are consistent with San Francisco's Qualified GHG Reduction Strategy would result in less-than-significant impacts from GHG emissions. In order to facilitate a determination of compliance with San Francisco's Qualified GHG Reduction Strategy, the Planning Department has prepared a Greenhouse Gas Analysis Compliance Checklist.[5] The project sponsor is required to submit the completed table regarding project compliance with the identified regulations and provide project-level details in the discussion column. This information will be reviewed by the environmental planner during the environmental review process to determine if the project would comply with San Francisco's Greenhouse Gas Reduction Strategy. Projects that do not comply with an ordinance or regulation may be determined to be inconsistent with the Greenhouse Gas Reduction Strategy.

- **Geology.** The proposed project would be located on a project site with a slope greater than 20 percent and would include approximately 11,188 cubic yards of excavation. Therefore, a geotechnical study is required. The geotechnical study must be prepared by a qualified consultant and submitted with the EEA, and should provide recommendations for any geotechnical concerns identified in the study. In general, compliance with the building codes would avoid the potential for significant impacts related to structural damage, ground subsidence, liquefaction, landslides, and surface settlement. To assist Planning Department staff in determining whether the project would result in environmental impacts related to geological hazards, it is recommended that you provide a copy of the geotechnical information with boring logs for the proposed project. This study will also help inform the Department Archeologist of the project site's subsurface geological conditions.

- **Hazardous Materials.** The proposed project would include excavation of approximately 11,188 cubic yard of soil in order to accommodate the basement levels of the proposed buildings, which would be approximately 17 to 21 feet below grade. The project site is also located in Redevelopment Zone 1 on the former Southern Pacific Transportation Company property where historical uses, and previous industrial activities on adjacent property, have resulted in soil and groundwater contamination. The California Department of Toxic Substances Control (DTSC) is the designated lead agency for determination and oversight of soil and groundwater cleanup requirements for the proposed project site. Implementation of future development in Redevelopment Zone 1 would be dependent on the site's cleanup according to DTSC protocols.

  In addition, the proposed project is subject to Article 22A of the Health Code, also known as the Maher Ordinance. The Maher Ordinance, which is administered and overseen by the Department of

[5] Refer to http://sf-planning.org/index.aspx?page=1886 for latest "Greenhouse Gas Compliance Checklist for Private Development Projects."

Public Health, requires the project sponsor to retain the services of a qualified professional to prepare a Phase I Environmental Site Assessment (ESA) that meets the requirements of Health Code Section 22.A.6. As the lead agency for remediation activities in Redevelopment Zone 1, DTSC would coordinate with DPH on the implementation of the Maher Program on the project site.
DPH requires that projects subject to the Maher Ordinance complete a Maher Application, available at: http://www.sfdph.org/dph/EH/HazWaste/hazWasteSiteMitigation.asp. Fees for DPH review and oversight of projects subject to the ordinance would apply. Please refer to DPH's fee schedule, available at: http://www.sfdph.org/dph/EH/Fees.asp#haz. Please provide a copy of the submitted Maher Application and Phase I ESA with the EEA.

- **Hydrology and Water.** Based on the *Visitacion Valley Redevelopment Program EIR*, the project site is located in an area with the potential for soil erosion. The proposed project would include approximately 11,188 cubic yards of excavation. Therefore, *Visitacion Valley Redevelopment Program EIR Hydrology and Water Quality Mitigation Measure 12-2: Increased Risk of Soil Erosion and Contaminant Spills During Project Remediation and Construction,* which requires project sponsors to implement design features and measures to minimize project-generated erosion and control for potential hazardous materials spills, would likely apply.

- **Tree Planting and Protection.** The Department of Public Works Code Section 8.02-8.11 requires disclosure and protection of landmark, significant, and street trees located on private and public property. Any such trees must be shown on the site plans with the size of the trunk diameter, tree height, and accurate canopy drip line. Please submit the *Tree Planting and Protection Checklist* with the EEA and ensure that trees are appropriately shown on site plans. Also see the comments below under "Street Trees."

PLANNING DEPARTMENT APPROVALS:

The project requires the following Planning Department approvals. These approvals may be reviewed in conjunction with the required environmental review, but may not be granted until after the required environmental review is completed. Please note that the subject parcel is located within the Visitacion Valley Schlage Lock Plan Area.

1. **Rezoning.** The project site is located within an M-1 (Light Industrial) Zoning District. The proposed residential project would not be permitted at the proposed density. The proposed project includes a rezoning of the property to the MUG (Mixed Use General) Zoning District, which requires the Board of Supervisors approval of a Zoning Map Amendment for the subject parcel.

2. **Height District Reclassification.** The project site is located within a 40-X Height and Bulk District. The height of the proposed project would exceed the existing height limit. The proposed project includes a rezoning of the property to the 57-X and 68-X Height and Bulk Districts, which requires the Board of Supervisors approval of a Height District Reclassification for the subject parcel.

3. A **Lot Line Adjustment Application** from the Department of Public Works is required for the proposed lot line adjustment.

4. **Building Permit Applications** are required for the demolition of the existing buildings and proposed new construction on the subject property.

If the Zoning Map Amendment and Height District Reclassification are approved, the following applications would also be required:

5. A **Large Project Authorization** from the Planning Commission is required per Planning Code Section 329 for the new construction of a building greater than 75 feet in height or greater than 25,000 gross square feet. Planning Code Section 329 outlines the requirements for a Large Project Authorization that will be applicable if the project is rezoned to an MUG Zoning District. A Large Project Authorization is required for new building construction exceeding 75 feet in height or 25,000 gross square feet. All large projects are subject to review by the Planning Commission in an effort to achieve the objectives and policies of the General Plan, the applicable Design Guidelines and the Planning Code. To the extent possible, the project should be designed to minimize deviations and should strive to comply with all Planning Code requirements.

6. A **Shadow Analysis Application** is required for new construction over 40 feet in height that would cast a shadow on properties designated to be acquired by the Recreation and Parks Department.

If the Zoning Map Amendment and Height District Reclassification are not approved, the following applications would also be required:

7. A **Conditional Use Authorization** from the Planning Commission is required per Planning Code Section 207 to allow the construction of residential units in an M-1 Zoning District.

Applications are available in the Planning Department lobby at 1650 Mission Street Suite 400, at the Planning Information Center at 1660 Mission Street, and online at www.sfplanning.org. Building Permit applications are available at the Department of Building Inspection at 1660 Mission Street.

NEIGHBORHOOD NOTIFICATIONS AND PUBLIC OUTREACH:

Project Sponsors are encouraged to conduct public outreach with the surrounding community and neighborhood groups early in the development process. Additionally, many approvals require a public hearing with an associated neighborhood notification. Differing levels of neighborhood notification are mandatory for some or all of the reviews and approvals listed above.

This project is required to conduct a **Pre-Application Meeting** with surrounding neighbors and registered neighborhood groups before a development application may be filed with the Planning Department. The Pre-application packet, which includes instructions and template forms, is available at www.sfplanning.org under the "Permits & Zoning" tab. All registered neighborhood group mailing lists are available online at www.sfplanning.org under the "Resource Center" tab.

The project is also required to hold a **Post-Application Meeting** for Site and Building Permit Applications and Parks and Public Open Space Subject to Design Review. The following requirement applies to applications for site and/or building permits and parks or other public open space subject to design review. During the 30-day public review period prior to project approval, the project sponsor shall hold a public meeting on or proximate to the proposed project site. A representative from the Planning

Department shall attend any such meeting. Documentation that the meeting took place shall be submitted to the Planning Department consistent with the Department's pre-application meeting proof-of-meeting requirements and shall be kept with the project file. The Planning Director, or Planning Commission if required, shall not approve such a project prior to any such required meeting.

PRELIMINARY PROJECT COMMENTS:

The following comments address specific Planning Code and other general issues that may significantly impact the proposed project. When the Planning Code requirements differ between the M-1 and MUG Zoning Districts it is noted below; otherwise, the Planning Code requirements are the same for both Zoning Districts.

1. **Visitacion Valley/Schlage Lock Special Use District & Design for Development.** The subject property falls within the Visitacion Valley/Schlage Lock Special Use District, adopted in 2009 and amended in 2014.

   The planning process that led to the establishment of the Special Use District and associated Plans (the former Redevelopment Plan, the 2009 Design for Development), date back to 2000. The 2009 Design for Development (D4D) document memorializes the vision of a park/open space adjacent to the historic office building. It also includes the potential for housing on the southern portion of the site. The amended D4D document (2014) maintains the vision for the parcel as open space with the potential for housing. The 2014 Open Space and Streetscape Master Plan (OSSMP) for the Schlage Lock site includes a "Blanken Park alternative," which calls for open space, gardens and public programming on the site.

   The current M-1 Zoning District allows residential uses at a density ratio not exceeding the number of dwelling units permitted in the nearest residential zoning district with a Conditional Use Authorization. In this case, the nearest residential zoning district is RH-1 (Residential, House, Single-Family). Therefore, a density ratio of one unit per 1,500 square feet of lot area would be allowed with a Conditional Use Authorization. With a lot size of 35,993 square feet, a maximum of 24 dwelling units would be allowed. The project sponsor is requesting a reclassification to MUG (Mixed-Use General) and greater height limits similar to those of the adjacent Schlage Lock site. If the project is successfully rezoned to the proposed MUG Zoning District, there is no residential density limit.

   The adjacent Schlage Lock development agreement and accompanying zoning emerged from over 15 years of community process and is part of a master plan which provides significant public benefits, including public open space, streetscape and transportation improvements, access improvements to the Caltrain station, increased affordable housing, and restoration of the historic office building – including the provision of community space. Moreover, the Schlage Lock project will be building substantial basic infrastructure (e.g. streets, water, sewer), and it is possible that the 2201 Bayshore project will benefit from these investments. Comparable to the process for the Schlage Lock site, the Planning Department would expect any reclassification of this site to be vetted through a public process that includes consideration of design and public benefits. Related to this site particularly, the community has long prioritized benefits and amenities associated with the old office building and open space. Any proposed public benefits should be inspired by and consistent with the Design for Development document and Open Space and Streetscape Master Plan. (See Public Realm

Improvements, below.) Please review all of the Visitacion Valley/Schlage Lock plan documents, available at: http://www.sf-planning.org/index.aspx?page=1682.

The Department recommends coordinating with the Planning Department and the Office of Economic and Workforce Development in order to discuss a public engagement process and next steps. For contact information, please see the Visitacion Valley/Schlage Lock page on the Planning Department's website: http://www.sf-planning.org/index.aspx?page=1682.

2. **Existing Height and Bulk.** The subject property is located within a 40-X Height and Bulk District, which does not permit the project's proposed height and bulk. The proposed project could not be approved under existing zoning; therefore, a height reclassification is required.

3. **Building Bulk.** Planning Code Section 249.45 outlines bulk and mass limitations. Please ensure that the project plans provide adequate detail in order for staff to determine compliance with this Planning Code requirement.

4. **Site Planning/Urban Design Concept Plan.** The Department encourages that this lot is developed with a site plan that references the broader community process that resulted in the adoption of the first D4D document in 2009 and the current D4D document in June 2014. The Urban Design Concept Plan in both documents shows no buildings on the northern side of the lot, but rather an extension of the Blanken Street Park. The Department encourages the addition of more public open space especially on the northern side of this lot in order to be consistent with the Visitacion Valley Schlage Lock Open Space and Streetscape Master Plan and the Design for Development document.

5. **Major Modification.** Per Planning Code Section 249.45, a Major Modification is any deviation of more than 10 percent from any quantitative standard in this Special Use District or the Design for Development document. If the project is seeking any such deviation then the Major Modification must be approved by the Planning Commission. Additionally, any modifications to Bulk and Massing, Ground Floor Entrances, Private Open Space, Car Sharing, and Public Realm as outlined in either Planning Code Section 249.45 and the Design for Development document also requires a Major Modification that can be approved by the Planning Commission.

6. **Rear Yard.** Planning Code Section 134 requires a minimum rear yard setback of 25% of the lot depth to be provided at the lowest story containing a dwelling unit, and at each succeeding level or story of the building. As proposed, all residential floors of the project encroach into the required rear yard; therefore, the project does not comply. The Planning Department recommends the provision of a comparable amount of open space equivalent to what would have been provided in a compliant rear yard. This deviation would be approved as an exception under the Large Project Authorization or as a Major Modification if a Large Project Authorization is not required.

7. **Open Space (Residential).** For the MUG Zoning District, Planning Code Section 135 requires the project to provide 80 sf of open space for every dwelling unit (if non publicly accessible) and 54 sf of open space for every dwelling unit (if publicly accessible). For the M-1 Zoning District, Planning Code Section 249.45 requires the project to provide 50 sf of open space for every dwelling unit (if common) and 60 sf of open space for every dwelling unit (if private). As proposed, the project provides approximately 16,488 sf of a combination of publicly accessible and not publicly accessible open space. As proposed, there is not sufficient detail provided to determine whether the project

meets the open space requirements. Please ensure that the project plans provide adequate detail in order for staff to determine compliance.

8. **Permitted Obstructions.** Planning Code Section 136 establishes specific dimensional and glazing requirements for bay window projections. As proposed, there is not sufficient detail provided to determine whether the proposed bay windows and balconies comply. Please ensure that the project plans provide adequate detail in order for staff to determine compliance.

9. **Exposure.** Section 140 requires that each dwelling unit have at least one room that meets the 120-square-foot minimum superficial floor area requirement of Section 503 of the Housing Code face directly on a street right-of-way, code-complying rear yard, or an appropriately sized courtyard. The proposed rear yard is not code-complying and does not provide a large enough courtyard to meet the exposure requirement for those units that only have windows fronting the rear yard area. Therefore, the proposed project requires revision to meet the minimum exposure requirement, or you may request and justify an exposure exception through the Large Project Authorization process. The Department generally encourages projects to minimize the number of units needing an exposure exception. As proposed, there is not sufficient detail provided to determine whether the project meets the exposure requirements. Please ensure that the project plans provide adequate detail in order for staff to determine compliance.

10. **Rooftop Screening.** Planning Code Section 141 establishes specific rooftop screening requirements. As proposed, there is not sufficient detail provided to determine whether the project meets the rooftop screening requirements. Please ensure that the project plans provide adequate detail in order for staff to determine compliance.

11. **Street Trees/Streetscape Plan/Pedestrian Improvements.** Planning Code Section 138.1 outlines the requirements for streetscape and pedestrian improvements, including the requirement for new street trees and a streetscape plan. Per Planning Code Section 138.1, the project sponsor will be required to submit a Streetscape Plan illustrating the location and design of streetscape improvements appropriate to the street type, including site furnishings, landscaping, corner curb extensions, and sidewalk widening as appropriate. The Planning Department may require these elements as part of conditions of approval. Streetscape designs should be consistent with the Schlage Lock Open Space + Streetscape Master Plan, which can be found at http://www.sf-planning.org/index.aspx?page=1682. The project sponsor should coordinate streetscape and pedestrian improvements with the master developer of the adjacent Schlage Lock site. Required streetscape and pedestrian improvements are not eligible for in-kind fee credit.

12. **Bird Safety.** Planning Code Section 139 outlines the standards for new construction to reduce bird mortality and bird hazards. Please refer to these standards to ensure compliance with the Standards for Bird-Safe Buildings.

13. **Shadow Analysis.** Based upon the preliminary analysis and submitted materials, the project will have potential shadow impacts on nearby property designated to be acquired by the San Francisco Recreation and Park Department. A Shadow Analysis Application will be required if the proposed building(s) exceed 40 feet in height.

14. **Shadow Analysis (Section 295).** Planning Code Section 295 requires that a shadow analysis must be performed to determine whether the project has the potential to cast shadow on properties under the jurisdiction of or designated to be acquired by the San Francisco Recreation and Park Commission. Department staff has prepared a shadow fan that indicates the project may cast new shadow on Blanken Park, the Leland Greenway, and Visitacion Park. Therefore, a detailed shadow analysis would need to be prepared to determine if the project would create new shadow in that results in an adverse impact to Blanken Park, the Leland Greenway, and Visitacion Park, pursuant to Section 295. If this detailed shadow analysis finds that the project would cast shadow on Blanken Park, the Leland Greenway, and Visitacion Park, the sponsor should explore sculpting of portions of the project to avoid casting new shadows on the park.

15. **Street Frontage.** New construction located within an MUG Zoning District would be subject to the requirements for street frontage as outlined in Planning Code Section 145.1, including the requirements for active uses, ground floor ceiling heights, transparency and fenestration, among others. Please refer to Planning Code Section 145.1. In addition, Planning Code Section 249.45 requires that residential entrances line the streets as described in the D4D document. Please ensure that the project plans provide adequate detail in order for staff to determine compliance with both Code Sections.

16. **Parking.** Under the current zoning and the proposed zoning, no parking would be required. However, each of these zoning districts would have parking maximums, which are listed in Planning Code Section 151.1. Per Planning Code Section 249.45, parking is limited to up to one parking space for every dwelling unit in the Schlage Lock Visitacion Valley Special Use District. Based on the existing and future transit accessibility of the site and the need to limit traffic volumes in the area, parking should be minimized on site. The project as proposed complies with this Code Section.

17. **Bicycle Parking.** Planning Code Section 155.1-155.4 provides requirements for bicycle parking and associated facilities (i.e. showers and lockers) in new residential development. Based on the proposed plans, which includes 205 dwelling units, the proposed project is required to provide a minimum of 126 Class 1 bicycle parking spaces and 10 Class 2 bicycle parking spaces. The project as proposed complies with this Code Section.

18. **Dwelling Unit Mix.** For the MUG Zoning District, Planning Code Section 207.6 states that at least 40% of the dwelling units in each building with residential uses shall contain at least 2 bedrooms or that states that at least 30% of the dwelling units in each building with residential uses shall contain at least 3 bedrooms. For the M-1 Zoning District, Planning Code Section 249.45 states that at least 30% of the dwelling units in each building with residential uses shall contain at least 2 bedrooms. The project appears to comply with this Code Section, however, please provide more detail on the floor plans in order for staff to be able to determine if the bedroom size and arrangement is in compliance.

19. **Visitacion Valley Community Facilities and Infrastructure Fee.** The Visitation Valley Community Facilities and Infrastructure Fee shall be paid before the City issues a first construction document. The fee is $4.58 for each net addition of occupied square feet of residential use.

20. **Option for In-Kind Provision of Community Improvements and Fee Credits.** Project sponsors may propose to directly provide community improvements to the City. In such a case, the City may enter

into an In-Kind Improvements Agreement with the sponsor and issue a fee waiver for the Visitation Valley Community Facilities and Infrastructure Fee from the Planning Commission, for an equivalent amount to the value of the improvements. This process is further explained in Section 420.3(c) of the Planning Code. More information on in-kind agreements can be found in the Application Packet for In-Kind Agreement at http://www.sf-planning.org/Modules/ShowDocument.aspx?documentid=8601

21. **Public Realm Improvements.** Blanken Park and the public space near the old office building have been identified as priority projects in the Schlage Lock D4D and OSSMP documents. The concept proposal in the Schlage Lock Open Space + Streetscape Master Plan includes community gardens, safe and landscaped pedestrian connections, well-designed stairs, fitness stations, and landscaped slopes. See comments in the Preliminary Design Comment section below for more discussion.

22. **Transit Impact Development Fee.** Pursuant to Planning Code Section 411 et seq., the Transit Impact Development Fee may apply if uses other than residential are added to the proposal. Please be aware that an ongoing process – the Transportation Sustainability Program may eventually replace the Transit Impact Development Fee. You can find more information about this program here: http://www.sf-planning.org/index.aspx?page=3035

23. **Bayshore Multi-modal Facility Location Study.** The City and County of San Francisco are currently evaluating alternative locations and designs for a multi-modal facility to strengthen transit connections in the Schlage Lock area, including a planned bus rapid transit (BRT) route. The "multi-modal facility" may be as simple as an enhanced streetscape, as significant as a new enclosed structure, or any range of investments which fall between the two. The Project Sponsor should ensure designs that support transit access and multi-modal connections in the area, as consistent with BRT plans and Study findings. The Study is expected to have public engagement commencing in Fall 2015 and to conclude in Spring 2016. For more information contact Jeremy Shaw at (415) 575-9135 or Jeremy.Shaw@sfgov.org.

24. **Affordable Housing.** Pursuant to Planning Code Section 415, any housing project which consists of ten or more dwelling units shall satisfy the Inclusionary Housing Program requirements outlined in Planning Code Section 415.3(b), Table 415.3. Table 415.3 provides alternatives which include payment of a 20% fee, providing 12% (of the total # of units) on-site as affordable, or 20% (of the total # of units) off-site as affordable. Please see Planning Code Section 415 for further Inclusionary Housing Program Code requirements which also includes submission of an Affidavit of Compliance to the Planning Department depending on the alternative sought. Any on-site affordable dwelling-units proposed as part of the project must be designated as owner-occupied units, not rental units. Affordable units designated as on-site units shall be sold as ownership units and will remain as ownership units for the life of the project.

    For your information, if a project proposes rental units, it may be eligible for an on-site alternative to the Affordable Housing Fee if it has demonstrated to the Planning Department that the affordable units are not subject to the Costa Hawkins Rental Housing Act (a Costa Hawkins exception). Affordable units are not subject to the Costa Hawkins Rental Housing Act under the exception provided in Civil Code Sections 1954.50 through one of the following methods:

    a. Direct financial construction from a public entity
    b. Development bonus or other form of public assistance

You must state in your submittal how the project qualifies for a Costa Hawkins exception. If the project is deemed eligible, we may start working with the City Attorney on the agreement.

25. **First Source Hiring Agreement.** A First Source Hiring Agreement is required for any project proposing to construct 25,000 gross square feet or more. For more information, please contact:

    Ken Nim, Workforce Compliance Officer
    CityBuild, Office of Economic and Workforce Development
    City and County of San Francisco
    50 Van Ness Avenue, San Francisco, CA 94102
    (415) 581-2303

PRELIMINARY DESIGN COMMENTS:

The project is located in the Visitation Valley/Schlage Lock Development Project area, the result of a long community planning process. The current neighborhood context includes primarily three-story residential buildings with some nearby ground floor retail along Bayshore Boulevard. The proposed more immediate context is intended to include residential buildings of up to 57 or 68 feet in height with minimal and specifically located ground floor commercial uses. In addition, the adjacent historic office building will be restored and include community uses. This site, most recently envisioned as a park, is also adjacent to CalTrain tracks and right-of-way. The following comments address preliminary design issues that may significantly impact the proposed project:

1. **Site Design, Open Space, and Massing.** Overall, the Urban Design Advisory Team (UDAT) recommends a more modestly built project located in the southern portion of the site that more directly supports the recent community planning intent to have an open space with smaller buildings rather than maximum built envelop with edge pathways. In the direction of a more modest scenario, UDAT would encourage the creation of an open space from Blanken Avenue to the extension of Raymond Avenue that is well-connected and accessible to the public. It would be also important to establish a welcoming pedestrian connection between Bayshore Boulevard and Street A.

2. **Street Frontage.** Generally, the project should respect and enhance the planned street grid, infrastructure and pedestrian networks in the Development Project area. UDAT would support residential units at the ground floor in alignment with the approved Design of Development document. Particular detail, transparency, and design attention should be given for the facades, exterior design elements and pathways that face onto larger passageways and open space, for example, at the end of Leland Avenue and its greenway. The sponsor should consider a community room with outdoor interface to activate adjacent open space on the northern portion of the site.

3. **Architecture.** As the project is diagrammatic, UDAT does not yet have any specific architectural comments however more generally recommends the use of high quality materials, significant depth between façade planes, and thoughtful detailing to provide interest at the pedestrian level.

PRELIMINARY PROJECT ASSESSMENT EXPIRATION:

This Preliminary Project Assessment is valid for a period of **18 months**. An application, as listed above, must be submitted no later than **February 7, 2017**. Otherwise, this determination is considered expired and a new Preliminary Project Assessment is required. Such applications and plans must be generally consistent with those found in this Preliminary Project Assessment.

cc: Julie Heinzler, Property Owner
Erika Jackson, Current Planning
Jenny Delumo, Environmental Planning
Jeremy Shaw, Citywide Planning and Analysis
Jonas Ionin, Planning Commission Secretary
Charles Rivasplata, SFMTA
Jerry Sanguinetti, Public Works
Pauline Perkins, SFPUC
Planning Department Webmaster (planning.webmaster@sfgov.org)

EXHIBIT 8

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424 Jessie Historic Properties, LLC

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Clerk of the Court
BY: JUDITH NUNEZ
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

VISITACION INVESTMENT, LLC, a California limited liability company,

Plaintiff,

v.

424 JESSIE HISTORIC PROPERTIES, LLC, a California limited liability company, all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the Complaint adverse to Plaintiff's title, or any cloud on Plaintiff's title thereto, and DOES 1 through 50, inclusive,

Defendants.

Case No. CGC-19-579667

VERIFIED ANSWER TO COMPLAINT FOR QUIET TITLE, FOR DECLARATORY RELIEF, AND FOR PRELIMINARY AND PERMANENT INJUNCTION

Action Filed: October 1, 2019
Trial Date: Not Set

Defendant 424 Jessie Historic Properties, LLC ("Defendant"), hereby answers the Complaint ("Complaint") filed by Plaintiff Visitacion Investment, LLC ("Plaintiff") on October 1, 2019, as follows:

GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

1. Defendant lacks sufficient information and belief to answer the allegation contained in Paragraph 1 and 2, and on that basis denies the allegations contained therein.

2. Answering Paragraph 3, Defendant admits that Defendant is a California limited liability company with its principle place of business in Tiburon, California. Defendant further admits that Defendant owns two parcels of real property commonly known as 2201 Bayshore Boulevard and 220 Tunnel Avenue, San Francisco, with the Assessor's Parcel numbers 5087-004 and 5087-005 respectively ("JHP Property"), and denies on lack of information and belief the remaining allegations contained therein.

3. Defendant lacks sufficient information and belief to answer the allegation contained in Paragraph 4, and on that basis denies the allegations contained therein.

4. Defendant admits the allegation contained in Paragraph 5.

5. Defendant lacks sufficient information and belief to answer the allegation contained in Paragraph 6 and 7, and on that basis denies the allegations contained therein.

6. Answering Paragraph 8, Defendant admits that Defendant's real property commonly known as 2201 Bayshore Boulevard and 220 Tunnel Avenue, San Francisco, adjoins a portion of Plaintiff's real property commonly known as 2201, 2245, 2500, 2555 Bayshore Boulevard, San Francisco, and 222 Tunnel Avenue, and 289, 290, 292 Sunnyvale Avenue, San Francisco, and denies on lack of information and belief the remaining allegations contained therein.

7. Defendant lacks sufficient information and belief to answer the allegation contained in Paragraph 9 and 10, and on that basis denies the allegations contained therein.

8. Answering Paragraph 11, Defendant admits that on or about August 1990, Southern Pacific Transportation Company, grantor, granted to Tuntex, Inc, grantee, certain real

property in San Francisco as described by the grant deed executed on August 1, 1990, recorded August 10, 1990 as Document No. E761808 ("1990 Grant Deed"), and denies on lack of information and belief the remaining allegations contained therein.

9. Answering Paragraph 12, Defendant admits that on or about August 1990, Southern Pacific Transportation Company did not convey the real properties commonly known as 2201 Bayshore Boulevard and 220 Tunnel Avenue, San Francisco, and denies on lack of information and belief the balance of allegations contained therein.

10. Answering Paragraph 13, Defendant admits that the 1990 Grant Deed reserved various easements over the real property granted to Tuntex, Inc., and that Exhibit B to the 1990 Grant Deed sets forth these easements, and denies on lack of information and belief the remaining allegations contained therein.

11. Answering Paragraph 14, Defendant admits that Exhibit B to the 1990 Grant Deed contains a provision providing the following:

> A perpetual, exclusive easement in, on, under, over, and through the locations described in Schedule 1 (Railroad Main Line Easement), Schedule 2 (Drill & Spur Track Easement), and Schedule 3 (Access Roadway Easement) attached hereto, in which areas Grantor (and its lessees, sublessees, licensees, successors or assigns) shall have the right to own, operate, maintain, repair, lease, license, and/or remove existing and/or future railroad, rail and railroad related equipment and facilities and communications line and facilities of every kind and nature including but not limited to all existing facilities, telephone, telegraph, television and fiber optic lines and related equipment.

Defendant denies on lack of information and belief the remaining allegations contained therein.

12. Answering Paragraph 15, Defendant admits that Southern Pacific Transportation Company and Tuntex, Inc. executed and recorded a "Deed Correcting Description of Rail Easement" ("1991 Deed") on or about July 1991, and that the 1991 Deed contains a metes and bounds description of the easements. Defendant further admits that the 1991 Deed contains certain provisions providing the same language as that contained in the 1990 Grant Deed, and denies on lack of information and belief the remaining allegations contained therein.

13. Answering Paragraph 16, Defendant admits that the 1990 Grant Deed and the 1991 Deed contain the following provision, and denies the remaining allegations contained therein:

> Upon abandonment or termination of the easement, or any portion thereof, Grantor shall be obligated to execute and deliver to Grantee or its successors and assigns an instrument in form and substance satisfactory to Grantee, or its successors and assigns, relinquishing the easement described in this paragraph.

14. Answering Paragraph 17, Defendant admits that Union Pacific Railroad Company conveyed portions of real property commonly known as 2201 Bayshore Boulevard, San Francisco ("JHP Property"), to Patrick McNerney, that Patrick McNerney is the president of Martin McNerney Development, Inc., the manager of Defendant 424 Jessie Historic Properties, LLC, that Patrick McNerney conveyed the JHP Property to Defendant, and denies on lack of information and belief the remaining allegations contained therein.

15. Answering Paragraph 18, Defendant admits the allegation contained therein except the allegation, "pursuant to [the Quitclaim Deed] the RR disclaimed any interest in the Easements", which allegation it denies.

16. Answering Paragraph 19, Defendant admits on information and belief that Plaintiff is now developing its respective potion of real property for mixed use, multi-family housing, and denies on lack of information and belief the remaining allegations contained therein.

17. Answering Paragraph 20, Defendant admits that on or about May 8, 2015, Defendant submitted a Preliminary Project Assessment application to the San Francisco Planning Department describing two new proposed residential buildings with a total of 205 dwelling units, and denies the remaining allegations contained therein.

18. Answering Paragraph 21, Defendant admits that the 2015 Preliminary Project Assessment was assigned to review by the San Francisco Planning Department as Case No. 215-006509PPA, and that the San Francisco Planning Department issued a Preliminary Project Assessment on August 7, 2015, and denies the remaining allegations contained therein.

19. Defendant lacks sufficient information and belief to answer the allegations contained in Paragraph 22, and on that basis denies the allegations contained therein.

20. Answering Paragraph 23, Defendant denies the allegations contained therein.

21. Answering Paragraph 24, Defendant admits on information and belief that Plaintiff intends to convert Plaintiff's property to residential and commercial use, and denies on lack of information and belief the remaining allegations contained therein.

22. Answering Paragraph 25, Defendant admits that Plaintiff has requested Defendant execute and deliver to Plaintiff a quitclaim deed relinquishing the Easements, and that Defendant has not executed this quitclaim deed relinquishing the easements, and denies the remaining allegations contained therein.

FIRST CAUSE OF ACTION
(Quiet Title Against All Defendants)

23. Answering Paragraph 26, Defendant incorporate herein by this reference its responses to Paragraphs 1 through 22, above, as if set fully set forth herein.

24. Answering Paragraph 27, Defendant denies the allegations contained therein.

25. Answering Paragraph 28, Defendant denies the allegations contained therein.

26. Answering Paragraph 29, Defendant denies the allegations contained therein.

27. Answering Paragraph 30, Defendant admits that Plaintiff seeks to quiet title, and denies the remaining allegations contained therein.

28. Answering Paragraph 31, Defendant admits that Plaintiff seeks to quiet title, and denies the remaining allegations contained therein.

SECOND CAUSE OF ACTION
(For Declaratory Relief re Termination and Abandonment of the Easements - Against Defendants)

29. Answering Paragraph 32, Defendant incorporates herein by this reference its responses to Paragraphs 1 through 28, above, as if set fully set forth herein.

30. Answering Paragraphs 33 and 34 Defendant denies the allegations contained therein.

THIRD CAUSE OF ACTION
(For Preliminary and Permanent Injunction - Against Defendants)

31. Answering Paragraph 35, Defendant incorporates herein by this reference its responses to Paragraphs 1 through 30, above, as if set fully set forth herein.

32. Answering Paragraphs 36, 37 and 38, Defendant denies the allegations contained therein.

PRAYER FOR RELIEF

In response to the prayers for relief as to each cause of action and for all causes of action, Defendant denies Plaintiff is entitled to the relief sought.

AFFIRMATIVE DEFENSES

As separate affirmative defenses to the Complaint, and the whole thereof, Defendant asserts as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

1. The Complaint fails to state a claim against Defendant upon which any of the relief sought by Plaintiff can be granted in law or equity, including, without limitation, quiet title, declaratory relief, preliminary and permanent injunction, and any compensatory or punitive damages, attorneys' fees or costs.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

2. Defendant is informed and believes that each of Plaintiff's causes of action against Defendant is barred by the applicable statute of limitations including, but not limited to, California Code of Civil Procedure sections 318, 319, 320, 321, 322, 323, 325, 337, 337a, 338, 338(b), 338(d), 338(g), 339, 339(1), 340, and 343.

THIRD AFFIRMATIVE DEFENSE

(Laches)

3. Defendant is informed and believes that the Complaint, and each purported cause of action contained therein, is barred by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

(Estoppel)

4. Defendant is informed and believes that Plaintiff is estopped from asserting the claims alleged in the Complaint by, among other things, their acts, omissions and conduct, and the acts, omissions and conduct of its predecessors, agents, employees and representatives.

FIFTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Losses)

5. Defendant is informed and believes that Plaintiff's alleged loss, injuries and damages, which are denied, were aggravated by Plaintiff's failure to use reasonable diligence to mitigate them.

SIXTH AFFIRMATIVE DEFENSE

(Waiver and Release)

6. Defendant is informed and believes that Plaintiff is barred from any recovery under the Complaint because it has voluntarily and knowingly waived and released the right to maintain the actions filed in this case by, among other things, their acts, omissions and conduct, and the acts, omissions and conduct of their predecessors, agents, employees and representatives.

SEVENTH AFFIRMATIVE DEFENSE

(Acts in Concert and with Approval)

7. If any of the acts or omissions alleged in the Complaint was committed by the Defendant or its predecessors on title, which is denied, Defendant is informed and believes that Plaintiff and/or the predecessors on title directly or indirectly acted in concert with such persons or knowingly ratified or approved such conduct, and are therefore precluded from any recovery from or against Defendant based thereon.

EIGHTH AFFIRMATIVE DEFENSE

(Assumption of Risk)

8. Defendant is informed and believes that Plaintiff had knowledge of the risks and hazards inherent in the events and activities which took place at the times set forth in the Complaint, as well as the magnitude of those risks and hazards, and thereafter knowingly and willingly assumed and accepted those risks and hazards.

NINTH AFFIRMATIVE DEFENSE

(Statute of Frauds)

9. Defendant is informed and believes that each of Plaintiff's causes of action set forth in the Complaint are barred by the statute of frauds.

TENTH AFFIRMATIVE DEFENSE

(Offset)

10. Defendant is informed and believes that it has incurred damages and expenses in an amount to be ascertained and applied as an offset against Plaintiff's claims, without acknowledging that such claims have merit or provide any basis for recovery.

ELEVENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

11. Defendant is informed and believes that Plaintiff has "unclean hands" with regard to the relief sought in the Complaint and are therefore barred from obtaining such relief.

TWELFTH AFFIRMATIVE DEFENSE

(Consent and Ratification)

12. Defendant is informed and believes that Plaintiff has ratified, acknowledged, consented to, or acquiesced in Defendant's property rights.

THIRTEENTH AFFIRMATIVE DEFENSE

(Bona Fide Purchaser)

13. Defendant is informed and believes that Plaintiff's claims are barred because Defendant and its predecessors on title are good faith bona fide purchasers for value without

notice who took free and clear of Plaintiff's claims.

FOURTEENTH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

14. Defendant is informed and believes that granting Plaintiff's demands set forth in the Complaint would result in Plaintiff receiving relief, money or valuable property interests beyond anything they are entitled to receive, which is hereby denied.

FIFTEENTH AFFIRMATIVE DEFENSE

(No Reliance)

15. Defendant is informed and believes that Plaintiff did not rely on any act, omission, conduct, or statement of Defendant or its predecessors.

SIXTEENTH AFFIRMATIVE DEFENSE

(Outside of Scope of Agency)

16. Defendant is informed and believes that any of the acts or omissions alleged in the Complaint committed by Defendant's agents or representatives, which is hereby denied, was outside the scope of the authority of those agents or representatives and was neither authorized nor ratified by Defendant, nor did Defendant creates ostensible authority for such conduct.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Privilege)

17. Defendant is informed and believes that the acts and omissions alleged in Plaintiff's Complaint were privileged by, among other things, Civil Code Section 47.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Notice)

18. Defendant is informed and believes that Plaintiff's claims herein are barred by Plaintiff's failure to comply with California Code of Civil Procedure section 760.010, *et seq.*

NINETEENTH AFFIRMATIVE DEFENSE

(Lack of Standing)

19. Defendant is informed and believes that Plaintiffs lack standing to assert the matters alleged in the Complaint against Defendant.

TWENTIETH AFFIRMATIVE DEFENSE

(Balancing of Equities)

20. Defendant is informed and believes that Plaintiff's claims herein are barred because a balancing of equities deprived Defendant of valuable vested rights and amount to a hardship far outweighing any loss or inconvenience to Plaintiff.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(No Extinguishment)

21. Defendant is informed and believes that Plaintiff's claims are barred by Plaintiff's failure to allege fats establishing extinguishment of Defendant's easement rights under California Civil Code section 811.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Equitable Easement)

22. In the event that Defendant's appurtenant easement and right of way under its 2016 Grant Deed is in any manner invalid or unenforceable, in whole or in part, which Defendant deny, Defendant is informed and believe it is entitled to an equitable easement which provides Defendant's property access to the public roadway for, among other things, ingress and egress and utilities.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(No Abandonment)

23. Defendant is informed and believes that Plaintiff's claims herein are barred by Plaintiff's failure to allege facts establishing abandonment of Defendant's easement rights and failure to meet the requirements of, among other things, California Civil Code sections 877.040 and 887.050.

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff takes nothing by way of its Complaint;

2. For judgment in Defendant's favor;

3. For all costs of suit herein incurred including, where authorized, reasonable attorneys' fees; and

4. For other relief as the Court may deem just and proper.

Dated: January 31, 2020

STEYER LOWENTHAL BOODROOKAS ALVAREZ & SMITH LLP

By: _____
Jeffrey H. Lowenthal
Zheying Li
Attorneys for Defendant
424 Jessie Historic Properties, LLC

VERIFICATION

I, Patrick McNerney, declare:

I am President of Martin McNerney Development, Inc., the manager of Defendant 424 Jessie Historic Properties, LLC in the above-entitled action, and authorized to execute this verification on its behalf. I have read the foregoing **VERIFIED ANSWER TO COMPLAINT FOR QUIET TITLE, FOR DECLARATORY RELIEF, AND FOR PREMINARY AND PERMANENET INJUNCTION** and know the contents thereof. I am informed and believe that the same is true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 30, 2020 at San Francisco, California.

Patrick McNerney

EXHIBIT 9

Jeffrey H. Lowenthal (State Bar No. 111763)
Zheying Li (State Bar No. 308767)
STEYER LOWENTHAL BOODROOKAS
ALVAREZ & SMITH LLP
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Attorneys for Attorneys for Defendant
424 Jessie Historic Properties, LLC

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

02/04/2020
Clerk of the Court
BY: JUDITH NUNEZ
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

VISITACION INVESTMENT, LLC, a California limited liability company,

Plaintiff,

v.

424 JESSIE HISTORIC PROPERTIES, LLC, a California limited liability company, all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the Complaint adverse to Plaintiff's title, or any cloud on Plaintiff's title thereto, and DOES 1 through 50, inclusive,

Defendants.

---

424 JESSIE HISTORIC PROPERTIES, LLC, a California limited liability company,

Cross-Complainant,

v.

VISITACION INVESTMENT, LLC, a California limited liability company, and ROES 1 through 50, inclusive,

Cross-Defendants.

Case No. CGC-19-579667

CROSS-COMPLAINT FOR QUIET TITLE AND DECLARATORY RELIEF, AND EXHIBITS 1-5

Action Filed: October 1, 2019
Trial Date: Date

Cross-Complainant 424 Jessie Historic Properties, LLC ("Cross-Complainant") alleges as follows:

GENERAL ALLEGATIONS

1. Cross-Complainant is a California limited liability company and the owner of that certain real property commonly known as 2201 Bayshore Boulevard and 220 Tunnel Avenue, San Francisco, with Assessor's Parcel numbers 5087-004 and 5087-005 respectively, and legally described in Exhibit 1 attached hereto ("JHP Property").

2. Cross-Complainant is informed and believes that cross-defendant Visitacion Investment, LLC ("Visitacion LLC") is a California limited liability company and the current owner of that certain real property located adjacent to the JHP Property commonly known as 2201, 2245, 2500, 2555 Bayshore Boulevard, 222 Tunnel Avenue, and 289, 290, 292 Sunnydale Avenue, San Francisco ("Visitacion Property"). Cross-Complaint is further informed and believes that Southern Pacific Transportation Company conveyed the Visitacion Property to Visitacion LLC's predecessor in interest, Tuntex, Inc., by Grant Deed recorded on August 10, 1990 ("1990 Grant Deed"), a correct and true copy of which is attached hereto as Exhibit 2.

3. Cross-Complainant is informed and believes that Southern Pacific Transportation Company and Visitacion LLC's predecessor in interest, Tuntex, Inc., executed a Deed Correcting Description of Rail Easement on or about August 22, 1991, recorded as Document No. E962735, in the County of San Francisco ("1991 Deed"), a true and correct copy of which is attached hereto as Exhibit 3.

4. On or about February 5, 2015, Southern Pacific Transportation Company successor, Union Pacific Railroad Company conveyed its interest in the JHP Property to Patrick McNerney by Quitclaim Deed, recorded as Document No. 2015-J016863-00 in the County of San Francisco ("Quitclaim Deed"), a true and correct copy of which is attached hereto as Exhibit 4. Exhibit "A" to the Quitclaim Deed provides the legal description of the JHP Property and various easements, reserved by Southern Pacific Transportation Company in the 1990 Grant Deed and 1991 Deed ("Subject Easements").

5. On or about September 14, 2016, Patrick McNerney conveyed the JHP Property to Cross-Complainant by Grant Deed, recorded as Document No. 2016-K328238-00 in the County of San Francisco ("2016 Grant Deed"), a true and correct copy of which is attached hereto as Exhibit 5.

6. Cross-Complainant is not aware of the true names and capacities of those cross-defendants named herein as Roes 1 through 20, inclusive, and therefore sue said cross-defendants by such fictitious names. Cross-Complainant is informed and believes and upon that basis allege that the fictitiously named cross-defendants Roes 1 through 20, and each of them, claim some right, title, estate, lien, or interest in Cross-Complainant's Property adverse to the claim of Cross-Complainant, which constitutes a cloud on Cross-Complainant's title, estate, and/or interest, or said cross-defendants are legally responsible for the matters herein alleged. Cross-Complaint shall seek leave of court to amend this Cross-Complaint to include the true names and capacities of such fictitious cross-defendants when the same are ascertained.

7. Cross-Complainant is informed and believes and upon that basis alleges that the named Cross-Defendants and Cross-Defendants Roes 1 through 20, inclusive, and each of them, at all times herein mentioned, acted as the agents, servants, employees, legal representatives, and/or co-conspirators of each other Cross-Defendant and that all of such Cross-Defendants acted in concert and participated and furthered the wrongs herein set forth, and with the knowledge, permission, consent, notification, and adoption of each other Cross-Defendant.

8. Cross-Complainant has been sued by Visitacion LLC and has answered Visitacion LLC's Verified Complaint, admitting and denying certain allegations thereof. However, for a full determination of the matter, Cross-Complainant incorporates herein by reference all of the allegations contained in Vistacion LLC's Verified Complaint and Cross-Complainant's Verified Answer thereto for the limited purpose of setting forth the nature of Vistacion LLC's claims and without admitting or adopting as true and correct any of the allegations therein.

9. Cross-Complainant is informed and believes that Cross-Defendant Visitacion LLC claims an interest in the JHP Property including the Subject Easements. Cross-Complaint is further informed and believes that Visitacion LLC claims that Cross-Complaint has abandoned

and terminated its interest in the Subject Easements.

10. Cross-Complainant is informed and believes that the 1990 Grant Deed and the 1991 Deed expressly reserved various easements in favor of JHP Property as follows:

> Grantor excepts from the Property hereby conveyed and reserves unto itself, its successors and assigns:
>
> A perpetual, exclusive easement in, on, under, over and through the locations described in Schedule 1 (Railroad Main Line Easement), Schedule 2 (Drill & Spur Track Easement), and Schedule 3 (Access Roadway Easement) attached hereto, in which areas Grantor (and its lessees, sublessees, licensees, successors or assigns) shall have the right to own, operate, maintain, repair, lease, license, and/or remove existing and/or future railroad, rail and railroad related equipment and facilities and communications lines and facilities of every kind and nature including but not limited to all existing facilities, telephone, telegraph, television and fiber optic lines and related equipment. All improvements presently existing on or hereafter constructed on the easement area, if owned by Grantor, shall remain the personal property of the Grantor and its successors and assigns.

11. Cross-Complainant is informed and believes that the Subject Easements for "communication lines and facilities of every kind and nature" is an independent from and additional to the "Railroad Main Line Easement", "Drill & Spur Track Easement", and "Access Roadway Easement" of the Subject Easements.

12. Cross-Complainant is informed and believes that JHP Property is zoned M-1, which allows, as either conditional or permitted uses, heavy manufacturing, storage yards, truck terminals, internet service exchange (e.g., a data center) and/or wireless telecommunication facilities, among other uses. Cross-Complainant is further informed and believes that each such conditional or permitted use requires "communications lines and facilities of every kind and nature" as described in the Subject Easements.

13. Cross-Complainant is informed and believes that JHP Property is adjacent to various existing and fully operational passenger and freight train rail lines, and that the JHP Property has a potential use as an adjunct to these existing rail lines, which requires the use of the Subject Easements.

14. Cross-Complainant is informed and believes that the Subject Easements for "communication lines and facilities of every kind and nature", is necessary for Cross-

Complainant's potential use and development of the JHP Property for commercial or residential property.

15. Cross-Complainant has not abandoned or intended to abandon the Subject Easements. Cross-Complainant is informed and believes that Cross-Complainant's predecessors in interest, have not abandoned or intended to abandon the Subject Easements.

16. Cross-Complainant is informed and believes that Visitacion LLC has proposed development and improvement of the Visitacion Property that will substantially interfere with and obstruct Cross-Complainant's use or potential use of the Subject Easements.

FIRST CAUSE OF ACTION

(Quiet Title – Against All Cross-Defendants)

17. Cross-Complainant refers to and incorporates herein by reference paragraphs 1 through 16 of this Cross-Complaint.

18. The basis for Cross-Complainant's title to the JHP Property including the Subject Easements is the 2016 Grant Deed, recorded on September 14, 2016 in the San Francisco Recorder's Office as Document No. 2016-K328238-00.

19. Cross-Complainant is informed and believes that Visitacion LLC claims that Cross-Complainant has relinquished any and all rights in the Subject Easements.

20. Cross-Complainant claims full and complete legal and equitable ownership of the JHP Property, including the Subject Easements.

21. Cross-Complainant has not abandoned or terminated the Subject Easements. Cross-Complainant's use or potential uses of the JHP Property, including as an adjunct to adjacent existing and fully operational rail lines, various uses allowed under JHP Property's M-1 zoning and potential commercial or residential development, require the use of the Subject Easements.

22. Cross-Complainant seeks to quiet title in and to Cross-Complaint against all adverse claims of cross-defendants, whose claims are without any right whatsoever and interfere, trespass, or encroach upon Cross-Complainant's use of and right to the JHP Property including

the Subject Easements.

23. By this Cross-Complaint, Cross-Complainant seeks a judgment against all cross-defendants, quieting title to the JHP Property including the Subject Easements, as of September 14, 2016.

SECOND CAUSE OF ACTION

(Declaratory Relief – Against All Cross-Defendants)

24. Cross-Complainant refers to and incorporates herein by reference paragraphs 1 through 23, above.

25. The basis for Cross-Complainant's title to the JHP Property and Subject Easements is the 2016 Grant Deed, recorded on September 14, 2016 in the San Francisco Recorder's Office as Document No. 2016-K328238-00.

26. On or about October 1, 2019, Visitacion LLC filed its Verified Complaint, in which Visitacion LLC claims that Cross-Complainant has abandoned or terminated the Subject Easements. Cross-Complainant has not abandoned or terminated the Subject Easements. Cross-defendants have no right, title, interest, estate, lien or easement whatsoever in the JHP Property including the Subject Easements.

27. An actual controversy has arisen and now exists, as follows:

a. Cross-Complainant contends that the cross-defendants have no right, title, interest, estate, lien or easement in the JHP Property including the Subject Easements;

b. Cross-Complainant contends that Cross-Complainant has not abandoned or terminated the Subject Easements.

c. Cross-Complainant is informed and believes that cross-defendants dispute Cross-Complainant's contentions.

28. Cross-Complainant seeks a judicial determination that cross-defendants do not have any legal or equitable rights in the JHP Property including Subject Easements, and that the Subject Easements have not been abandoned or terminated.

///

///

WHEREFORE, Cross-Complainant demands judgment against cross-defendants as follows:

1. For a quiet title judgment as alleged herein;

2. For a declaration of the rights and duties of Cross-Complainant and cross-defendants with regard to the matters alleged herein;

3. For costs of suit incurred herein including where authorized, reasonable attorney's fees, and

4. For such other and further relief as this Court may deem just and proper.

Dated: January 31, 2020

STEYER LOWENTHAL BOODROOKAS ALVAREZ & SMITH LLP

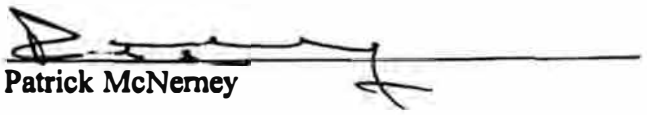
By: _____
Jeffrey H. Lowenthal
Zheying Li
Attorneys for Attorneys for Defendant
424 Jessie Historic Properties, LLC

VERIFICATION

I, Patrick McNerney, declare:

I am President of Martin McNerney Development, Inc., the manager of Defendant 424 Jessie Historic Properties, LLC in the above-entitled action, and authorized to execute this verification on its behalf. I have read the foregoing **CROSS-COMPLAINT FOR QUIET TITLE AND DECLARATORY RELIEF** and know the contents thereof. I am informed and believe that the same is true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 30, 2020 at San Francisco, California.



Patrick McNerney

Exhibit "A"

FEE PARCEL

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

THOSE PORTIONS OF PARCEL 4 AND 5 AS SHOWN ON THAT CERTAIN "PARCEL MAP" FILED JULY 16, 1980 IN BOOK 16 OF PARCEL MAPS, PAGE 40, IN THE OFFICE OF THE COUNTY RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO DESCRIBED AS FOLLOWS:

PARCEL 1:

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID LOT NO. 4; THENCE ALONG THE NORTHERLY LINE OF SAID LOT NO. 4 SOUTH 74°37'31" EAST (SHOWN AS "SOUTH 75°48'30" EAST" ON SAID PARCEL MAP) 55.07 FEET TO A POINT IN A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE EXISTING CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO); THENCE SOUTHERLY ALONG SAID CONCENTRIC LINE ON A CURVE TO THE LEFT, TANGENT TO SAID CURVE AT LAST SAID POINT BEARS SOUTH 15°18'45" WEST, HAVING A RADIUS OF 5785.096 FEET, THROUGH A CENTRAL ANGLE OF 1°17'04" AN ARC DISTANCE OF 129.70 FEET TO THE WESTERLY LINE OF SAID LOT NO. 5; THENCE CONTINUING SOUTHERLY ALONG SAID CONCENTRIC LINE THROUGH A CENTRAL ANGLE OF 5°21'01" AN ARC DISTANCE OF 540.10 FEET TO THE SOUTHERLY LINE OF SAID LOT NO. 5; THENCE ALONG SAID SOUTHERLY LINE OF SAID LOT NO. 5 NORTH 72°09'01" WEST (SHOWN AS "NORTH 73°20' WEST" ON SAID PARCEL MAP) 117.46 FEET TO SOUTHEASTERLY LINE OF SAID LOT NO. 4; THENCE ALONG SAID SOUTHEASTERLY LINE SOUTH 32°17'13" WEST 29.95 FEET; THENCE NORTH 17°58'59" EAST (SHOWN AS "SOUTH 16°48'00" WEST" ON SAID PARCEL MAP) 309.26 FEET; THENCE SOUTH 71°57'37" EAST 19.979 FEET; THENCE NORTH 17°58'59" EAST 304.33 FEET; THENCE NORTH 74°37'31" WEST 20.00 FEET; THENCE NORTH 17°58'59" EAST 80.00 FEET TO THE POINT OF BEGINNING.

PORTION OF ASSESSOR'S LOTS 004 AND 005, BLOCK 5087

SCHEDULE 1
(MAIN LINE EASTMENT)

THOSE CERTAIN PARCELS OF LAND SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (NOT INCLUDED)

EXHIBIT 1

PARCEL NO. 2: (SIGNAL CABINET AREA)

COMMENCING AT THE NORTHERLY TERMINUS OF THAT CERTAIN COURSE HAVING A DISTANCE OF 109.964 FEET AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099, AND 5101, SAN FRANCISCO, CALIFORNIA", AS PER MAP FILED JULY 16, 1980, IN BOOK 16 OF PARCEL MAPS, PAGE 40, RECORDS OF SAID COUNTY; THENCE SOUTH 17°58'59" WEST ALONG SAID COURSE, 3.2 FEET TO A CHAIN LINK FENCE; THENCE SOUTH 32°17'13" WEST ALONG SAID FENCE, 21.6 FEET TO A FENCE POST; THENCE SOUTH 17°42'55" WEST, CONTINUING ALONG SAID FENCE, 100.2 FEET TO ANOTHER FENCE POST; THENCE SOUTH 69°17'37" EAST, CONTINUING ALONG SAID FENCE, 117.3 FEET TO ANOTHER FENCE POST; THENCE NORTH 9°22'01" EAST, CONTINUING ALONG SAID FENCE, 2.0 FEET TO THE TRUE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN TO BE DESCRIBED; THENCECONTINUING NORTH 9°22'01" EAST ALONG SAID FENCE, 22.0 FEET; THENCE SOUTH 80°37'59" EAST, LEAVING SAID FENCE, 22.8 FEET; THENCE SOUTH 9°22'01" WEST 22.0 FEET; THENCE NORTH 80°37'59" WEST 22.8 FEET TO THE TRUE POINT OF BEGINNING.

SCHEDULE 2
(DRILL & SPUR TRACK EASEMENT)

THOSE CERTAIN PARCELS OR STRIPS OF LAND SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (NOT INCLUDED)

PARCEL NO. 2: (DRILL AND SPUR TRACK AREA)

A STRIP OF LAND, 30 FEET WIDE LYING EQUALLY 15.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEASTERLY CORNER OF THE 0.411 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED JUNE 13, 1985, FROM SOUTHERN PACIFIC TRANSPORTATION COMPANY TO STATE OF CALIFORNIA, RECORDED JUNE 26, 1985, AS INSTRUMENT D660213, REEL D867, PAGE 591, OFFICIAL RECORDS OF SAID COUNTY; THENCE NORTH 6°33'34" WEST 309.26 FEET TO A POINT IN THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY DRILL TRACK RIGHT OF WAY (WHICH TRACK LIES WESTERLY OF AND WHICH DIVERGES SOUTHERLY, SOUTHWESTERLY, AND SOUTHERLY FROM THE CENTERLINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S EASTBOUND MAIN TRACK (SAN FRANCISCO - SAN JOSE) AND WHICH CROSSES THE COMMON COUNTY LINE BETWEEN THE COUNTY OF SAN FRANCISCO AND THE COUNTY OF SAN MATEO AT TA POINT DISTANT SOUTH 88°58'58" EAST ALONG SAID COUNTY LINE, 237.36 FEET FROM ITS INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT 105.67 FEET EASTERLY, MEASURED AT RIGHT ANGLES, FROM THE EASTERLY LINE OF BAYSHORE BOULEVARD); THENCE SOUTH 15°19'08" WEST ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY, 88.81 FEET TO A POINT IN THE NORTHERLY LINE OF LOT NO. 8, AS SAID LOT IS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099 & 5101, SAN FRANCISCO, CALIFORNIA," AS PER MAP FILED JULY 16, 1980, IN BOOK 16 OF PARCEL MAPS, PAGE 40, RECORDS OF SAID COUNTY, LAST SAID POINT BEING DISTANT NORTH 72°09'01" WEST ALONG SAID NORTHERLY LINE, 68.75 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT NO. 8, LAST SAID POINT BEING TRUE POINT OF BEGINNING OF

THE LINE HEREIN TO BE DESCRIBED; THENCE SOUTHERLY AND SOUTHWESTERLY AND SOUTHERLY CONTINUING ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY, THE COURSES AND CURVATURES THEREOF AS FOLLOWS: SOUTH 15°19'08" WEST 3.62 FEET TO A POINT; SOUTHERLY ON A CURVE TO THE RIGHT, TANGENT TO SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 3564.239 FEET, A CENTRAL ANGLE OF 0°22'10", AN ARC DISTANCE OF 22.99 FEET TO A POINT; SOUTH 15°41'18' WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 152.89 FEET TO A POINT; SOUTHERLY AND SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 382.245 FEET, A CENTRAL ANGLE OF 16°38'26", AN ARC DISTANCE OF 111.02 FEET TO A POINT; SOUTH 32°19'44" WEST, TANGENT TO THE LAST SAID CURVE AT LAST SAID POINT, 161.72 FEET TO A POINT; SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 286.483 FEET, A CENTRAL ANGLE OF 35°25'30", AN ARC DISTANCE OF 177.35 FEET TO A POINT; AND SOUTH 67°45'14" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 544.20 FEET.

EXCEPTING THEREFROM THAT PORTION LYING EASTERLY OF AND COINCIDENT WITH A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO).

ALSO, EXCEPTING THEREFROM THAT PORTION LYING WITHIN SAID COUNTY OF SAN MATEO.

PARCEL NO. 3: (DRILL AND SPUR TRACK AREA)

A STRIP OF LAND, 30 FEET WIDE, LAYING EQUALLY 15.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEASTERLY CORNER OF THE 0.411 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED JUNE 13, 1985, FROM SOUTHERN PACIFIC TRANSPORTATION COMPANY TO STATE OF CALIFORNIA, RECORDED JUNE 26, 1985, AS INSTRUMENT D660213, REAL 0867, PAGE 591, OFFICIAL RECORDS OF SAID COUNTY; THENCE NORTH 6°33'34" WEST 309.26 FEET TO A POINT IN THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY (WHICH TRACK LIES WESTERLY OF AND WHICH DIVERGES SOUTHERLY, SOUTHWESTERLY, AND SOUTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S EASTBOUND MAIN TRACK (SAN FRANCISCO - SAN JOSE) AND WHICH CROSSES THE COMMON COUNTY LINE BETWEEN THE COUNTY OF SAN FRANCISCO AND THE COUNTY OF SAN MATEO AT A POINT DISTANT SOUTH 88°58'58" EAST ALONG SAID COUNTY LINE, 237.36 FEET FROM ITS INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT 105.67 FEET EASTERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY LINE OF BAYSHORE BOULEVARD); THENCE SOUTHERLY ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY, THE COURSES AND CURVATURES THEREOF AS FOLLOWS: SOUTH 15°19'08" WEST 92.43 FEET TO A POINT; SOUTHERLY ON A CURVE TO THE RIGHT, TANGENT TO SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 3564.239 FEET, A CENTRAL ANGLE OF 0°22'10' AND ARC DISTANCE OF 22.99 FEET TO A POINT; SOUTH 15°41'18" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 152.89 FEET TO A POINT; SOUTHERLY AND SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 382.245 FEET, A CENTRAL ANGLE OF 16°38'26", AN ARC DISTANCE OF 111.02 FEET TO A POINT; AND SOUTH 32°19'44" WEST, TANGENT TO LAST SAID CURVE AT

LAST SAID POINT, 53.00 FEET TO A POINT IN THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S SPUR TRACK RIGHT OF WAY (WHICH TRACK DIVERGES NORTHERLY FROM SAID CENTER LING OF SAID COMPANY'S DRILL TRACK) AND THE TRUE POINT OF BEGINNING OF THE LINE HEREIN TO BE DESCRIBED; THENCE NORTHERLY ALONG SAID CENTER OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S SPUR TRACK RIGHT OF WAY, THE COURSES AND CURVATURES THEREOF AS FOLLOWS: NORTH 25°58'09" EAST 81.00 FEET TO A POINT; NORTHERLY ON A CURVE TO THE LEFT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 382.245 FEET, A CENTRAL ANGLE OF 16°36'08", AND ARC DISTANCE OF 110.76 FEET TO A POINT; AND NORTH 9°22'01' EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 109.53 FEET.

EXCEPTING THEREFROM THAT PORTION OF THE ABOVE DESCRIBED 30 FOOT WIDE STRIP OF LAND, HEREIN ABOVE DESCRIBED IN "PARCEL NO. 3, LYING EASTERLY OF AND COINCIDENT WITH A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO).

SCHEDULE 3
(ACCESS ROADWAY EASEMENT)

THOSE CERTAIN PARCELS OF LAND SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (NOT INCLUDED)

PARCEL NO. 2: (ROADWAY AREA)

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY UNE OF LOT NO. 8, AS SAID LOT IS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099, &5101, SAN FRANCISCO, CALIFORNIA", AS PER MAP FILED JULY 16, 1980, IN BOOK 16 OF PARCEL MAPS, PAGE 40, RECORDS OF SAID COUNTY, WITH A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO), SAID POINT BEING DISTANT NORTH 72°09'01" WEST ALONG SAID NORTHERLY LINE, 115.29 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT NO. 8; THENCE SOUTHERLY ALONG SAID CONCENTRIC LINE, ON A CURVE TO THE LEFT, TANGENT TO SAID CURVE AT LAST SAID POINT BEARS SOUTH 8°40'41" WEST, HAVING A RADIUS OF 5785.096 FEET, A CENTRAL ANGLE OF 0°51'24", AN ARC DISTANCE OF 86.50 FEET TO A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 15.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S TAIL TRACK (WHICH LIES WESTERLY OF AND WHICH DIVERGES NORTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK AND WHICH DRILL TRACK LIES WESTERLY OF AND WHICH DIVERGES SOUTHERLY, SOUTHWESTERLY, AND SOUTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S EASTBOUND MAIN TRACK (SAN FRANCISCO - SAN JOSE), AND WHICH SAID DRILL TRACK CROSSES THE COMMON COUNTY LINE BETWEEN COUNTY OF SAN FRANCISCO AND COUNTY OF SAN MATEO AT A POINT DISTANT SOUTH 88°58'58" EAST ALONG SAID COUNTY LINE, 237.36 FEET FROM ITS INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT 105.67 FEET EASTERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY UNE OF BAYSHORE BOULEVARD); THENCE SOUTHERLY AND SOUTHWESTERLY ALONG SAID PARALLEL AND

CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: SOUTH 9°22'01" WEST 67.82 FEET TO A POINT; SOUTHERLY AND SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 367.245 FEET, A CENTRAL ANGLE OF 16°36'08", AN ARC DISTANCE OF 106.41 FEET TO A POINT; AND SOUTH 25°58'09" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 80.17 FEET TO A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 15.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK; THENCE SOUTHWESTERLY ALONG LAST SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: SOUTH 32°19'44" WEST 107.88 FEET TO A POINT; SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 271.843 FEET, A CENTRAL ANGLE OF 35°25'30", AN ARC DISTANCE OF 168.08 FEET TO A POINT; AND SOUTH 67°45'14" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 356.47 FEET TO THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF SUNNYDALE AVENUE, 66 FEET WIDE; THENCE LEAVING LAST SAID PARALLEL AND CONCENTRIC LINE, NORTH 69°24'23" WEST ALONG SAID PROLONGATION, 65.40 FEET TO A POINT IN THE MOST WESTERLY LINE OF SAID LOT NO. 8, LAST SAID POINT BEING THE SOUTHERLY TERMINUS OF THAT CERTAIN COURSE SHOWN ON SAID MAP HAVING A DISTANCE OF "66.00'"; THENCE NORTH 20°35'37" EAST ALONG LAST SAID WESTERLY LINE, 43.00 FEET TO A LINE PARALLEL WITH AND DISTANT 10.00 FEET NORTHERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY PROLONGATION OF THE CENTER LINE OF SAID SUNNYDALE AVENUE; THENCE SOUTH 69°24'23" EAST ALONG LAST SAID PROLONGATION, 13.70 FEET TO A POINT; THENCE EASTERLY AND NORTHEASTERLY ON A CURVE TO THE LEFT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 175.00 FEET, A CENTRAL ANGLE OF 42°50'23", AN ARC DISTANCE OF 130.85 FEET TO A POINT IN A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 35.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK; THENCE NORTHEASTERLY ALONG LAST SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: NORTH 67°45'14" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 246.15 FEET TO A POINT; NORTHEASTERLY ON A CURVE TO THE LEFT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 251.843 FEET, A CENTRAL ANGLE OF 35°25'30", AN ARC DISTANCE OF 155.71 FEET TO A POINT; AND NORTH 32°19'44" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 106.77 FEET TO A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 35.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S TAIL TRACK; THENCE NORTHERLY ALONG LAST SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: NORTH 25°58'09" EAST 79.06 FEET TO A POINT; NORTHEASTERLY AND NORTHERLY ON A CURVE TO THE LEFT TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 347.245 FEET, A CENTRAL ANGLE OF 16°36'08", AND ARC DISTANCE OF 100.62 FEET TO A POINT; AND NORTH 9°22'01" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 67.27 FEET TO A POINT IN A LINE CONCENTRIC WITH AND DISTANT 95.00 FEET WESTERLY, MEASURED RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK; THENCE LEAVING LAST SAID PARALLEL AND CONCENTRIC LINE, NORTHERLY ALONG LAST SAID CONCENTRIC LINE, ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT BEARS NORTH 7°49'17" EAST, HAVING A RADIUS OF 5805.096 FEET, A CENTRAL ANGLE OF 0°53'19", AN ARC DISTANCE OF 90.03 FEET TO SAID NORTHERLY LINE OF SAID LOT NO. 8; THENCE SOUTH 72°09'01" EAST ALONG LAST SAID NORTHERLY LINE, 20.26 FEET TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 0.519 OF AN ACRE, MORE OR LESS.

INGRESS/EGRESS AREA

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

THAT PORTION OF PARCEL 4, A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AS SHOWN ON THAT CERTAIN "PARCEL MAP" FILED JULY 16, 1980 IN BOOK 16 OF PARCEL MAPS AT PAGE 40, IN THE OFFICE OF THE COUNTY RECORDERS OF THE CITY AND COUNTY OF SAN FRANCISCO, LYING SOUTHERLY OF THE EASTERLY PROLONGATION OF THE NORTHERLY LINE OF LOT NO. 7 OF SAID PARCEL MAP.

RECORDING REQUESTED BY

SAN FRANCISCO, CA
RECORDER'S OFFICE
Bruce Jamison, Recorder
DOC- E761808
TICOR Title Company
Friday, August 10, 1990 02:48:00PM
Rec 15.00 --- Fs 17.00
Mic 1.00 ---
AFN 20.00 --- Mnt
TOTAL =0 REEL F187 IMAGE 0594

AND WHEN RECORDED MAIL TO

Name Tuntex (U.S.A.). Inc.
Street Address 150 Executive Park Blvd., Suite 4200
City State Zip San Francisco, California 94134
Attn: Stephen C.H. Lin, Ph.D

SPACE ABOVE THIS LINE FOR RECORDER'S USE

5102-9
5102-1
5102-6

17

DOCUMENTARY TRANSFER TAX IS $ [illegible]
☐ COMPUTED ON FULL VALUE OF PROPERTY CONVEYED, OR
☐ COMPUTED ON FULL VALUE LESS LIENS & ENCUMBRANCES REMAINING THEREON AT TIME OF SALE
Shown on Separate Statement
pursuant to Section 11932, Revenue & Taxation Code
Signature of declarant or agent determining tax -- firm name

GRANT DEED

AFN

FOR VALUE RECEIVED, Southern Pacific Transportation Company ("Grantor"), a Delaware corporation, grants to Tuntex (U.S.A.), Inc., a Delaware corporation ("Grantee") all that certain real property located in the City and County of San Francisco, State of California, and as more particularly described in Exhibit A, attached hereto and by this reference incorporated herein (the "Property");

TOGETHER WITH all rights and easements appurtenant thereto;

SUBJECT TO a lien to secure payment of current taxes and assessments and all easements, rights of way, covenants, conditions and restrictions, leases and other exceptions to title which are of record; and

EXCEPTING AND RESERVING unto Grantor that certain Form of Railroad Easement as more particularly described in Exhibit B, attached hereto and by this reference incorporated herein.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed this 1ST day of August, 1990.

"Grantor"

SOUTHERN PACIFIC
TRANSPORTATION COMPANY

By: [signature] President
Its:
V.B. Curcio

Attest: [signature]
Its: ASSISTANT SECRETARY
B.J. Medina

EXHIBIT 2

Sf. Assessor's Office AUG 10 1990

STATE OF CALIFORNIA
. City and County of San Francisco } ss.

On this 2ND day of AUGUST in the year One Thousand Nine Hundred and Ninety
before me, ROBERT E. JOHNSON, a Notary Public in and for the City and County of San Francisco, State of California, personally appeared
W. B. CURTIS & A. J. MEDINA

known to me (or proved to me on the basis of satisfactory evidence) to be the Its Vice President & ASST. SECRETARY of the corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named and acknowledged to me that such corporation executed the same.

OFFICIAL SEAL
ROBERT E. JOHNSON
NOTARY PUBLIC - CALIFORNIA
CITY & COUNTY OF SAN FRANCISCO
My Comm. Expires Jan. 22, 1993

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, the day and year in this certificate first above written.

Corporation

Robert E. Johnson
Notary Public in and for the City and County of San Francisco, State of California.

My commission Expires January 22, 1993

PJK
7-25-90

EXHIBIT "A"

AUG 10 1990

LEGAL DESCRIPTION

All that real property situated in the City and County of San Francisco, State of California, described as follows:

PARCEL ONE:

Lot 6, as said lot is shown on the map of Parcel Map Book 16, Page 40, filed July 16, 1980, in the Office of the County Recorder of the City and County of San Francisco, State of California.

PARCEL TWO:

Lot 8, as said lot is shown on the map of Parcel Map Book 16, Page 40, filed July 16, 1980, in the Office of the County Recorder of the City and County of San Francisco, State of California.

Excepting therefrom that portion of said land described as follows:

Commencing at a point in that certain course having a length of 596.75 feet as shown in the easterly line of said Lot 8, distant thereon South 1°16'55" West 190.00 feet from the northerly terminus of said course; thence continuing along said course South 1°16'55" West 408.52 feet to the southerly terminus of said course; thence leaving said course, North 28°08'04" West 70.12 feet to a point in a line that is concentric with and distant 18 feet easterly, measured radially from the existing center line of Southern Pacific Transportation Company's spur track and the existing center line of Southern Pacific Transportation Company's westbound main track (San Francisco-San Luis Obispo); thence along said concentric line as follows: Northerly on a curve to the right, having a radius of 600.00 feet, a central angle of 18°29'24" (tangent to said curve at last mentioned point bears North 13°35'41" West), an arc distance of 193.63 feet to a point of compound curve, and northerly on a curve to the right, having a radius of 5691.69 feet, a central angle of 1°34'15", an arc distance of 156.05 feet; thence leaving said concentric line, South 88°43'05" East 41.39 feet to the point of commencement.

RHS039/ld

S.F. Recorder's Office AUG 10 1990

PARCEL THREE:

Commencing at a point on the southerly line of Sunnydale Avenue, distant thereon 105 feet and 8 inches easterly from the easterly line of Milliken Street; running thence easterly along the said southerly line of Sunnydale Avenue 138 feet and 8 inches; thence at a right angle southerly 224 feet and 5 inches; thence at a right angle westerly 138 feet and 8 inches; and thence at a right angle northerly 224 feet and 5 inches to the point of commencement.

Excepting therefrom that portion lying within San Mateo County.

PARCEL FOUR:

Commencing at a point on the southerly line of Sunnydale Avenue (formerly Tobin Street), distant thereon 244 feet 4 inches easterly from the easterly line of Milliken Street; running thence South 71-1/2° East along the southerly line of Sunnydale Avenue 277 feet 4 inches; thence South 18-1/2° West 224 feet 5 inches; thence North 71-1/2° West 277 feet 4 inches; thence North 18-1/2° East 224 feet 5 inches to the point of commencement.

Excepting therefrom that portion lying within San Mateo County.

SN
30MAR90
REV 12JUN90

EXHIBIT "B"
(Schedule 1)

S.F. Recorder's Office AUG 10 1990

MAIN LINE EASEMENT

Those certain parcels of land situated in the City and County of San Francisco, State of California, described as follows:

Parcel No. 1:

Commencing at the northeasterly corner of Lot No. 8, as said Lot is shown on that certain map entitled "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCKS 5087, 5099 and 5101, SAN FRANCISCO, CALIFORNIA", as per map filed July 16, 1980, in Book 16 of Parcel Maps, Page 40, Records of said County, said corner being at the easterly terminus of that certain course shown on said map having a bearing and distance of "N 73°20' W 232.62'"; thence North 72°09'01" West along the northerly line of said Lot No. 8, and also said course, 13.84 feet to point in a line concentric with and distant 25.00 feet easterly, measured radially from the existing center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco), and the True Point of Beginning of the parcel of land herein to be described; thence southerly along said concentric line on a curve to the left, tangent to said curve at last said point bears South 9°30'54" West, having a radius of 5685.096 feet, a central angle of 2°04'27", an arc distance of 205.81 feet to the northerly line of the 0.411 acre parcel of land described in deed dated June 13, 1935, from Southern Pacific Transportation Company to State of California, recorded June 26, 1985, as Instrument 0660213, Reel

AUG 10 1990

0867, Page 951, Official Records of said County; thence North 88°46'13" West along last said northerly line, 8.03 feet to a point for the northwesterly corner of last said land; thence southerly along the westerly line of last said land, on a curve to the left, tangent to last said curve at last said point bears South 6°24'50" West, having a radius of 5691.60 feet, a central angle of 1°34'15", an arc distance of 156.05 feet to a point of compound curve; thence continuing southerly along said westerly line on last said curve to the left, having a radius of 600.00 feet, a central angle of 9°52'28", an arc distance of 103.41 feet to a point in said concentric line; thence leaving said westerly line, southerly along said concentric line, on a curve to the left, tangent to last said curve at last said point bears South 3°49'34" West, having a radius of 5685.096 feet, a central angle of 1°51'01", an arc distance of 183.60 feet; thence South 1°28'31" West 12.80 feet to a point in the common County line between the County of San Francisco and the County of San Mateo, last said point being distant thereon, North 88°58'58" West 61.21 feet from its intersection with the westerly line of Tunnel Avenue, 60 feet in width; thence North 88°58'58" West along said County line and also the southerly line of said Lot No. 8, passing at 25.06 feet the said center line of Southern Pacific Transportation Company's Westbound main track, and continuing for a total distance of 100.13 feet; thence North 1°28'35" East 14.47 feet to a point in a line concentric with and distant 75.00 feet westerly, measured radially from last said center line; thence

S.F. Assessor's Office AUG 10 1990

northerly along last said concentric line, on a curve to the right, tangent to last said curve at last said point bears North 1°58'33" East, having a radius of 5785.096 feet, a central angle of 6°42'08", an arc distance of 676.72 feet to said northerly line of said Lot No. 8; thence South 72°09'01" East along last said northerly line, passing at 76.11 feet the said center line of Southern Pacific Transportation Company's westbound main track, and continuing for a total distance of 101.45 feet to the True Point of Beginning, containing an area of 1.513 acres, more or less.

Parcel No. 2:

Commencing at the southerly terminus of that certain course having a distance of 109.964 feet as shown on that certain map entitled, "PARCEL MAP, BEING A PORTION OF ASSESSOR'S Block 5087, 5099, and 5101, SAN FRANCISCO, CALIFORNIA", as per map file July 16, 1980, in Book 16 of Parcel Maps, Page 40, Records of said County; thence North 17°58'59" East along said course, 3.2 feet to a chain link fence; thence North 32°17'13" East along said fence, 21.6 feet to a fence post; thence South 17°42'55" West, continuing along said fence, 100.2 feet to another fence post; thence North 69°17'37" West, continuing along said fence, 117.3 feet to another fence post; thence South 9°22'01" West, continuing along said fence, 2.0 feet to the True Point of Beginning of the parcel of land herein to be described; thence continuing South 9°22'01" West along said fence, 22.3 feet; thence North 80°37'59" West, leaving said fence, 22.8 feet; thence North 9°22'01" East 22.0 feet; thence South 80°37'59" East 22.8 feet to the True Point of Beginning.

GN
2 Mar 90
R&N 25 July 90
RHS.

EXHIBIT "B"
(Schedule 2)

AUG 10 1990

DRILL & SPUR TRACK EASEMENT

Those certain parcels or strips of land situated in the City and County of San Francisco, State of California, described as follows:

PARCEL NO. 1

Beginning at the point of intersection of the westerly line of Tunnel Avenue, 60 feet in width, with the common County line between the County of San Francisco and the County of San Mateo; thence North 88°58'58" West along said County line and also the southerly line of Lot No. 8, as said Lot is shown on that certain map entitled "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCKS 5087, 5099, & 5101, SAN FRANCISCO, CALIFORNIA," as per map filed July 16, 1980 in Book 16 of Maps, Page 40, Records of said County, 39.80 feet to a point in a line concentric and parallel with and distant 15.00 feet westerly, measured radially and at right angles from the center line of Southern Pacific Transportation Company's drill track (which lies easterly of and which diverges southerly from the center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco) and which crosses said County line at a point distant North 88°58'58" West along said County line 24.41 feet from its intersection with said westerly line of Tunnel Avenue); thence northerly along said concentric and parallel line, the curvature and course thereof as follows: northerly on a curve to the left, tangent to said curve at last said point bears North 12°03'07" West, having a radius of 558.14 feet, a central angle of 2°35'41", an arc distance of 25.28 feet to a point, and North 14°38'48" West, tangent to last said curve at last said point, 50.80 feet to a point in a line concentric with and distant 25.00 feet easterly, measured radially, from said center line of Southern Pacific

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Transportation Company's westbound main track; thence northerly along last said concentric line, on a curve to the right, tangent to last said curve at last said point bears North 2°35'12" East, having a radius of 5685.096 feet, a central angle of 1°14'22", an arc distance of 122.98 feet to a point in the westerly line of the 0.411 acre parcel of land described in deed dated June 13, 1985, from Southern Pacific Transportation Company to the State of California, recorded June 25, 1985, as Instrument D660213, Reel 0867, Page 591, Official Records of said County; thence southerly along last said westerly line, on a curve to the left, tangent to last said curve at last said point bears South 5°01'53" East, having a radius of 600.00 feet, a central angle of 8°36'56", an arc distance of 90.22 feet; thence South 28°11'12" East, continuing along last said westerly line, 70.12 feet to the easterly line of last said land; thence leaving last said westerly line, North 1°13'47" East along said easterly line, 1.77 feet to said westerly line of Tunnel Avenue; thence South 4°30'58" East along last said westerly line, 48.41 feet to the Point of Beginning, containing an area of 5018 square feet, more or less.

PARCEL NO. 2

A strip of land, 30 feet wide lying equally 15.00 feet on each side of the following described line:

Commencing at the northeasterly corner of the 0.411 acre parcel of land described in deed dated June 13, 1985, from Southern Pacific Transportation Company to State of California, recorded June 26, 1985, as Instrument D660213, Reel 0867, Page 591, Official Records of said County; thence North 6°33'34" West 309.26 feet to a point in the center line of Southern Pacific Transportation Company drill track right of way (which track lies westerly of and which diverges southerly, southwesterly, and southerly from the center line of Southern Pacific Transportation Company's eastbound main track (San Francisco-San Jose) and which

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crosses the common County line between the County of San Francisco and the County of San Mateo at a point distant South 88°58'58" East along said County line, 237.36 feet from its intersection with a line parallel with and distant 105.67 feet easterly, measured at right angles, from the easterly line of Bayshore Boulevard); thence South 15°19'08" West along said center line of Southern Pacific Transportation Company's drill track right of way, 88.81 feet to a point in the northerly line of Lot No. 8, as said Lot is shown on that certain map entitled "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCKS 5087, 5099 & 5101, SAN FRANCISCO, CALIFORNIA," as per map filed July 16, 1980, in Book 16 of Parcel Maps, Page 40, Records of said County, last said point being distant North 72°09'01" West along said northerly line, 68.75 feet from the northeasterly corner of said Lot No. 8, last said point being the True Point of Beginning of the line herein to be described; thence southerly and southwesterly and southerly continuing along said center line of Southern Pacific Transportation Company's drill track right of way, the courses and curvatures thereof as follows: South 15°19'08" West 3.62 feet to a point; southerly on a curve to the right, tangent to said curve at last said point is last described course, having a radius of 3564.239 feet, a central angle of 0°22'10", an arc distance of 22.99 feet to a point; South 15°41'18" West, tangent to last said curve at last said point, 152.89 feet to a point; southerly and southwesterly on a curve to the right, tangent to last said curve at last said point is last described course, having a radius of 382.245 feet, a central angle of 16°38'26", an arc distance of 111.02 feet to a point; South 32°19'44" West, tangent to the last said curve at last said point, 161.72 feet to a point; southwesterly on a curve to the right, tangent to last said curve at last said point is last described course, having a radius of 286.483 feet, a central angle of 35°25'30", an arc distance of 177.35 feet to a point; and South 67°45'14" West, tangent to last said curve at last said point, 544.20 feet.

Excepting therefrom that portion lying easterly of and coincident with a line concentric with and distant 75.00 feet westerly, measured radially from the center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco).

Also, excepting therefrom that portion lying within said County of San Mateo.

PARCEL NO. 3

A strip of land, 30 feet wide, lying equally 15.00 feet on each side of the following described line:

Commencing at the northeasterly corner of the 0.411 acre parcel of land described in deed dated June 13, 1985, from Southern Pacific Transportation Company to State of California, recorded June 26, 1985, as Instrument D660213, Reel D867, Page 591, Official Records of said County; thence North 6°33'34" West 309.26 feet to a point in the center line of Southern Pacific Transportation Company's drill track right of way (which track lies westerly of and which diverges southerly, southwesterly, and southerly from the center line of Southern Pacific Transportation Company's eastbound main track (San Francisco-San Jose) and which crosses the common County line between the County of San Francisco and the County of San Mateo at a point distant South 88°58'58" East along said County line, 237.36 feet from its intersection with a line parallel with and distant 105.67 feet easterly, measured at right angles from the easterly line of Bayshore Boulevard); thence southerly along said center line of Southern Pacific Transportation Company's drill track right of way, the courses and curvatures thereof as follows: South 15°19'08" West 92.43 feet to a point; southerly on a curve to the right, tangent to said curve at last said point is last described course, having a radius of 3564.239 feet, a central angle of 0°22'10" an arc distance of 22.99 feet to a point; South 15°41'18" West, tangent to last said

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curve at last said point, 152.89 feet to a point; southerly and southwesterly on a curve to the right, tangent to last said curve at last said point is last described course, having a radius of 382.245 feet, a central angle of 16°38'26", an arc distance of 111.02 feet to a point; and South 32°19'44" West, tangent to last said curve at last said point, 53.00 feet to a point in the center line of Southern Pacific Transportation Company's spur track right of way (which track diverges northerly from said center line of said Company's drill track) and the True Point of Beginning of the line herein to be described; thence northerly along said center line of Southern Pacific Transportation Company's spur track right of way, the courses and curvatures thereof as follows: North 25°58'09" East 81.00 feet to a point; northerly on a curve to the left, tangent to last said curve at last said point is last described course, having a radius of 382.245 feet, a central angle of 16°36'08", an arc distance of 110.76 feet to a point; and North 9°22'01" East, tangent to last said curve at last said point, 109.53 feet.

Excepting therefrom that portion of the above described 30 foot wide strip of land, herein above described in "PARCEL NO. 3, lying easterly of and coincident with a line concentric with and distant 75.00 feet westerly, measured radially from the center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco).

SF Assessor's Office AUG 10 1990

SA
2 MAPS
Ref. 12 MAPS

EXHIBIT "B"
(Schedule 3)

ACCESS ROADWAY EASEMENT

Those certain parcels of land situated in the City and County of San Francisco, State of California, described as follows:

PARCEL NO. 1

Beginning at the northeasterly corner of the 0.411 acre parcel of land described in deed dated June 13, 1985, from Southern Pacific Transportation Company to State of California, recorded June 26, 1985, as Instrument 0660213, Reel 0867, Page 591, Official Records of said County; thence North 88°46'13" West along the northerly line of said 0.411 acre parcel of land, 33.31 feet to a point in a line concentric with and distant 25.00 feet easterly, measured radially from the center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco), said point being distant South 88°46'13" East along said northerly line, 8.08 feet from the northwesterly corner of said 0.411 acre parcel of land; thence northerly along said concentric line, on a curve to the right, tangent to said curve at last said point bears North 6°26'27" East, having a radius of 5685.096 feet, a central angle of 2°04'27", an arc distance of 205.81 feet to the northerly line of Lot No. 8, as said Lot is shown on that certain map entitled "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCKS 5087, 5099, & 5101, SAN FRANCISCO, CALIFORNIA", as per map filed July 16, 1980, in Book 16 of Parcel Maps, Page 40, Records of said County; thence South 72°09'01" East along last said northerly line, 13.84 feet to the northeasterly corner of said Lot No. 8; thence South 13°42'29" West along the easterly line of said Lot No. 8 and also the westerly line of Tunnel Avenue, 60

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feet in width, 10.88 feet to an angle point therein; thence continuing along said easterly line and also last said westerly line, South 1°13'47" West 190.00 feet to the Point of Beginning, containing an area of 4646 square feet, more or less.

PARCEL NO. 2

Beginning at the point of intersection of the northerly line of Lot No. 8, as said Lot is shown on that certain map entitled "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCKS 5087, 5099, & 5101, SAN FRANCISCO, CALIFORNIA", as per map filed July 16, 1980, in Book 16 of Parcel Maps, Page 40, Records of said County, with a line concentric with and distant 75.00 feet westerly, measured radially from the center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco), said point being distant North 72°09'01" West along said northerly line, 115.29 feet from the northeasterly corner of said Lot No. 8; thence southerly along said concentric line, on a curve to the left, tangent to said curve at last said point bears South 8°40'41" West, having a radius of 5785.096 feet, a central angle of 0°51'24", an arc distance of 86.50 feet to a line parallel and concentric with and distant 15.00 feet westerly, measured at right angles and radially from the center line of Southern Pacific Transportation Company's tail track (which lies westerly of and which diverges northerly from the center line of Southern Pacific Transportation Company's drill track and which drill track lies westerly of and which diverges southerly, southwesterly, and southerly from the center line of Southern Pacific Transportation Company's eastbound main track (San Francisco-San Jose), and which said drill track crosses the common County line between the County of San

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Francisco and the County of San Mateo at a point distant South 88°58'58" East along said County line, 237.36 feet from its intersection with a line parallel with and distant 105.67 feet easterly, measured at right angles from the easterly line of Bayshore Boulevard); thence southerly and southwesterly along said parallel and concentric line, the courses and curvature thereof as follows: South 9°22'01" West 67.82 feet to a point; southerly and southwesterly on a curve to the right, tangent to last said curve at last said point is last described course, having a radius of 367.245 feet, a central angle of 16°36'08", an arc distance of 106.41 feet to a point; and South 25°58'09" West, tangent to last said curve at last said point, 80.17 feet to a line parallel and concentric with and distant 15.00 feet northwesterly, measured at right angles and radially from said center line of Southern Pacific Transportation Company's drill track; thence southwesterly along last said parallel and concentric line, the courses and curvature thereof as follows: South 32°19'44" West 107.88 feet to a point; southwesterly on a curve to the right, tangent to last said curve at last said point is last described course, having a radius of 271.843 feet, a central angle of 35°25'30", an arc distance of 168.08 feet to a point; and South 67°45'14" West, tangent to last said curve at last said point, 356.47 feet to the easterly prolongation of the southerly line of Sunnydale Avenue, 66 feet wide; thence leaving last said parallel and concentric line, North 69°24'23" West along said prolongation, 65.40 feet to a point in the most westerly line of said Lot No. 8, last said point being the southerly terminus of that certain course shown on said map having a distance of "66.00'"; thence North 20°35'37" East along last said westerly line, 43.00 feet to a line parallel with and distant 10.00 feet northerly, measured at right angles from the easterly prolongation of the center line of said Sunnydale Avenue; thence South 69°24'23" East along last said prolongation, 13.70 feet to a point; thence easterly and northeasterly on a

S.F. Recorder's Office AUG 10 1990

curve to the left, tangent to last said curve at last said point is last described course, having a radius of 175.00 feet, a central angle of 42°50'23", an arc distance of 130.85 feet to a point in a line parallel and concentric with and distant 35.00 feet northwesterly, measured at right angles and radially from said center line of Southern Pacific Transportation Company's drill track; thence northeasterly along last said parallel and concentric line, the courses and curvature thereof as follows: North 67°45'14" East, tangent to last said curve at last said point, 246.15 feet to a point; northeasterly on a curve to the left, tangent to last said curve at last said point is last described course, having a radius of 251.843 feet, a central angle of 35°25'30", an arc distance of 155.71 feet to a point; and North 32°19'44" East, tangent to last said curve at last said point, 106.77 feet to a line parallel and concentric with and distant 35.00 feet westerly, measured at right angles and radially from said center line of Southern Pacific Transportation Company's tail track; thence northerly along last said parallel and concentric line, the courses and curvature thereof as follows: North 25°58'09" East 79.06 feet to a point; northeasterly and northerly on a curve to the left tangent to last said curve at last said point is last described course, having a radius of 347.245 feet, a central angle of 16°36'08", an arc distance of 100.62 feet to a point; and North 9°22'01" East, tangent to last said curve at last said point, 67.27 feet to a point in a line concentric with and distant 95.00 feet westerly, measured radially from said center line of Southern Pacific Transportation Company's westbound main track; thence leaving last said parallel and concentric line, northerly along last said concentric line, on a curve to the right, tangent to last said curve at last said point bears North 7°49'17" East, having a radius of 5805.096 feet, a central angle of 0°53'19", an arc distance of 90.03 feet to said northerly line of said Lot No. 8; thence South 72°09'01" East along last said northerly line, 20.26 feet to the Point of Beginning, containing an area of 0.519 of an acre, more or less.

SAN FRANCISCO RECORDER'S OFFICE
DOC- E962735

WHEN RECORDED MAIL TO:

Mr. Hubert A. Gelbert
Tuntex (U.S.A.) Inc.
150 Executive Park Boulevard
Suite 4200
San Francisco, CA 94134

REEL F445 IMAGE 0298

DEED CORRECTING DESCRIPTION OF RAIL EASEMENT

THIS DEED CORRECTING DESCRIPTION OF RAIL EASEMENT (this "Correcting Grant") is executed as of this 23RD day of JULY, 1991, by Southern Pacific Transportation Company, a Delaware corporation ("SPTCo") and Tuntex Properties, Inc. (Brisbane), formerly known as Oyster Point Properties, Inc., a California corporation ("Tuntex") on the basis of the following facts, understandings and intentions:

A. In furtherance of that certain Agreement of Purchase and Sale (the "Sale Agreement") dated as of December 28, 1989 by and among Tuntex, Tuntex (U.S.A.) Inc., a Delaware corporation, and SPTCo, SPTCo conveyed by grant deed certain property (the "Property") described with particularity in the Sale Agreement, reserving therefrom certain easements (the "Easements");

B. Subsequent to the execution of the Sale Agreement and conveyance of the Property, Oyster Point Properties, Inc., a California corporation, changed its name to "Tuntex Properties, Inc. (Brisbane)", without affecting any change in the corporate structure or identity;

C. In that certain executed letter, dated December 29, 1989, (the "Executed Letter"), SPTCo and Tuntex acknowledged and agreed that the legal description of the Easements, as set forth in Exhibit "B" to the grant deed executed and recorded on August 10, 1990 as Instrument No. C761908 in the Official Records of San Francisco County (the "Original Grant Deed") was not prepared by a surveyor, and thus it would be necessary to substitute therefor a legal description based on a survey;

D. Pursuant to the terms of the Executed Letter, SPTCo, at its sole cost and expense, caused a surveyor registered under the laws of the State of California to prepare a new legal description of the Easements attached hereto as Exhibit 1 (the "New Legal Description") and incorporated herein by this reference;

E. Pursuant to the terms of the Executed Letter, SPTCo and Tuntex agreed that, upon Tuntex's approval of the New Legal Description, SPTCo and Tuntex would execute and record in the Official Records of San Francisco County an instrument correcting the description of the Easements by substituting the New Legal Description for the description of the Easements set forth in the Original Grant Deed; and

EXHIBIT 3

f. SPTCo and Tuntex have agreed that the substitution of the description of the Easements set forth in the Original Grant Deed with the New Legal Description shall be effected by the parties' execution and recording of this Correcting Deed.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES OF THE PARTIES AND OTHER VALUABLE CONSIDERATION by the execution and recording hereof, SPTCo and Tuntex hereby correct the Original Grant Deed by:

1. Deleting the legal description of the Easements set forth in the Original Grant Deed; and

2. Substituting therefor the New Legal Description attached hereto as Exhibit 1 and incorporated herein by this reference.

IN WITNESS WHEREOF, SPTCo and Tuntex have executed this Correcting Deed this 30 day of July, 1991.

"SPTCo"

SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation

By: _____
Its: As Vice President

"Tuntex"

TUNTEX (U.S.A.) INC.
a Delaware corporation

By: _____
Its: _____

JO:ng

E962735

State of California §
§
City and County of San Francisco §

On July 30, 1991, before me personally appeared Rick L. (here Insert name and title of the officer), personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

OFFICIAL SEAL
C.M. LIMA
NOTARY PUBLIC - CALIFORNIA
SAN MATEO COUNTY
My Comm. Expires April 29, 1994

Signature C M Lima (Seal)

STATE OF CALIFORNIA }
City and County of San Francisco }

E962735

On this 23rd day of JULY in the year One Thousand Nine Hundred and Ninety ONE
before me, JOSEPH F. JUBILADO a Notary Public in and for the City and County of San Francisco, State of California, personally appeared

S. D. STEEL

known to me (or proved to me on the basis of satisfactory evidence) to be the

VICE PRESIDENT

of the corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named and he acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in my office in the City and County of San Francisco, the day and year in this certificate first above written

OFFICIAL NOTARY SEAL
JOSEPH F. JUBILADO
Notary Public — California
SAN FRANCISCO COUNTY
My Comm. Expires JUN 05 1995

Joseph F. Jubilado
Notary Public in and for the City and County of San Francisco, State of California

My Commission Expires June 5, 1995

EXHIBIT "I" E962735

FORM OF RAILROAD EASEMENT

"Grantor excepts from the Property hereby conveyed and reserves unto itself, its successors and assigns:

A perpetual, exclusive easement in, on, under, over and through the locations described in Schedule 1 (Railroad Main Line Easement), Schedule 2 (Drill & Spur Track Easement), and Schedule 3 (Access Roadway Easement) attached hereto, in which areas Grantor (and its lessees, sublessees, licensees, successors or assigns) shall have the right to own, operate, maintain, repair, lease, license, and/or remove existing and/or future railroad, rail and railroad related equipment and facilities and communications lines and facilities of every kind and nature including but not limited to all existing facilities, telephone, telegraph, television and fiber optic lines and related equipment. All improvements presently existing on or hereafter constructed on the easement area, if owned by Grantor, shall remain the personal property of the Grantor and its successors and assigns. Upon abandonment or termination of the easement, or any portion thereof, Grantor shall be obligated to execute and deliver to Grantee or its successors and assigns an instrument in form and substance satisfactory to Grantee, or its successors and assigns, relinquishing the easement described in this paragraph. Grantor shall defend, indemnify and hold Grantee, its successors and assignees, harmless from and against any liability, damage, cost or expense arising from or in connection with Grantor's use of the property covered by the easement reserved herein.

Notwithstanding the exclusive nature of such easement, Grantor shall permit Grantee, its successors and assigns, (a) such rights of passage on, over, and under such easement area for such public or private streets and rights of way ("Rail Crossings") as Grantee may require to provide reasonable access to any improvements located on the Property, and (b) the right to construct, (i) improvements over said easement commencing at a minimum height of thirty-five (35) feet above top of rail and (ii) structural support improvements and other improvements reasonably related to a railroad depot within the easement area ("Improvements"), in all cases subject to (a) approval of the location or locations and the design of such Rail Crossings and Improvements by the Grantor, which approval shall not be unreasonably withheld; (b) such conditions as Grantor may reasonably impose to protect its own operations over such easement area or to comply with applicable law; (c) approval of such Rail Crossings or improvements by the California Public Utility Commission and by such other governmental and regulatory agencies as may be required; (d) acceptance, to the extent applicable, of such Rail Crossings as dedicated public streets by the City of San Francisco; and (e) construction of the physical improvements constituting such Rail Crossings and Improvements at no expense to the Grantor."

SAN FRANCISCO - TUOLUMNE

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EXHIBIT "1"
(Schedule 1)

MAIN LINE EASEMENT

Those certain parcels of land situated in the City and County of San Francisco, State of California, described as follows:

Parcel No. 1:

Commencing at the northeasterly corner of Lot No. 8, as said Lot is shown on that certain map entitled "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCKS 5087, 5099 and 5101, SAN FRANCISCO, CALIFORNIA", as per map filed July 16, 1980; in Book 16 of Parcel Maps, Page 40, Records of said County, said corner being at the easterly terminus of that certain course shown on said map having a bearing and distance of "N 73°20' W 232.62'"; thence North 72°09'01" West along the northerly line of said Lot No. 8, and also said course, 13.84 feet to a point in a line concentric with and distant 25.00 feet easterly, measured radially from the existing center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco), and the True Point of Beginning of the parcel of land herein to be described; thence southerly along said concentric line one curve to the left; tangent to said curve at last said point bears South 8°30'54" West, having a radius of 5685.096 feet, a central angle of 2°04'27", an arc distance of 205.81 feet to the northerly line of the 0.411 acre parcel of land described in deed dated June 13, 1985, from Southern Pacific Transportation Company to State of California, recorded June 26, 1985, as Instrument 0660213, Reel 0867, Page 951, Official Records of said County;

thence North 08°40'13" West along last said northerly line, 8.03 feet to a point for the northwesterly corner of last said land; thence southerly along the westerly line of last said land, on a curve to the left, tangent to last said curve at last said point bears South 6°24'50" West, having a radius of 5691.60 feet, a central angle of 1°34'15", an arc distance of 156.05 feet to a point of compound curve; thence continuing southerly along said westerly line on last said curve to the left, having a radius of 600.00 feet, a central angle of 9°52'28", an arc distance of 103.41 feet to a point in said concentric line; thence leaving said westerly line, southerly along said concentric line, on a curve to the left, tangent to last said curve at last said point bears South 3°43'34" West, having a radius of 5685.096 feet, a central angle of 1°51'01", an arc distance of 183.60 feet; thence South 1°28'31" West 12.80 feet to a point in the common County line between the County of San Francisco and the County of San Mateo, last said point being distant thereon, North 88°58'58" West 61.21 feet from its intersection with the westerly line of Tunnel Avenue, 60 feet in width; thence North 88°58'58" West along said County line and also the southerly line of said Lot No. 8, passing at 25.06 feet the said center line of Southern Pacific Transportation Company's Westbound main track, and continuing for a total distance of 100.13 feet; thence North 1°28'35" East 14.47 feet to a point in a line concentric with and distant 75.00 feet westerly, measured radially from last said center line; thence northerly along last said concentric line, on a curve to the right, tangent to last said curve at last said point bears North 1°56'33" East, having a radius of 5765.096 feet, a central angle of 6°42'08", an arc distance of 676.72 feet to said northerly line of said Lot No. 8; thence South 72°09'01" East along last said northerly line, passing at 76.11 feet the

said center line of Southern Pacific Transportation Company's westbound main track, and continuing for a total distance of 101.45 feet to the True Point of Beginning, containing an area of 1.513 acres, more or less.

Parcel No. 2:

Commencing at the northerly terminus of that certain course having a distance of 109.964 feet as shown on that certain map entitled, "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099, and 5101, SAN FRANCISCO, CALIFORNIA", as per map filed July 16, 1980, in Book 16 of Parcel Maps, Page 90, Records of said County; thence South 17°58'59" West along said course, 3.2 feet to a chain link fence; thence South 32°17'13" West along said fence, 21.6 feet to a fence post; thence South 37°42'55" West, continuing along said fence, 100.2 feet to another fence post; thence South 69°17'37" East, continuing along said fence, 117.3 feet to another fence post; thence North 9°22'01" East, continuing along said fence, 2.0 feet to the True Point of Beginning of the parcel of land herein to be described; thence continuing North 9°22'01" East along said fence, 22.0 feet; thence South 80°37'59" East, leaving said fence, 22.8 feet; thence South 9°22'01" West 22.0 feet; thence North 80°37'59" West 22.8 feet to the True Point of Beginning.

SN
2 Mar. 90
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RMS.

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EXHIBIT "1"
(Schedule 2)

DRILL & SPUR TRACK EASEMENT

Those certain parcels or strips of land situated in the City and County of San Francisco, State of California, described as follows:

PARCEL NO. 1

Beginning at the point of intersection of the westerly line of Tunnel Avenue, 80 feet in width, with the common County line between the County of San Francisco and the County of San Mateo; thence North 88°58'58" West along said County line and also the southerly line of Lot No. 8, as said Lot is shown on that certain map entitled "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCKS 5087, 5099, & 5101, SAN FRANCISCO, CALIFORNIA," as per map filed July 16, 1980 in Book 16 of Maps, Page 40, Records of said County, 39.80 feet to a point in a line concentric and parallel with and distant 15.00 feet westerly, measured radially and at right angles from the center line of Southern Pacific Transportation Company's drill track (which lies easterly of and which diverges southerly from the center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco) and which crosses said County line at a point distant North 88°58'58" West along said County line 26.41 feet from its intersection with said westerly line of Tunnel Avenue); thence northerly along said concentric and parallel line, the curvature and course thereof as follows: northerly on a curve to the left, tangent to said curve at last said point bears North 12°03'07" West, having a radius of 558.14 feet, a central angle of 2°35'41", an arc distance of 25.28 feet to a point, and North 14°38'48" West, tangent to last said curve at last said point, 50.80 feet to a point in a line concentric withand distant 25.00 feet easterly, measured radially, from said center line of Southern Pacific

Transportation Company's westbound main track; thence northerly along last said concentric line, on a curve to the right, tangent to last said curve at last said point bears North 2°35'12" East, having a radius of 5685.096 feet, a central angle of 1°14'22", an arc distance of 122.08 feet to a point in the westerly line of the 0.411 acre parcel of land described in deed dated June 13, 1985, from Southern Pacific Transportation Company to the State of California, recorded June 25, 1985, as Instrument 0660213, Reel 0867, Page 591, Official Records of said County; thence southerly along last said westerly line, on a curve to the left, tangent to last said curve at last said point bears South 5°01'53" East, having a radius of 600.00 feet, a central angle of 8°36'56", an arc distance of 90.22 feet; thence South 28°11'12" East, continuing along last said westerly line, 70.12 feet to the easterly line of last said land; thence leaving last said westerly line, North 1°13'47" East along said easterly line, 1.77 feet to said westerly line of Tunnel Avenue; thence South 4°30'58" East along last said westerly line, 48.41 feet to the Point of Beginning, containing an area of 5018 square feet, more or less.

PARCEL NO. 2

A strip of land, 30 feet wide lying equally 15.00 feet on each side of the following described line:

Commencing at the northeasterly corner of the 0.411 acre parcel of land described in deed dated June 13, 1985, from Southern Pacific Transportation Company to State of California, recorded June 26, 1985, as Instrument 0660213, Reel 0867, Page 591, Official Records of said County; thence North 6°33'34" West 309.26 feet to a point in the center line of Southern Pacific Transportation Company drill track right of way (which track lies westerly of and which diverges southerly, southwesterly, and southerly from the center line of Southern Pacific Transportation Company's eastbound main track (San Francisco-San Jose) and which

crosses the common County line between the County of San Francisco and the County of San Mateo at a point distant South 88°58'58" East along said County line, 237.36 feet from its intersection with a line parallel with and distant 105.67 feet easterly, measured at right angles, from the easterly line of Bayshore Boulevard); thence South 15°19'08" West along said center line of Southern Pacific Transportation Company's drill track right of way, 88.81 feet to a point in the northerly line of Lot No. 8, as said Lot is shown on that certain map entitled "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCKS 5087, 5099 & 5101, SAN FRANCISCO, CALIFORNIA," as per map filed July 16, 1980, in Book 16 of Parcel Maps, Page 40, Records of said County, last said point being distant North 72°09'01" West along said northerly line, 58.75 feet from the northeasterly corner of said Lot No. 8, last said point being the True Point of Beginning of the line herein to be described: thence southerly and southwesterly and southerly continuing along said center line of Southern Pacific Transportation Company's drill track right of way, the courses and curvatures thereof as follows: South 15°19'08" West 3.62 feet to a point; southerly on a curve to the right, tangent to said curve at last said point is last described course, having a radius of 3564.239 feet, a central angle of 0°22'10", an arc distance of 22.99 feet to a point; South 15°41'18" West, tangent to last said curve at last said point, 152.89 feet to a point; southerly and southwesterly on a curve to the right, tangent to last said curve at last said point is last described course, having a radius of 382.245 feet, a central angle of 16°38'26", an arc distance of 111.02 feet to a point; South 32°19'44" West, tangent to the last said curve at last said point, 161.72 feet to a point; southwesterly on a curve to the right, tangent to last said curve at last said point is last described course, having a radius of 286.483 feet, a central angle of 35°25'30", an arc distance of 177.35 feet to a point; and South 67°45'14" West, tangent to last said curve at last said point, 544.20 feet.

Excepting therefrom that portion lying easterly of and coincident with a line concentric with and distant 75.00 feet westerly, measured radially from the center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco).

Also, excepting therefrom that portion lying within said County of San Mateo.

PARCEL NO. 3

A strip of land, 30 feet wide, lying equally 15.00 feet on each side of the following described line:

Commencing at the northeasterly corner of the 0.411 acre parcel of land described in deed dated June 13, 1985, from Southern Pacific Transportation Company to State of California, recorded June 26, 1985, as Instrument 0660213, Reel 0867, Page 591, Official Records of said County; thence North 6°33'34" West 309.26 feet to a point in the center line of Southern Pacific Transportation Company's drill track right of way (which track lies westerly of and which diverges southerly, southwesterly, and southerly from the center line of Southern Pacific Transportation Company's eastbound main track (San Francisco-San Jose) and which crosses the common County line between the County of San Francisco and the County of San Mateo at a point distant South 88°58'58" East along said County line, 237.36 feet from its intersection with a line parallel with and distant 105.67 feet easterly, measured at right angles from the easterly line of Bayshore Boulevard); thence southerly along said center line of Southern Pacific Transportation Company's drill track right of way, the courses and curvatures thereof as follows: South 15°19'08" West 92.43 feet to a point; southerly on a curve to the right, tangent to said curve at last said point is last described course, having a radius of 3564.239 feet, a central angle of 0°22'10" an arc distance of 22.99 feet to a point; South 15°41'18" West, tangent to last said

curve at last said point, 152.89 feet to a point; southerly and southwesterly on a curve to the right, tangent to last said curve at last said point is last described course, having a radius of 382.245 feet, a central angle of 16°38'26", an arc distance of 111.02 feet to a point; and South 32°19'44" West, tangent to last said curve at last said point, 53.00 feet to a point in the center line of Southern Pacific Transportation Company's spur track right of way (which track diverges northerly from said center line of said Company's drill track) and the True Point of Beginning of the line herein to be described; thence northerly along said center line of Southern Pacific Transportation Company's spur track right of way, the courses and curvatures thereof as follows: North 25°58'09" East 81.00 feet to a point; northerly on a curve to the left, tangent to last said curve at last said point is last described course, having a radius of 382.245 feet; a central angle of 16°36'08", an arc distance of 110.76 feet to a point; and North 9°22'01" East, tangent to last said curve at last said point, 109.53 feet.

Excepting therefrom that portion of the above described 30 foot wide strip of land, herein above described in "PARCEL NO. 3, lying easterly of and coincident with a line concentric with and distant 75.00 feet westerly, measured radially from the center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco).

D962735

EXHIBIT "1"
(Schedule 3)

ACCESS ROADWAY EASEMENT

Those certain parcels of land situated in the City and County of San Francisco, State of California, described as follows:

PARCEL NO. 1

Beginning at the northeasterly corner of the 0.411 acre parcel of land described in deed dated June 13, 1985, from Southern Pacific Transportation Company to State of California, recorded June 26, 1985, as Instrument 0660213, Reel 0867, Page 591, Official Records of said County; thence North 08°46'13" West along the northerly line of said 0.411 acre parcel of land, 33.31 feet to a point in a line concentric with and distant 25.00 feet easterly, measured radially from the center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco), said point being distant South 85°46'13" East along said northerly line, 8.08 feet from the northwesterly corner of said 0.411 acre parcel of land; thence northerly along said concentric line, on a curve to the right, tangent to said curve at last said point bears North 6°26'27" East, having a radius of 5685.096 feet, a central angle of 2°00'27", an arc distance of 205.81 feet to the northerly line of Lot No. 8, as said Lot is shown on that certain map entitled "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCKS 5087, 6099, & 5101, SAN FRANCISCO, CALIFORNIA", as per map filed July 15, 1980, in Book 16 of Parcel Maps, Page 40, Records of said County; thence South 72°09'01" East along last said northerly line, 13.84 feet to the northeasterly corner of said Lot No. 8; thence South 13°42'29" West along the easterly line of said Lot No. 8 and also the westerly line of Tunnel Avenue, 60

feet in width, 10.88 feet to an angle point therein; thence continuing along said easterly line and also last said westerly line, South 1°13'47" West 190.00 feet to the Point of Beginning, containing an area of 4646 square feet, more or less.

PARCEL NO. 2

Beginning at the point of intersection of the northerly line of Lot No. 8, as said Lot is shown on that certain map entitled "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCKS 5087, 5099, & 5101, SAN FRANCISCO, CALIFORNIA", as per map filed July 16, 1980, in Book 16 of Parcel Maps, Page 40, Records of said County, with a line concentric with and distant 75.00 feet westerly, measured radially from the center line of Southern Pacific Transportation Company's westbound main track (San Jose-San Francisco), said point being distant North 72°09'01" West along said northerly line, 115.29 feet from the northeasterly corner of said Lot No. 8; thence southerly along said concentric line, on a curve to the left, tangent to said curve at last said point bears South 8°40'41" West, having a radius of 5765.096 feet, a central angle of 0°51'24", an arc distance of 86.50 feet to a line parallel and concentric with and distant 15.00 feet westerly, measured at right angles and radially from the center line of Southern Pacific Transportation Company's tail track (which lies westerly of and which diverges northerly from the center line of Southern Pacific Transportation Company's drill track and which drill track lies westerly of and which diverges southerly, southwesterly, and southerly from the center line of Southern Pacific Transportation Company's eastbound main track (San Francisco-San Jose), and which said drill track crosses the common County line between the County of San

Francisco and the County of San Mateo at a point distant South 88°58'50" East along said County line, 237.36 feet from its intersection with a line parallel with and distant 105.67 feet easterly, measured at right angles from the easterly line of Bayshore Boulevard; thence southerly and southwesterly along said parallel and concentric line, the courses and curvature thereof as follows: South 9°22'01" West 67.62 feet to a point; southerly and southwesterly on a curve to the right, tangent to last said curve at last said point is last described course, having a radius of 367.245 feet, a central angle of 16°36'08"; an arc distance of 106.41 feet to a point; and South 25°58'09" West, tangent to last said curve at last said point, 80.17 feet to a line parallel and concentric with and distant 15.00 feet northwesterly, measured at right angles and radially from said center line of Southern Pacific Transportation Company's drill track; thence southwesterly along last said parallel and concentric line, the courses and curvature thereof as follows: South 32°19'44" West 107.88 feet to a point; southwesterly on a curve to the right, tangent to last said curve at last said point is last described course, having a radius of 271.843 feet, a central angle of 35°25'30", an arc distance of 168.08 feet to a point; and South 67°45'14" West, tangent to last said curve at last said point, 366.47 feet to the easterly prolongation of the southerly line of Sunnydale Avenue, 66 feet wide; thence leaving last said parallel and concentric line, North 69°24'23" West along said prolongation, 65.40 feet to a point in the most westerly line of said Lot No. 8, last said point being the southerly terminus of that certain course shown on said map having a distance of "66.00'"; thence North 20°35'37" East along last said westerly line, 43.00 feet to a line parallel with and distant 10.00 feet northerly, measured at right angles from the easterly prolongation of the center line of said Sunnydale Avenue; thence South 69°24'23" East along last said prolongation, 13.70 feet to a point; thence easterly and northeasterly on a

curve to the left, tangent to last said curve at last said point is last described course, having a radius of 175.00 feet, a central angle of 42°50'23", an arc distance of 130.85 feet to a point in a line parallel and concentric with and distant 35.00 feet northwesterly, measured at right angles and radially from said center line of Southern Pacific Transportation Company's drill track; thence northeasterly along last said parallel and concentric line, the courses and curvature thereof as follows: North 67°45'14" East, tangent to last said curve at last said point, 246.15 feet to a point; northeasterly on a curve to the left, tangent to last said curve at last said point is last described course, having a radius of 251.843 feet, a central angle of 35°25'30", an arc distance of 155.71 feet to a point; and North 32°19'44" East, tangent to last said curve at last said point, 106.11 feet to a line parallel and concentric with and distant 35.00 feet westerly, measured at right angles and radially from said center line of Southern Pacific Transportation Company's tail track; thence northerly along last said parallel and concentric line, the courses and curvature thereof as follows: North 25°58'09" East 79.06 feet to a point; northeasterly and northerly on a curve to the left tangent to last said curve at last said point is last described course, having a radius of 347.245 feet, a central angle of 16°36'08", an arc distance of 100.62 feet to a point; and North 9°22'01" East, tangent to last said curve at last said point, 67.27 feet to a point in a line concentric with and distant 95.00 feet westerly, measured radially from said center line of Southern Pacific Transportation Company's westbound main track; thence leaving last said parallel and concentric line, northerly along last said concentric line, on a curve to the right, tangent to last said curve at last said point bears North 7°49'17" East, having a radius of 5805.996 feet, a central angle of 0°53'12", an arc distance of 90.03 feet to said northerly line of said Lot No. 8; thence South 72°09'01" East along last said northerly line, 20.26 feet to the Point of Beginning, containing an area of 0.619 of an acre, more or less.

20159K01686300014
San Francisco Assessor-Recorder
Carmen Chu, Assessor-Recorder
DOC 2015-K016863-00
Acct 5002-Old Republic Title Company
Thursday, FEB 05, 2015 11:46:49
Ttl Pd$13,939.00 Nbr-0005097538
okc/RE/1-14

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

Patrick McNerney
14 Mint Plaza, Fifth Floor
San Francisco, CA 94103

Mail Tax Statements to:

Patrick McNerney
14 Mint Plaza, Fifth Floor
San Francisco, CA 94103

CRTC
02270154027 DP
Blk 5087; lots 4 & 5
2201 Bayshore Blvd.

Space Above Line for Recorder's Use Only

(1567-58)

DOCUMENTARY TRANSFER TAX $ 13,875.00
XX Computed on the full value of the property conveyed
___ Computed on the full value less liens and encumbrances remaining at the time of sale
___ Not a sale (Rev. & Tax. Code Section 11927(a))

Signature of Declarant or Agent Determining Tax

QUITCLAIM DEED

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (formerly known as Southern Pacific Transportation Company, a Delaware corporation), Grantor, in consideration of the sum of Ten Dollars ($10.00), and other valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, does hereby REMISE, RELEASE and forever QUITCLAIM unto **PATRICK McNERNEY**, an individual, as his sole and separate property, Grantee, whose address is 14 Mint Plaza, Fifth Floor, San Francisco, California 94103 and unto his heirs and assigns forever, all of Grantor's right, title, interest, estate, claim and demand, both at law and in equity, of, in, and to the real estate (hereinafter the "Property") situated in the City and County of San Francisco, State of California, identified and more particularly described as "Fee Parcel" in **Exhibit A**, hereto attached and hereby made a part hereof, together with any and all of Grantor's right, title and interest in and to portions of that certain Form of Railroad Easement reserved by Southern Pacific Transportation Company in that certain Grant Deed dated August 1, 1990, and recorded on August 10, 1990 in the Official Records of San Francisco County, California, as Instrument No. E761808, as modified by that certain Deed Correcting Description of Rail Easement dated July 23, 1991, and recorded on August 22, 1991 in the Official Records of San Francisco County, California, identified and more particularly described as "Schedule 1", "Schedule 2" and "Schedule 3" in the attached **Exhibit A** ("Railroad Easement").

EXHIBIT 4

EXCEPTING FROM THIS QUITCLAIM AND RESERVING UNTO GRANTOR, its successors and assigns, forever, all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered underlying the Property, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable to Grantor, its successors and assigns, but without entering upon or using the surface of the Property, and in such manner as not to damage the surface of the Property, or to interfere with the use thereof by Grantee, its successors or assigns.

Except as may be otherwise provided in a written assignment or other written agreement between Grantor and Grantee, Grantor reserves all income (including, without limitation, rentals, license fees and royalties) from any existing license and other existing rights to use the Property and renewals thereof granted by Grantor or Grantor's predecessors in interest. Grantee agrees that if Grantee receives any such income, Grantee will promptly forward the income to Grantor.

Covenants.

The Property is quitclaimed by Grantor subject to the following covenants, conditions and restrictions which Grantee by the acceptance of this Deed covenants for itself, its successors and assigns, faithfully to keep, observe and perform:

Fence Covenant. Grantee, at its sole cost and expense, shall install, within ninety (90) days after the recording of this Deed, and thereafter maintain fencing or other barriers to prevent access to or encroachment on the railroad right-of-way of Grantor adjacent to the easterly boundary of the Property. The fencing or barrier must be of a design and type satisfactory to Grantor, and in compliance with applicable building codes. Grantee shall submit the plans for the fencing or barrier construction to:

Union Pacific Railroad Company
Assistant Vice President-Real Estate (Folder No. 1567-58)
1400 Douglas Street, Mail Stop 1690
Omaha, Nebraska 68179

for review and approval. Grantor shall complete such review and make appropriate response to Grantee within twenty (20) days after receipt of such plans by Grantor. Grantor shall not unreasonably withhold its approval of such plans. Such approval does not constitute a guarantee or warranty that such plans comply with applicable governmental laws, rules, regulations or ordinances, or that the fence as constructed will be structurally sound.

Railroad Proximity Covenant.

(a) Grantee acknowledges that the property abutting the easterly boundary line of the Property is dedicated and used for railroad purposes, that railroad operations may create noise, vibrations, emissions, fumes and odors twenty-four (24) hours a day, and that the amount, nature and intensity of railroad operations may increase or change (collectively, the

"Permitted Effects"). Grantee accepts the Property subject to the existence of the Permitted Effects. By acceptance of the Property, Grantee agrees that, at Grantee's sole cost and expense, as part of the development of the Property, Grantee shall design and install and/or construct and thereafter maintain improvements to reduce or limit the Permitted Effects and to comply with all governmental requirements, if any, which may be imposed as a condition to the development and use of the Property because of the Permitted Effects.

(b) Grantee shall not, and hereby waives all rights to, (i) institute legal proceedings against Grantor to reduce or lessen the Permitted Effects, and (ii) directly or indirectly participate in petition drives, lobbying efforts or other activities seeking the enactment of federal, state or local laws or ordinances to reduce or lessen the Permitted Effects. Any party breaching such covenant shall reimburse Grantor for all costs incurred by Grantor to comply with any such orders, laws or ordinances, including, without limitation, attorney fees and court costs.

(c) If Grantee sells or leases all or any portion of the Property, Grantee shall require all purchasers and tenants to acknowledge the location of the railroad operations abutting the Property and the existence of the Permitted Effects, and to agree in writing, for the benefit of Grantor, to comply with the above covenants.

Covenants To Run With Land. The foregoing covenants, conditions and restrictions shall run with the Property, the burdens of which will be binding on the successors and assigns of Grantee, and the benefits of which will inure to the successors and assigns of Grantor. A breach of the foregoing covenants, conditions and restrictions, or the continuance thereof, may, at the option of Grantor, its successors or assigns, be enjoined, abated or remedied by appropriate proceedings.

Environmental.

"As Is" Sale. Grantee acknowledges and agrees that the Property and the Railroad Easement have been sold and quitclaimed to and accepted by Grantee in an "as is" condition with all faults, and that the Property and the property over which the Railroad Easement is located ("Railroad Easement Area") have been used for, among other things, railroad operating right-of-way and for other commercial or industrial purposes. Grantor does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the Property, Railroad Easement Area or Railroad Easement or any of such related matters; in particular, but without limitation, Grantor makes no representations or warranties with respect to the use, condition, title, occupation or management of the Property, Railroad Easement Area or Railroad Easement, compliance with applicable statutes, laws, codes, ordinances, regulations or requirements relating to leasing, zoning, subdivision, planning, building, fire, safety, health or environmental matters (including but not limited to the existence of Hazardous Materials, in, on, under or emanating to or from the Property), compliance with covenants, conditions and restrictions (whether or not of record), other local, municipal, regional, state or federal requirements, or other statutes, laws, codes, ordinances, regulations or requirements (collectively, "Condition of the Property"). Grantee acknowledges and agrees that the Property and Railroad Easement have been sold and quitclaimed on the basis of Grantee's own

investigation of the physical and environmental conditions of the Property and Railroad Easement Area, including the subsurface conditions and Grantee assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation. For purposes of this Deed, "Hazardous Materials" means any flammable or explosive materials, petroleum or petroleum products, oil, crude oil, natural gas or synthetic gas usable for fuel, radioactive materials, asbestos, hazardous waste or substances or toxic waste or substances, including, without limitation, any substances now or hereafter defined as or included in the definition of "hazardous substances", "hazardous waste", "hazardous materials", "toxic materials" or "toxic substances" under any applicable federal, state or local law or regulation now or hereafter in effect.

Release. GRANTEE, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES GRANTOR, GRANTOR'S EMPLOYEES, AGENTS, OR ANY OTHER PERSON ACTING ON BEHALF OF GRANTOR, OF AND FROM ANY CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, DAMAGES, COSTS, EXPENSES, PENALTIES, FINES OR COMPENSATION WHATSOEVER, DIRECT OR INDIRECT, WHICH GRANTEE NOW HAS OR WHICH GRANTEE MAY HAVE IN THE FUTURE ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE CONDITION OF THE PROPERTY OR RAILROAD EASEMENT AREA, INCLUDING, WITHOUT LIMITATION, THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY AND RAILROAD EASEMENT AREA (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY AND RAILROAD EASEMENT AREA BY ANY HAZARDOUS MATERIALS), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING APPLIES REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS. WITH RESPECT TO THE FOREGOING RELEASE, GRANTEE EXPRESSLY WAIVES THE BENEFITS AND PROTECTIONS OF SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA, WHICH READS AS FOLLOWS:

> **1542. Certain Claims Not Affected by General Release. 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.**

Indemnity. FROM AND AFTER CLOSING, GRANTEE SHALL, TO THE MAXIMUM EXTENT PERMITTED BY LAW, INDEMNIFY, DEFEND AND SAVE HARMLESS GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, FINES, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND

EXPENSES, INCLUDING ATTORNEY'S FEES, IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER, ADJACENT OR EMANATING FROM OR TO THE PROPERTY BY ANY HAZARDOUS MATERIALS), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING APPLIES REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.

General Allocation of Environmental Responsibility. With respect to any existing or future presence of Hazardous Materials in, under or emanating to or from the Property or Railroad Easement Area, Grantee, at no cost to Grantor, agrees to be solely responsible for conducting any investigation, monitoring, remediation, removal, response or other action required by any governmental agency, court order, law or regulation or which may otherwise be necessary to make the Property or Railroad Easement Area suitable for Grantee's use of the Property or Railroad Easement Area.

IN WITNESS WHEREOF, the Grantor has caused this deed to be duly executed as of the 21st day of January, 2015.

Attest:

Barbara Holder
Assistant Secretary

(Seal)

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: Tony Lee
Title: Assistant Vice President – Real Estate

Grantee hereby accepts this Quitclaim Deed and agrees for himself, his heirs and assigns, to be bound by the covenants set forth herein.

Dated this 2ND day of ~~January~~ FEBRUARY, 2015.

PATRICK McNERNEY

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On January 21, 2015, before me, Gregg A Larsen, Notary Public
TONY K. LOVE
in and for said County and State, personally appeared _____
and Barbara Holder who are the Assistant Vice President – Real Es tat e
and the Assistant Secretary, respectively, of Union Pacific Railroad Company, a Delaware corporation, and who are personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

GENERAL NOTARY - State of Nebraska
GREGG A. LARSEN
My Comm. Exp. Aug. 28, 2016

Notary Public

(Seal)

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On this 2nd day of ~~January~~ February, 2015, before me, June Y Williams, Notary Public, personally appeared PATRICK McNERNEY, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.

June Y Williams
Notary Public

(Seal)

JUNE Y. WILLIAMS
COMM. #1997789
NOTARY PUBLIC-CALIFORNIA
SAN FRANCISCO COUNTY
My Comm. Expires Nov. 11, 2016

Union Pacific Railroad Company

San Francisco County, California

Exhibit "A"

FEE PARCEL

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

THOSE PORTIONS OF PARCEL 4 AND 5 AS SHOWN ON THAT CERTAIN "PARCEL MAP" FILED JULY 16, 1980 IN BOOK 16 OF PARCEL MAPS, PAGE 40, IN THE OFFICE OF THE COUNTY RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO DESCRIBED AS FOLLOWS:

PARCEL 1:

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID LOT NO. 4; THENCE ALONG THE NORTHERLY LINE OF SAID LOT NO. 4 SOUTH 74°37'31" EAST (SHOWN AS "SOUTH 75°48'30" EAST" ON SAID PARCEL MAP) 55.07 FEET TO A POINT IN A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE EXISTING CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO); THENCE SOUTHERLY ALONG SAID CONCENTRIC LINE ON A CURVE TO THE LEFT, TANGENT TO SAID CURVE AT LAST SAID POINT BEARS SOUTH 15°18'45" WEST, HAVING A RADIUS OF 5785.096 FEET, THROUGH A CENTRAL ANGLE OF 1°17'04" AN ARC DISTANCE OF 129.70 FEET TO THE WESTERLY LINE OF SAID LOT NO. 5; THENCE CONTINUING SOUTHERLY ALONG SAID CONCENTRIC LINE THROUGH A CENTRAL ANGLE OF 5°21'01" AN ARC DISTANCE OF 540.10 FEET TO THE SOUTHERLY LINE OF SAID LOT NO. 5; THENCE ALONG SAID SOUTHERLY LINE OF SAID LOT NO. 5 NORTH 72°09'01" WEST (SHOWN AS "NORTH 73°20' WEST" ON SAID PARCEL MAP) 117.46 FEET TO SOUTHEASTERLY LINE OF SAID LOT NO. 4; THENCE ALONG SAID SOUTHEASTERLY LINE SOUTH 32°17'13" WEST 29.95 FEET; THENCE NORTH 17°58'59" EAST (SHOWN AS "SOUTH 16°48'00" WEST" ON SAID PARCEL MAP) 309.26 FEET; THENCE SOUTH 71°57'37" EAST 19.979 FEET; THENCE NORTH 17°58'59" EAST 304.33 FEET; THENCE NORTH 74°37'31" WEST 20.00 FEET; THENCE NORTH 17°58'59" EAST 80.00 FEET TO THE POINT OF BEGINNING.

PORTION OF ASSESSOR'S LOTS 004 AND 005, BLOCK 5087

SCHEDULE 1
(MAIN LINE EASTMENT)

THOSE CERTAIN PARCELS OF LAND SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (NOT INCLUDED)

PARCEL NO. 2: (SIGNAL CABINET AREA)

COMMENCING AT THE NORTHERLY TERMINUS OF THAT CERTAIN COURSE HAVING A DISTANCE OF 109.964 FEET AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099, AND 5101, SAN FRANCISCO, CALIFORNIA", AS PER MAP FILED JULY 16, 1980, IN BOOK 16 OF PARCEL MAPS, PAGE 40, RECORDS OF SAID COUNTY; THENCE SOUTH 17°58'59" WEST ALONG SAID COURSE, 3.2 FEET TO A CHAIN LINK FENCE; THENCE SOUTH 32°17'13" WEST ALONG SAID FENCE, 21.6 FEET TO A FENCE POST; THENCE SOUTH 17°42'55" WEST, CONTINUING ALONG SAID FENCE, 100.2 FEET TO ANOTHER FENCE POST; THENCE SOUTH 69°17'37" EAST, CONTINUING ALONG SAID FENCE, 117.3 FEET TO ANOTHER FENCE POST; THENCE NORTH 9°22'01" EAST, CONTINUING ALONG SAID FENCE, 2.0 FEET TO THE TRUE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN TO BE DESCRIBED; THENCE CONTINUING NORTH 9°22'01" EAST ALONG SAID FENCE, 22.0 FEET; THENCE SOUTH 80°37'59" EAST, LEAVING SAID FENCE, 22.8 FEET; THENCE SOUTH 9°22'01" WEST 22.0 FEET; THENCE NORTH 80°37'59" WEST 22.8 FEET TO THE TRUE POINT OF BEGINNING.

SCHEDULE 2
(DRILL & SPUR TRACK EASEMENT)

THOSE CERTAIN PARCELS OR STRIPS OF LAND SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (NOT INCLUDED)

PARCEL NO. 2: (DRILL AND SPUR TRACK AREA)

A STRIP OF LAND, 30 FEET WIDE LYING EQUALLY 15.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEASTERLY CORNER OF THE 0.411 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED JUNE 13, 1985, FROM SOUTHERN PACIFIC TRANSPORTATION COMPANY TO STATE OF CALIFORNIA, RECORDED JUNE 26, 1985, AS INSTRUMENT D660213, REEL D867, PAGE 591, OFFICIAL RECORDS OF SAID COUNTY; THENCE NORTH 6°33'34" WEST 309.26 FEET TO A POINT IN THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY DRILL TRACK RIGHT OF WAY (WHICH TRACK LIES WESTERLY OF AND WHICH DIVERGES SOUTHERLY, SOUTHWESTERLY, AND SOUTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S EASTBOUND MAIN TRACK (SAN FRANCISCO - SAN JOSE) AND WHICH CROSSES THE COMMON COUNTY LINE BETWEEN THE COUNTY OF SAN FRANCISCO AND THE COUNTY OF SAN MATEO AT TA POINT DISTANT SOUTH 88°58'58" EAST ALONG SAID COUNTY LINE, 237.36 FEET FROM ITS INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT 105.67 FEET EASTERLY, MEASURED AT RIGHT ANGLES, FROM THE EASTERLY LINE OF BAYSHORE BOULEVARD); THENCE SOUTH 15°19'08" WEST ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY, 88.81 FEET TO A POINT IN THE NORTHERLY LINE OF LOT NO. 8, AS SAID LOT IS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099 & 5101, SAN FRANCISCO, CALIFORNIA," AS PER MAP FILED JULY 16, 1980, IN BOOK 16 OF PARCEL MAPS, PAGE 40, RECORDS OF SAID COUNTY, LAST SAID POINT BEING DISTANT NORTH 72°09'01" WEST ALONG SAID NORTHERLY LINE, 68.75 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT NO. 8, LAST SAID POINT BEING TRUE POINT OF BEGINNING OF

THE LINE HEREIN TO BE DESCRIBED; THENCE SOUTHERLY AND SOUTHWESTERLY AND SOUTHERLY CONTINUING ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY, THE COURSES AND CURVATURES THEREOF AS FOLLOWS: SOUTH 15°19'08" WEST 3.62 FEET TO A POINT; SOUTHERLY ON A CURVE TO THE RIGHT, TANGENT TO SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 3564.239 FEET, A CENTRAL ANGLE OF 0°22'10", AN ARC DISTANCE OF 22.99 FEET TO A POINT; SOUTH 15°41'18' WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 152.89 FEET TO A POINT; SOUTHERLY AND SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 382.245 FEET, A CENTRAL ANGLE OF 16°38'26", AN ARC DISTANCE OF 111.02 FEET TO A POINT; SOUTH 32°19'44" WEST, TANGENT TO THE LAST SAID CURVE AT LAST SAID POINT, 161.72 FEET TO A POINT; SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 286.483 FEET, A CENTRAL ANGLE OF 35°25'30", AN ARC DISTANCE OF 177.35 FEET TO A POINT; AND SOUTH 67°45'14" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 544.20 FEET'.

EXCEPTING THEREFROM THAT PORTION LYING EASTERLY OF AND COINCIDENT WITH A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO).

ALSO, EXCEPTING THEREFROM THAT PORTION LYING WITHIN SAID COUNTY OF SAN MATEO.

PARCEL NO. 3: (DRILL AND SPUR TRACK AREA)

A STRIP OF LAND, 30 FEET WIDE, LAYING EQUALLY 15.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEASTERLY CORNER OF THE 0.411 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED JUNE 13, 1985, FROM SOUTHERN PACIFIC TRANSPORTATION COMPANY TO STATE OF CALIFORNIA, RECORDED JUNE 26, 1985, AS INSTRUMENT D660213, REAL D867, PAGE 591, OFFICIAL RECORDS OF SAID COUNTY; THENCE NORTH 6°33'34" WEST 309.26 FEET TO A POINT IN THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY (WHICH TRACK LIES WESTERLY OF AND WHICH DIVERGES SOUTHERLY, SOUTHWESTERLY, AND SOUTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S EASTBOUND MAIN TRACK (SAN FRANCISCO - SAN JOSE) AND WHICH CROSSES THE COMMON COUNTY LINE BETWEEN THE COUNTY OF SAN FRANCISCO AND THE COUNTY OF SAN MATEO AT A POINT DISTANT SOUTH 88°58'58" EAST ALONG SAID COUNTY LINE, 237.36 FEET FROM ITS INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT 105.67 FEET EASTERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY LINE OF BAYSHORE BOULEVARD); THENCE SOUTHERLY ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY, THE COURSES AND CURVATURES THEREOF AS FOLLOWS: SOUTH 15°19'08" WEST 92.43 FEET TO A POINT; SOUTHERLY ON A CURVE TO THE RIGHT, TANGENT TO SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 3564.239 FEET, A CENTRAL ANGLE OF 0°22'10' AND ARC DISTANCE OF 22.99 FEET TO A POINT; SOUTH 15°41'18" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 152.89 FEET TO A POINT; SOUTHERLY AND SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 382.245 FEET, A CENTRAL ANGLE OF 16°38'26", AN ARC DISTANCE OF 111.02 FEET TO A POINT; AND SOUTH 32°19'44" WEST, TANGENT TO LAST SAID CURVE AT

LAST SAID POINT, 53.00 FEET TO A POINT IN THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S SPUR TRACK RIGHT OF WAY (WHICH TRACK DIVERGES NORTHERLY FROM SAID CENTER LING OF SAID COMPANY'S DRILL TRACK) AND THE TRUE POINT OF BEGINNING OF THE LINE HEREIN TO BE DESCRIBED; THENCE NORTHERLY ALONG SAID CENTER OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S SPUR TRACK RIGHT OF WAY, THE COURSES AND CURVATURES THEREOF AS FOLLOWS: NORTH 25°58'09" EAST 81.00 FEET TO A POINT; NORTHERLY ON A CURVE TO THE LEFT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 382.245 FEET, A CENTRAL ANGLE OF 16°36'08", AND ARC DISTANCE OF 110.76 FEET TO A POINT; AND NORTH 9°22'01' EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 109.53 FEET.

EXCEPTING THEREFROM THAT PORTION OF THE ABOVE DESCRIBED 30 FOOT WIDE STRIP OF LAND, HEREIN ABOVE DESCRIBED IN "PARCEL NO. 3, LYING EASTERLY OF AND COINCIDENT WITH A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO).

SCHEDULE 3
(ACCESS ROADWAY EASEMENT)

THOSE CERTAIN PARCELS OF LAND SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (NOT INCLUDED)

PARCEL NO. 2: (ROADWAY AREA)

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF LOT NO. 8, AS SAID LOT IS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099, &5101, SAN FRANCISCO, CALIFORNIA", AS PER MAP FILED JULY 16, 1980, IN BOOK 16 OF PARCEL MAPS, PAGE 40, RECORDS OF SAID COUNTY, WITH A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO), SAID POINT BEING DISTANT NORTH 72°09'01" WEST ALONG SAID NORTHERLY LINE, 115.29 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT NO. 8; THENCE SOUTHERLY ALONG SAID CONCENTRIC LINE, ON A CURVE TO THE LEFT, TANGENT TO SAID CURVE AT LAST SAID POINT BEARS SOUTH 8°40'41" WEST, HAVING A RADIUS OF 5785.096 FEET, A CENTRAL ANGLE OF 0°51'24", AN ARC DISTANCE OF 86.50 FEET TO A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 15.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S TAIL TRACK (WHICH LIES WESTERLY OF AND WIIICH DIVERGES NORTHERLY FROM THE CFNTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK AND WHICH DRILL TRACK LIES WESTERLY OF AND WHICH DIVERGES SOUTHERLY, SOUTHWESTERLY, AND SOUTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S EASTBOUND MAIN TRACK (SAN FRANCISCO - SAN JOSE), AND WHICH SAID DRILL TRACK CROSSES THE COMMON COUNTY LINE BETWEEN COUNTY OF SAN FRANCISCO AND COUNTY OF SAN MATEO AT A POINT DISTANT SOUTH 88°58'58" EAST ALONG SAID COUNTY LINE, 237.36 FEET FROM ITS INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT 105.67 FEET EASTERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY LINE OF BAYSHORE BOULEVARD); THENCE SOUTHERLY AND SOUTHWESTERLY ALONG SAID PARALLEL AND

CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: SOUTH 9°22'01" WEST 67.82 FEET TO A POINT; SOUTHERLY AND SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 367.245 FEET, A CENTRAL ANGLE OF 16°36'08", AN ARC DISTANCE OF 106.41 FEET TO A POINT; AND SOUTH 25°58'09" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 80.17 FEET TO A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 15.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK; THENCE SOUTHWESTERLY ALONG LAST SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: SOUTH 32°19'44" WEST 107.88 FEET TO A POINT; SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 271.843 FEET, A CENTRAL ANGLE OF 35°25'30", AN ARC DISTANCE OF 168.08 FEET TO A POINT; AND SOUTH 67°45'14"WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 356.47 FEET TO THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF SUNNYDALE AVENUE, 66 FEET WIDE; THENCE LEAVING LAST SAID PARALLEL AND CONCENTRIC LINE, NORTH 69°24'23" WEST ALONG SAID PROLONGATION, 65.40 FEET TO A POINT IN THE MOST WESTERLY LINE OF SAID LOT NO. 8, LAST SAID POINT BEING THE SOUTHERLY TERMINUS OF THAT CERTAIN COURSE SHOWN ON SAID MAP HAVING A DISTANCE OF "66.00'"; THENCE NORTH 20°35'37" EAST ALONG LAST SAID WESTERLY LINE, 43.00 FEET TO A LINE PARALLEL WITH AND DISTANT 10.00 FEET NORTHERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY PROLONGATION OF THE CENTER LINE OF SAID SUNNYDALE AVENUE; THENCE SOUTH 69°24'23" EAST ALONG LAST SAID PROLONGATION, 13.70 FEET TO A POINT; THENCE EASTERLY AND NORTHEASTERLY ON A CURVE TO THE LEFT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 175.00 FEET, A CENTRAL ANGLE OF 42°50'23", AN ARC DISTANCE OF 130.85 FEET TO A POINT IN A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 35.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK; THENCE NORTHEASTERLY ALONG LAST SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: NORTH 67°45'14" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 246.15 FEET TO A POINT; NORTHEASTERLY ON A CURVE TO THE LEFT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 251.843 FEET, A CENTRAL ANGLE OF 35°25'30", AN ARC DISTANCE OF 155.71 FEET TO A POINT; AND NORTH 32°19'44" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 106.77 FEET TO A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 35.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S TAIL TRACK; THENCE NORTHERLY ALONG LAST SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: NORTH 25°58'09" EAST 79.06 FEET TO A POINT; NORTHEASTERLY AND NORTHERLY ON A CURVE TO THE LEFT TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 347.245 FEET, A CENTRAL ANGLE OF 16°36'08", AND ARC DISTANCE OF 100.62 FEET TO A POINT; AND NORTH 9°22'01" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 67.27 FEET TO A POINT IN A LINE CONCENTRIC WITH AND DISTANT 95.00 FEET WESTERLY, MEASURED RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK; THENCE LEAVING LAST SAID PARALLEL AND CONCENTRIC LINE, NORTHERLY ALONG LAST SAID CONCENTRIC LINE, ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT BEARS NORTH 7°49'17" EAST, HAVING A RADIUS OF 5805.096 FEET, A CENTRAL ANGLE OF 0°53'19", AN ARC DISTANCE OF 90.03 FEET TO SAID NORTHERLY LINE OF SAID LOT NO. 8; THENCE SOUTH 72°09'01" EAST ALONG LAST SAID NORTHERLY LINE, 20.26 FEET TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 0.519 OF AN ACRE, MORE OR LESS.

INGRESS/EGRESS AREA

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

THAT PORTION OF PARCEL 4, A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AS SHOWN ON THAT CERTAIN "PARCEL MAP" FILED JULY 16, 1980 IN BOOK 16 OF PARCEL MAPS AT PAGE 40, IN THE OFFICE OF THE COUNTY RECORDERS OF THE CITY AND COUNTY OF SAN FRANCISCO, LYING SOUTHERLY OF THE EASTERLY PROLONGATION OF THE NORTHERLY LINE OF LOT NO. 7 OF SAID PARCEL MAP.

Union Pacific Railroad Co.
Real Estate Department
Omaha, NE

LD 0156758
January 16, 2015

RECORDING REQUESTED BY:

Old Republic Title Company

Escrow No.:
APN: 5087; Portions of 005 and 004 ✓
Situs: APN 5087; portion of Lot 004 and 005 ✓
No Property address
When Recorded Mail Document and Tax Statements to:

424 Jessie Historic Properties, LLC
14 Mint Plaza, 5th Floor
San Francisco, CA 94103

20169K32823800008
San Francisco Assessor-Recorder
Carmen Chu, Assessor-Recorder
DOC 2016-K328238-00
Acct 5002-Old Republic Title Company
Wednesday, SEP 14, 2016 08:44:57
Ttl Pd $39.00 Nbr-0005457639
oar/RE/1-8

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

Grant Deed

The undersigned grantor(s) declare(s):
Documentary Transfer Tax is $0.00 transfer from individual name to single member LLC
(X) computed on full value of property conveyed, or
( ) computed on full value less of liens and encumbrances remaining at time of sale.
( ) Unincorporated area: (X) City of San Francisco

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
Patrick McNerney, an individual, as his sole and separate property

hereby GRANT(S) to
424 Jessie Historic Properties, LLC, a California limited liability company

that property in City of San Francisco, San Francisco County, State of California, described as:
See "Exhibit A" attached hereto and made a part hereof.

Date: August 17, 2016

Patrick McNerney

EXHIBIT 5

cription: San Francisco,CA Document - Year.DocID 2016.328238 Page: 1 of 8

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

State of California
County of San Francisco

On 9.12.16 before me, June Y Williams a Notary Public, personally appeared Patrick McNerney, 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: June Y Williams

Name: June Y Williams
(Typed or Printed)

(Seal)

JUNE Y. WILLIAMS
COMM. #1997789
NOTARY PUBLIC-CALIFORNIA
SAN FRANCISCO COUNTY
My Comm. Expires Nov. 11, 2016

Exhibit "A"

FEE PARCEL

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

THOSE PORTIONS OF PARCEL 4 AND 5 AS SHOWN ON THAT CERTAIN "PARCEL MAP" FILED JULY 16, 1980 IN BOOK 16 OF PARCEL MAPS, PAGE 40, IN THE OFFICE OF THE COUNTY RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO DESCRIBED AS FOLLOWS:

PARCEL 1:

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID LOT NO. 4; THENCE ALONG THE NORTHERLY LINE OF SAID LOT NO. 4 SOUTH 74°37'31" EAST (SHOWN AS "SOUTH 75°48'30" EAST" ON SAID PARCEL MAP) 55.07 FEET TO A POINT IN A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE EXISTING CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO); THENCE SOUTHERLY ALONG SAID CONCENTRIC LINE ON A CURVE TO THE LEFT, TANGENT TO SAID CURVE AT LAST SAID POINT BEARS SOUTH 15°18'45" WEST, HAVING A RADIUS OF 5785.096 FEET, THROUGH A CENTRAL ANGLE OF 1°17'04" AN ARC DISTANCE OF 129.70 FEET TO THE WESTERLY LINE OF SAID LOT NO. 5; THENCE CONTINUING SOUTHERLY ALONG SAID CONCENTRIC LINE THROUGH A CENTRAL ANGLE OF 5°21'01" AN ARC DISTANCE OF 540.10 FEET TO THE SOUTHERLY LINE OF SAID LOT NO. 5; THENCE ALONG SAID SOUTHERLY LINE OF SAID LOT NO. 5 NORTH 72°09'01" WEST (SHOWN AS "NORTH 73°20' WEST" ON SAID PARCEL MAP) 117.46 FEET TO SOUTHEASTERLY LINE OF SAID LOT NO. 4; THENCE ALONG SAID SOUTHEASTERLY LINE SOUTH 32°17'13" WEST 29.95 FEET; THENCE NORTH 17°58'59" EAST (SHOWN AS "SOUTH 16°48'00" WEST" ON SAID PARCEL MAP) 309.26 FEET; THENCE SOUTH 71°57'37" EAST 19.979 FEET; THENCE NORTH 17°58'59" EAST 304.33 FEET; THENCE NORTH 74°37'31" WEST 20.00 FEET; THENCE NORTH 17°58'59" EAST 80.00 FEET TO THE POINT OF BEGINNING.

PORTION OF ASSESSOR'S LOTS 004 AND 005, BLOCK 5087

SCHEDULE 1
(MAIN LINE EASTMENT)

THOSE CERTAIN PARCELS OF LAND SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (NOT INCLUDED)

PARCEL NO. 2: (SIGNAL CABINET AREA)

COMMENCING AT THE NORTHERLY TERMINUS OF THAT CERTAIN COURSE HAVING A DISTANCE OF 109.964 FEET AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099, AND 5101, SAN FRANCISCO, CALIFORNIA", AS PER MAP FILED JULY 16, 1980, IN BOOK 16 OF PARCEL MAPS, PAGE 40, RECORDS OF SAID COUNTY; THENCE SOUTH 17°58'59" WEST ALONG SAID COURSE, 3.2 FEET TO A CHAIN LINK FENCE; THENCE SOUTH 32°17'13" WEST ALONG SAID FENCE, 21.6 FEET TO A FENCE POST; THENCE SOUTH 17°42'55" WEST, CONTINUING ALONG SAID FENCE, 100.2 FEET TO ANOTHER FENCE POST; THENCE SOUTH 69°17'37" EAST, CONTINUING ALONG SAID FENCE, 117.3 FEET TO ANOTHER FENCE POST; THENCE NORTH 9°22'01" EAST, CONTINUING ALONG SAID FENCE, 2.0 FEET TO THE TRUE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN TO BE DESCRIBED; THENCE CONTINUING NORTH 9°22'01" EAST ALONG SAID FENCE, 22.0 FEET; THENCE SOUTH 80°37'59" EAST, LEAVING SAID FENCE, 22.8 FEET; THENCE SOUTH 9°22'01" WEST 22.0 FEET; THENCE NORTH 80°37'59" WEST 22.8 FEET TO THE TRUE POINT OF BEGINNING.

SCHEDULE 2
(DRILL & SPUR TRACK EASEMENT)

THOSE CERTAIN PARCELS OR STRIPS OF LAND SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (NOT INCLUDED)

PARCEL NO. 2: (DRILL AND SPUR TRACK AREA)

A STRIP OF LAND, 30 FEET WIDE LYING EQUALLY 15.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEASTERLY CORNER OF THE 0.411 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED JUNE 13, 1985, FROM SOUTHERN PACIFIC TRANSPORTATION COMPANY TO STATE OF CALIFORNIA, RECORDED JUNE 26, 1985, AS INSTRUMENT D660213, REEL D867, PAGE 591, OFFICIAL RECORDS OF SAID COUNTY; THENCE NORTH 6°33'34" WEST 309.26 FEET TO A POINT IN THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY DRILL TRACK RIGHT OF WAY (WHICH TRACK LIES WESTERLY OF AND WHICH DIVERGES SOUTHERLY, SOUTHWESTERLY, AND SOUTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S EASTBOUND MAIN TRACK (SAN FRANCISCO - SAN JOSE) AND WHICH CROSSES THE COMMON COUNTY LINE BETWEEN THE COUNTY OF SAN FRANCISCO AND THE COUNTY OF SAN MATEO AT TA POINT DISTANT SOUTH 88°58'58" EAST ALONG SAID COUNTY LINE, 237.36 FEET FROM ITS INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT 105.67 FEET EASTERLY, MEASURED AT RIGHT ANGLES, FROM THE EASTERLY LINE OF BAYSHORE BOULEVARD); THENCE SOUTH 15°19'08" WEST ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY, 88.81 FEET TO A POINT IN THE NORTHERLY LINE OF LOT NO. 8, AS SAID LOT IS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099 & 5101, SAN FRANCISCO, CALIFORNIA," AS PER MAP FILED JULY 16, 1980, IN BOOK 16 OF PARCEL MAPS, PAGE 40, RECORDS OF SAID COUNTY, LAST SAID POINT BEING DISTANT NORTH 72°09'01" WEST ALONG SAID NORTHERLY LINE, 68.75 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT NO. 8, LAST SAID POINT BEING TRUE POINT OF BEGINNING OF

THE LINE HEREIN TO BE DESCRIBED; THENCE SOUTHERLY AND SOUTHWESTERLY AND SOUTHERLY CONTINUING ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY, THE COURSES AND CURVATURES THEREOF AS FOLLOWS: SOUTH 15°19'08" WEST 3.62 FEET TO A POINT; SOUTHERLY ON A CURVE TO THE RIGHT, TANGENT TO SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 3564.239 FEET, A CENTRAL ANGLE OF 0°22'10", AN ARC DISTANCE OF 22.99 FEET TO A POINT; SOUTH 15°41'18' WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 152.89 FEET TO A POINT; SOUTHERLY AND SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 382.245 FEET, A CENTRAL ANGLE OF 16°38'26", AN ARC DISTANCE OF 111.02 FEET TO A POINT; SOUTH 32°19'44" WEST, TANGENT TO THE LAST SAID CURVE AT LAST SAID POINT, 161.72 FEET TO A POINT; SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 286.483 FEET, A CENTRAL ANGLE OF 35°25'30", AN ARC DISTANCE OF 177.35 FEET TO A POINT; AND SOUTH 67°45'14" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 544.20 FEET.

EXCEPTING THEREFROM THAT PORTION LYING EASTERLY OF AN D COINCIDENT WITH A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO).

ALSO, EXCEPTING THEREFROM THAT PORTION LYING WITHIN SAID COUNTY OF SAN MATEO.

PARCEL NO. 3: (DRILL AND SPUR TRACK AREA)

A STRIP OF LAND, 30 FEET WIDE, LAYING EQUALLY 15.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEASTERLY CORNER OF THE 0.411 ACRE PARCEL OF LAND DESCRIBED IN DEED DATEO JUNE 13, 1985, FROM SOUTHERN PACIFIC TRANSPORTATION COMPANY TO STATE OF CALIFORNIA, RECORDED JUNE 26, 1985, AS INSTRUMENT 0660213, REAL D867, PAGE 591, OFFICIAL RECORDS OF SAID COUNTY; THENCE NORTH 6°33'34" WEST 309.26 FEET TO A POINT IN THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY (WHICH TRACK LIES WESTERLY OF AND WHICH DIVERGES SOUTHERLY, SOUTHWESTERLY, AND SOUTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S EASTBOUND MAIN TRACK (SAN FRANCISCO - SAN JOSE) AND WHICH CROSSES THE COMMON COUNTY LINE BETWEEN THE COUNTY OF SAN FRANCISCO AND THE COUNTY OF SAN MATEO AT A POINT DISTANT SOUTH 88°58'58" EAST ALONG SAID COUNTY LINE, 237.36 FEET FROM ITS INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT 105.67 FEET EASTERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY LINE OF BAYSHORE BOULEVARD); THENCE SOUTHERLY ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY, THE COURSES AND CURVATURES THEREOF AS FOLLOWS: SOUTH 15°19'08" WEST 92.43 FEET TO A POINT; SOUTHERLY ON A CURVE TO THE RIGHT, TANGENT TO SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 3564.239 FEET, A CENTRAL ANGLE OF 0°22'10' AND ARC DISTANCE OF 22.99 FEET TO A POINT; SOUTH 15°41'18" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 152.89 FEET TO A POINT; SOUTHERLY AND SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 382.245 FEET, A CENTRAL ANGLE OF 16°38'26", AN ARC DISTANCE OF 111.02 FEET TO A POINT; AND SOUTH 32°19'44" WEST, TANGENT TO LAST SAID CURVE AT

LAST SAID POINT, 53.00 FEET TO A POINT IN THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S SPUR TRACK RIGHT OF WAY (WHICH TRACK DIVERGES NORTHERLY FROM SAID CENTER LING OF SAID COMPANY'S DRILL TRACK) AND THE TRUE POINT OF BEGINNING OF THE LINE HEREIN TO BE DESCRIBED; THENCE NORTHERLY ALONG SAID CENTER OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S SPUR TRACK RIGHT OF WAY, THE COURSES AND CURVATURES THEREOF AS FOLLOWS: NORTH 25°58'09" EAST 81.00 FEET TO A POINT; NORTHERLY ON A CURVE TO THE LEFT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 382.245 FEET, A CENTRAL ANGLE OF 16°36'08", AND ARC DISTANCE OF 110.76 FEET TO A POINT; AND NORTH 9°22'01' EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 109.53 FEET.

EXCEPTING THEREFROM THAT PORTION OF THE ABOVE DESCRIBED 30 FOOT WIDE STRIP OF LAND, HEREIN ABOVE DESCRIBED IN "PARCEL NO. 3, LYING EASTERLY OF AND COINCIDENT WITH A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO).

SCHEDULE 3
(ACCESS ROADWAY EASEMENT)

THOSE CERTAIN PARCELS OF LAND SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (NOT INCLUDED)

PARCEL NO. 2: (ROADWAY AREA)

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF LOT NO. 8, AS SAID LOT IS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099, &5101, SAN FRANCISCO, CALIFORNIA", AS PER MAP FILED JULY 16, 1980, IN BOOK 16 OF PARCEL MAPS, PAGE 40, RECORDS OF SAID COUNTY, WITH A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO), SAID POINT BEING DISTANT NORTH 72°09'01" WEST ALONG SAID NORTHERLY LINE, 115.29 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT NO. 8; THENCE SOUTHERLY ALONG SAID CONCENTRIC LINE, ON A CURVE TO THE LEFT, TANGENT TO SAID CURVE AT LAST SAID POINT BEARS SOUTH 8°40'41" WEST, HAVING A RADIUS OF 5785.096 FEET, A CENTRAL ANGLE OF 0°51'24", AN ARC DISTANCE OF 86.50 FEET TO A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 15.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S TAIL TRACK (WHICH LIES WESTERLY OF AND WHICH DIVERGES NORTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK AND WHICH DRILL TRACK LIES WESTERLY OF AND WHICH DIVERGES SOUTHERLY, SOUTHWESTERLY, AND SOUTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S EASTBOUND MAIN TRACK (SAN FRANCISCO - SAN JOSE), AND WHICH SAID DRILL TRACK CROSSES THE COMMON COUNTY LINE BETWEEN COUNTY OF SAN FRANCISCO AND COUNTY OF SAN MATEO AT A POINT DISTANT SOUTH 88°58'58" EAST ALONG SAID COUNTY LINE, 237.36 FEET FROM ITS INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT 105.67 FEET EASTERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY LINE OF BAYSHORE BOULEVARD); THENCE SOUTHERLY AND SOUTHWESTERLY ALONG SAID PARALLEL AND

CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: SOUTH 9°22'01" WEST 67.82 FEET TO A POINT; SOUTHERLY AND SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 367.245 FEET, A CENTRAL ANGLE OF 16°36'08", AN ARC DISTANCE OF 106.41 FEET TO A POINT; AND SOUTH 25°58'09" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 80.17 FEET TO A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 15.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK; THENCE SOUTHWESTERLY ALONG LAST SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: SOUTH 32°19'44" WEST 107.88 FEET TO A POINT; SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 271.843 FEET, A CENTRAL ANGLE OF 35°25'30", AN ARC DISTANCE OF 168.08 FEET TO A POINT; AND SOUTH 67°45'14" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 356.47 FEET TO THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF SUNNYDALE AVENUE, 66 FEET WIDE; THENCE LEAVING LAST SAID PARALLEL AND CONCENTRIC LINE, NORTH 69°24'23" WEST ALONG SAID PROLONGATION, 65.40 FEET TO A POINT IN THE MOST WESTERLY LINE OF SAID LOT NO. 8, LAST SAID POINT BEING THE SOUTHERLY TERMINUS OF THAT CERTAIN COURSE SHOWN ON SAID MAP HAVING A DISTANCE OF "66.00'"; THENCE NORTH 20°35'37" EAST ALONG LAST SAID WESTERLY LINE, 43.00 FEET TO A LINE PARALLEL WITH AND DISTANT 10.00 FEET NORTHERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY PROLONGATION OF THE CENTER LINE OF SAID SUNNYDALE AVENUE; THENCE SOUTH 69°24'23" EAST ALONG LAST SAID PROLONGATION, 13.70 FEET TO A POINT; THENCE EASTERLY AND NORTHEASTERLY ON A CURVE TO THE LEFT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 175.00 FEET, A CENTRAL ANGLE OF 42°50'23", AN ARC DISTANCE OF 130.85 FEET TO A POINT IN A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 35.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK; THENCE NORTHEASTERLY ALONG LAST SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: NORTH 67°45'14" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 246.15 FEET TO A POINT; NORTHEASTERLY ON A CURVE TO THE LEFT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 251.843 FEET, A CENTRAL ANGLE OF 35°25'30", AN ARC DISTANCE OF 155.71 FEET TO A POINT; AND NORTH 32°19'44" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 106.77 FEET TO A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 35.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S TAIL TRACK; THENCE NORTHERLY ALONG LAST SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: NORTH 25°58'09" EAST 79.06 FEET TO A POINT; NORTHEASTERLY AND NORTHERLY ON A CURVE TO THE LEFT TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 347.245 FEET, A CENTRAL ANGLE OF 16°36'08", AND ARC DISTANCE OF 100.62 FEET TO A POINT; AND NORTH 9°22'01" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 67.27 FEET TO A POINT IN A LINE CONCENTRIC WITH AND DISTANT 95.00 FEET WESTERLY, MEASURED RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK; THENCE LEAVING LAST SAID PARALLEL AND CONCENTRIC LINE, NORTHERLY ALONG LAST SAID CONCENTRIC LINE, ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT BEARS NORTH 7°49'17" EAST, HAVING A RADIUS OF 5805.096 FEET, A CENTRAL ANGLE OF 0°53'19", AN ARC DISTANCE OF 90.03 FEET TO SAID NORTHERLY LINE OF SAID LOT NO. 8; THENCE SOUTH 72°09'01" EAST ALONG LAST SAID NORTHERLY LINE, 20.26 FEET TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 0.519 OF AN ACRE, MORE OR LESS.

INGRESS/EGRESS AREA

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

THAT PORTION OF PARCEL 4, A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AS SHOWN ON THAT CERTAIN "PARCEL MAP" FILED JULY 16, 1980 IN BOOK 16 OF PARCEL MAPS AT PAGE 40, IN THE OFFICE OF THE COUNTY RECORDERS OF THE CITY AND COUNTY OF SAN FRANCISCO, LYING SOUTHERLY OF THE EASTERLY PROLONGATION OF THE NORTHERLY LINE OF LOT NO. 7 OF SAID PARCEL MAP.

EXHIBIT 10

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

VISITACION INVESTMENT, LLC, a California limited liability company,

Plaintiff,

vs. Case No. CGC-19-579667

424 JESSIE HISTORIC PROPERTIES, LLC, a California limited liability company, all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the Complaint adverse to Plaintiff's title, or any cloud on Plaintiff's title thereto, and DOES 1 through 50, inclusive,

Defendants.

AND RELATED CROSS-ACTION.

DEPOSITION OF PERSON MOST KNOWLEDGEABLE OF

VISITACION INVESTMENT, LLC

GREGORY M. VILKIN

APPEARING REMOTELY FROM SAN FRANCISCO, CALIFORNIA

February 2, 2021

10:07 a.m.

REPORTED BY:

Michelle D. Knowles, CSR No. 8979, RPR, CRR, CRC, CCRR

APPEARING REMOTELY FROM SANTA CLARA COUNTY, CALIFORNIA

REMOTELY REPORTED FROM SANTA CLARA COUNTY, CALIFORNIA

TUESDAY, FEBRUARY 2, 2021, 10:07 A.M.

(Exhibits 38 - 67 marked.)

GREGORY M. VILKIN,
having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. LOWENTHAL:

Q. Mr. Vilkin, my name is Jeff Lowenthal. I represent the defendant in this case, 424 Jessica -- Jessie, J-e-s-s-i-e, Historic Properties, LLC.

I'm going to be taking your deposition today. You've been designated as the person most knowledgeable at Visitacion Investments, LLC, the plaintiff, with respect to various topics.

Have you ever had your deposition taken before?

A. I have.

Q. Okay. Approximately how many occasions?

A. Dozens.

Q. Oh, okay. So you know the process.

Q. Do you know of any reason that Visitacion didn't buy the JHP property, other than price?
A. No.
Q. Do you know what the current -- do you have any understanding as to the potential uses of the JHP property?
A. I do.
Q. Okay. And what is it?
A. I believe it's industrial use.
Q. And from your experience, what are examples of industrial use?
A. Warehouse buildings.
Q. Would that include shipping and receiving?
A. Yes.
Q. Would that include loading onto railroad cars, goods shipped and received from that facility?
A. Yes.
Q. Do you know what -- what's the current zoning of the Visitacion site?
A. The Schlage site?
Q. Yeah. I'm sorry. The Schlage site.
A. Mixed use.
Q. Okay. And do you know anything about the efforts to change the zoning of the JHP property?
A. Yes.

Q. And what do you know about that?
A. I know that the -- it was a request for a 205-unit multifamily development that was proposed to the City and a zone change that was not granted.
Q. And do you know why the zone change was not granted?
A. No.
MR. PREONAS: Objection. Calls for speculation.
BY MR. LOWENTHAL:
Q. Do you have any information as to why the zone change was not granted?
A. No.
Q. Given your development experience, would you say that it was in the best interests of the owners of the JHP property to keep all of their development options open at this point in time?
A. Very vague question. What are you trying to get at?
Q. Whether or not they should consider industrial use, commercial use, residential use, any/all possible uses in the development of its property.
A. Yes. I would assume that they would try and find the highest and best use for any asset.

Q. Right. And that's the -- that's basically the goal of a developer, right, is to -- is to --

A. It is.

Q. And a developer never wants to commit to any particular use when it doesn't have its final approvals for its development.

Is that a fair statement?

MR. PREONAS: Objection. Calls for speculation.

MR. LOWENTHAL: Yeah, I think he's pretty expertise in this area; so I'm going to ask him to answer the question.

MR. PREONAS: I didn't instruct him not to.

THE WITNESS: What I would tell you is if -- I can only tell you what I would do.

BY MR. LOWENTHAL:

Q. Okay. What would you do?

A. Okay. And I would continue to pursue all my options for development.

Q. And why is that?

A. Because until you have an approval from a governing body, you -- you have no rights other than what your current zoning is.

Q. Were you aware that JHP was approached by the railroad as a potential site to electrify -- I

guess "electrification" is the phrase they used -- electrification of the rail lines?

A. Not specifically, but I assume that they would be because all adjacent property owners have been notified, including ourselves, and have entered into agreements with the JPB to allow electrification on part of the property.

Q. And would you characterize that as a railroad-related use?

A. Electrification?

Q. Yeah.

A. Yes.

MR. LOWENTHAL: Steve, I'd also ask you -- none of those documents have been produced, so I'd appreciate if you could produce also the electrification documents with Visitacion as well as the title insurance policy.

THE WITNESS: I don't know that Visitacion has electrification. We are also the owners of the Baylands, which is all of the land to the south of Visitacion, and we have entered into agreements with JPB.

BY MR. LOWENTHAL:

Q. What does "JPB" stand for? Is it a Joint --

REPORTER'S CERTIFICATION

I, Michelle D. Knowles, Certified Shorthand Reporter, in and for the State of California, do hereby certify:

That the foregoing witness was by me duly sworn; that the deposition was then taken before me at the time and place herein set forth; that the testimony and proceedings were reported stenographically by me and later transcribed into typewriting under my direction; that the foregoing is a true record of the testimony and proceedings taken at that time.

IN WITNESS WHEREON, I have subscribed my name, this 12th day of February, 2021.



Michelle D. Knowles, CSR No. 8979,
RPR, CRR, CRC, CCRR

EXHIBIT 11

SEC. 210.4. M DISTRICTS: INDUSTRIAL.

M-1 Districts: Light Industrial. In general, the M-1 Districts are more suitable for smaller industries dependent upon truck transportation, while the M-2 Districts are more suitable for larger industries served by rail and water transportation and by large utility lines. In M-1 Districts, most industries are permitted, but some with particularly noxious characteristics are excluded. The permitted industries have certain requirements as to enclosure, screening, and minimum distance from Residential Districts.

M-2 Districts: Heavy Industrial. These Districts are the least restricted as to use and are located at the eastern edge of the City, separated from residential and commercial areas. The heavier industries are permitted, with fewer requirements as to screening and enclosure than in M-1 Districts, but many of these uses are permitted only as conditional uses or at a considerable distance from Residential Districts. Most of the land zoned M-2 is controlled by the Port of San Francisco.

Table 210.4

ZONING CONTROL TABLE FOR M DISTRICTS

Zoning Category	*§ References*	*M-1*	*M-2*
BUILDING STANDARDS			
Massing and Setbacks			
Height and Bulk Limits (See Height and Bulk Map for specific property information)	§§ 102, 105, 106, 250-252, 260, 261, 270, 271	Varies. See Height and Bulk District Maps.	
Front, Rear, and Side Setbacks	§§ 130, 132, 133, 134	See Residential Standards.	
Street Frontage and Public Realm			
Streetscape and Pedestrian Improvements	§ 138.1	Required.	
Street Frontage Requirements	§ 145.1	Not Required.	
Street Frontage, Required Ground Floor Commercial	§ 145.4	As specified in § 145.4, certain streets and districts are required to have "active commercial uses."	
Ground Floor Standards	§ 145.5	Ground floor spaces with a minimum clear ceiling height of 15 feet required.	
Street Frontage, Parking and Loading Access Restrictions	§ 155(r)	As specified in § 155(r).	
Artworks and Recognition of Artists and Architects	§ 429	Not Required.	
Miscellaneous			
Large Project Review	§§ 121.5, 253	None.	
Planned Unit Development	§ 304	C	C
Awnings, Canopy or Marquee	§§ 136, 136.1	P	P
Signs	§ 607	As permitted by Section § 607.	
RESIDENTIAL STANDARDS AND USES			
Development Standards			

Usable Open Space [Per Dwelling Unit]	§§ 135, 136	At least 36 square feet if private, and 48 square feet per Dwelling Unit if public.	
Residential Parking Requirements	§§ 151 , [1]	None required. P up to one space for every two units. C up to three spaces for every four units. NP above.	
Rear Yard Setback	§§ 130, 134	25 percent of the total depth lot depth, but in no case less than 15 feet.	
Residential Conversion, Demolition, or Merger	§ 317	C for Removal of one or more Residential Units or Unauthorized Units.	
Use Characteristics			
Intermediate Length Occupancy	§§102, 202.10	P(4)	P(4)
Single Room Occupancy	§ 102	P	P
Student Housing	§ 102	P	P
Residential Uses			
Residential Density, Dwelling Units (3)	§ 207	C at a density ratio not exceeding the number of dwelling units permitted in the nearest R District, with the distance to such R District measured from the midpoint of the front lot line or from a point directly across the street therefrom, whichever permits the greater density; provided, that the maximum density ratio shall in no case be less than one unit for each 800 feet of lot area. Any remaining fraction of one-half or more of the minimum amount of lot area per dwelling unit shall be adjusted upward to the next higher whole number of dwelling units. NP above.	
Senior Housing	§ 102	NP	NP
Residential Density, Group Housing	§ 208	C at a density ratio not exceeding the maximum density permitted for group housing in the nearest R District, with the distance to such R District measured from the midpoint of the front lot line or from a point directly across the street therefrom, whichever permits the greater density; provided that the maximum density shall in no case be less than one bedroom per 275 square feet of lot area. Any remaining fraction of one-half or more of the minimum amount of lot area per dwelling unit shall be adjusted upward to the next higher whole number of dwelling units. NP above.	
Homeless Shelter	§§ 102, 208	P	P
NON-RESIDENTIAL STANDARDS AND USES			
Development Standards			
Floor Area Ratio	§§ 102, 123, 124	5 to 1	5 to 1
Off-Street Parking, Non-Residential	§§ 150, 151.1[1] 167	None Required. Maximums set in Planning Code § 151.1.	
Commercial Use Characteristics			
Drive-up Facility	§ 102	C	C
Formula Retail	§§ 102, 303.1, 786	P (2)	P (2)
Maritime Use	§ 102	P	P
Open Air Sales	§ 102	P	P
Outdoor Activity Area	§ 102	P	P
Walk-up Facility	§ 102	P	P
Agricultural Use Category			
Agricultural Uses*	§§ 102,	P	P

	202.2(c)		
Automotive Use Category			
Automotive Uses*	§§ 102, 202.2(b)	P	P
Parking Garage, Private	§ 102	C	C
Parking Garage, Public	§ 102	C	C
Parking Lot, Public	§§ 102, 142, 156	C	C
Entertainment and Recreation Use Category			
Entertainment and Recreation Uses*	§ 102	P	P
Industrial Use Category			
Auto Wrecking	§§ 102, 202.2(d)	C	C
Automobile Assembly	§§ 102, 202.2(d)	P	P
Food Fiber and Beverage Processing 1	§§ 102, 202.2(d)	P	P
Food Fiber and Beverage Processing 2	§§ 102, 202.2(d)	NP	P
Grain Elevator	§§ 102, 202.2(d)	NP	P
Hazardous Waste Facility	§§ 102, 202.2(d)	NP	C
Junkyard	§§ 102, 202.2(d)	NP	P
Livestock Processing 1	§§ 102, 202.2(d)	P	P
Livestock Processing 2	§§ 102, 202.2(d)	NP	C
Manufacturing 1, Heavy	§§ 102, 202.2(d)	P	P
Manufacturing 2, Heavy	§§ 102, 202.2(d)	C	P
Manufacturing 3, Heavy	§§ 102, 202.2(d)	NP	P
Manufacturing, Light	§§ 102, 202.2(d)	P	P
Metal Workshop	§§ 102, 202.2(d)	P	P
Ship Yard	§§ 102, 202.2(d)	NP	P
Storage Yard	§§ 102, 202.2(d)	P	P
Storage, Volatile Materials	§§ 102, 202.2(d)	NP	C
Truck Terminal	§§ 102, 202.2(d)	C	C
Institutional Use Category			

Institutional Uses*		P	P
Child Care Facility	§ 102	C	NP
Hospital	§ 102	C	NP
Medical Cannabis Dispensary	§§ 102, 202.2(g)	NP	NP
Post-Secondary Ed. Institution	§ 102	P	NP
Residential Care Facility	§ 102	P	NP
School	§ 102	P	NP
Sales and Service Category			
Retail Sales and Service Uses*	§§ 102, 202.2(a)	P	P
Hotel	§ 102	C	C
Massage Establishment	§ 102	C	C
Motel	§§ 102, 202.2(a)	C	C
Non-Retail Sales and Service*	§ 102	P	P
Utility and Infrastructure Use Category			
Utility and Infrastructure*	§ 102	P	P
Internet Service Exchange	§ 102	C	C
Public Transportation Facility	§ 102	C	C
Wireless Telecommunications Services Facility	§ 102	P (1)	P (1)

* Not listed below.

(1) C required if taller than 25 feet above roof, grade or height limit depending on site or if within 1,000 feet of an R District and includes a parabolic antenna with a diameter in excess of three meters or a composite diameter of antennae in excess of six meters. See definition in § 102 for more information.

(2) C required for properties within the Third Street Formula Retail Restricted Use District (§ 786), which includes properties fronting Third Street between Williams Avenue and Paul Street.

(3) Construction of Accessory Dwelling Units may be permitted pursuant to Sections 207(c)(4) and 207(c)(6).

(4) C for buildings with 10 or more Dwelling Units.

(Added by Ord. 22-15, File No. 141253, App. 2/20/2015, Eff. 3/22/2015; amended by Ord. 33-16 , File No. 160115, App. 3/11/2016, Eff. 4/10/2016; Ord. 162-16 , File No. 160657, App. 8/4/2016, Eff. 9/3/2016; Ord. 166-16 , File No. 160477, App. 8/11/2016, Eff. 9/10/2016; Ord. 129-17, File No. 170203, App. 6/30/2017, Eff. 7/30/2017; Ord. 189-17, File No. 170693, App. 9/15/2017, Eff. 10/15/2017; Ord. 311-18, File No. 181028, App. 12/21/2018, Eff. 1/21/2019; Ord. 116-19, File No. 181156, App. 6/28/2019, Eff. 7/29/2019; Ord. 78-20, File No. 191075, App. 5/22/2020, Eff. 6/22/2020)

(Former Sec. 210.4 added by Ord. 136-68, App. 5/29/68; repealed by Ord. 22-15, File No. 141253, App. 2/20/2015, Eff. 3/22/2015)

AMENDMENT HISTORY

Former Secs. 210.5 and 210.6 consolidated and redesignated as Sec. 210.4 [see those sections for prior legislative history]; Table 210.4 added; Ord. 22-15, Eff. 3/22/2015. Table 210.4 amended; Ord. 33-16 , Eff. 4/10/2016. Note (3) added; Ord. 162-16 , Eff. 9/3/2016. Table 210.4 amended; Ord. 166-16 , Eff. 9/10/2016. Table 210.4 amended; Ord. 129-17, Eff. 7/30/2017. Table 210.4 amended; Ord. 189-17, Eff. 10/15/2017. Table 210.4 amended; Ord. 311-18, Eff. 1/21/2019. Note (3) amended; Ord. 116-19, Eff. 7/29/2019. Table 210.4 amended; Note (4) added; Ord. 78-20, Eff. 6/22/2020.

CODIFICATION NOTE

1. So in Ord. 311-18.

EXHIBIT 12

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

VISITACION INVESTMENT, LLC, a California limited liability company,

Plaintiff,

vs.

Case No. CGC-19-579667

424 JESSIE HISTORIC PROPERTIES, LLC, a California limited liability company, all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the Complaint adverse to Plaintiff's title, or any cloud on Plaintiff's title thereto, and DOES 1 through 50, inclusive,

Defendants.

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

REMOTE DEPOSITION OF ROBERT KRANTZ

May 20, 2021

10:04 a.m.

Scottsdale, Arizona

Karen Aligo, CSR No. 13418
~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

Q. Has it been active since then?
A. Yes.
Q. Okay. And any other licenses or certificates?
A. No.
Q. And now I want to get an idea of your employment history. Maybe it's easiest to say who you're currently employed with and then we can go back a few steps.
A. Employed with Union Pacific Railroad.
Q. And how long have you been with Union Pacific?
A. Cumulative employment has been around 25 years. I had a break in service for about 15 years.
Q. Okay. Were you with Southern Pacific before working for Union Pacific?
A. Yes.
Q. Okay. So when did you -- when did you actually -- why don't we start with Southern -- when did you go work for Southern Pacific?
A. In September 1979.
Q. Okay. And what was your job then?
A. I was an analyst in our marketing and sales department at Southern Pacific.

Q. And what did the marketing and sales department do?

A. Well, I was involved in -- on the railroad end of the business, meaning movement of freight and analyzing freight movements of different commodities. I was also involved in mergers and acquisitions, market studies, things like that.

Q. Were you involved at that time in disposing or selling of excess properties?

A. No.

Q. Okay. And when did your -- staying with Southern Pacific, when did your job change? We'll start in '79.

A. I moved into the treasury department -- gosh. I was -- early '80s, and I did that for maybe a year and then moved into transportation contracts, and that was from around '80- -- 1984 to about -- let's see.

I have to pull up my resume to take a look. It's been a while since I remembered the dates.

Q. That's okay. You can just give us your best estimate. I didn't tell you at the beginning because I'm sure that Ms. Johnson did, but, you know, we don't want you to guess or speculate, but if you give us a reasonable estimate, that's fair.

A. Yeah, from around -- I guess it's 1982 to '85 I was in transportation contracts.
Q. Okay.
A. And in 1985 until the end of 1986, I moved to Santa Fe Pacific Realty Corporation, which was the combined real estate entity for Southern Pacific and Santa Fe Railroads when they were trying to merge in the mid-'80s.
Q. What did you do for that company?
A. Prepared various real estate contracts, write -- permits, leases, purchase and sale agreements, things like that.
Q. Okay. How long were you with that company?
A. Oh, a couple of years, about two years.
Q. Okay. Then where did you go?
A. I then left Santa Fe Pacific Realty due to the failed merger, ended up going to work for Merrill Lynch Commercial Real Estate as a real estate agent. Did that for two and a half years.
Q. What type of properties did you sell?
A. Industrial properties.
Q. In what geographic area?
A. Northern California.
Q. Okay. And after you a left Merrill Lynch, where did you go to work?

A. I went back to Southern Pacific Railroad at the end of September 1988.
Q. And in what department and what role?
A. I was a property manager for approximately a year.
Q. And what does a property manager do?
A. We managed the railroad's real estate leases. I managed a thousand leases.
Q. Okay.
A. With the railroad.
Q. And what type -- just so I have some understanding -- so who were you leasing properties to? Were they excess properties you were leasing to third parties for different uses other than railroad use?
A. That's correct.
Q. Okay. And what did you do after that?
A. I moved into the sales area, became a sales manager.
Q. And what do you do as a sales manager for the Southern Pacific?
A. Sell surplus real estate. Real estate no longer needed for railroad operations.
Q. And what year was that that you started doing that?

A. It was around 1990.
Q. Okay. And how long did you stay in that role?
A. Until around 1993.
Q. Okay. And what did you do then?
A. Then I moved to a subsidiary company called Southern Pacific Real Estate Enterprises. I was the regional manager for -- well, SPREE for short, S-P-R-E-E, and we were the -- planning to be the new development arm of Southern Pacific.
Q. Okay. And how long did you stay in that position?
A. That was for about two and a half years.
Q. Okay. And then what did you do?
A. So --
Q. Actually, let me step back. As a development arm, what was your charge -- what was the SPREE's charge, what were they trying to do?
A. We would take our larger, more valuable properties and try to enhance value through rezoning general plan amendments, purchasing abutting properties to round out ownerships for better access, things like that. So basically looking to take properties through the entitlement process and add value.

Q. Okay. Okay. And you stayed there for a few years, so where are we now, sort of mid-'90s or so?

A. Yes. And eventually SPREE, which was a very small entity, became a larger entity and absorbed all of the Southern Pacific Railroad real estate department, and so SPREE became a much more larger organization.

Long story, had to do with things that Southern Pacific was trying to do to change employment counts, so they moved all the railroad real estate people into a non-railroad entity, which SPREE was.

Q. And you stayed with that company?

A. Yes, I continued with SPREE.

Q. And for how long were you with SPREE?

A. Until the acquisition by Union Pacific Railroad in 1997.

Q. What was your role with SPREE in 1997 before the acquisition?

A. Same thing, enhancing value for our properties and selling properties as well.

Q. And were you an officer of that company, or do you recall your position, the title?

A. Well, it changed when all of the Southern

Pacific folks became part of the SPREE. So I went from regional manager to, I think, a sales manager again. They change people's titles around.

Q. Okay. And you became a sales manager, and then the Union Pacific merger happened, and did you join Union Pacific?

A. Yes.

Q. And that was in 1997?

A. Yes.

Q. And what was your -- what position did you have with Union Pacific?

A. Same as sales manager.

Q. Okay. Still working in selling either enhancing value or selling real estate owned by the railroad?

A. Yes.

Q. And how long did you stay with Union Pacific?

A. Until December 31, 1998.

Q. Okay.

A. Union Pacific is based in Omaha. There were only a few of us left in San Francisco, and they were paring back the folks in the Bay Area, so I was the young guy at that time and took a buyout and left Union Pacific and went off on my own.

Q. Okay. The 2010 or so?
A. Um-hum.
Q. And what did you do in 2010?
A. I went back out on my own and restarted North Pacific Coast Company.
Q. And did you still work with the sale of surplus real estate for railroads at that time?
A. Yes, I did.
Q. And how many years did you stay with the North Pacific Coast Company? Or how long did you keep it going in that role?
A. Sure. I kept it going until I rejoined Union Pacific. December of 2013 they asked me to come back.
Q. And what role did you have with Union Pacific then?
A. Director of real estate.
Q. And where were you located?
A. Located in San Ramon, California.
Q. Okay. And what was your responsibilities?
A. I had territory in Northern California, covered ten counties and responsible for selling surplus nonoperating railroad real estate.
Q. Okay. And is that the same role you have today?

A. Yes.

Q. Okay. Were you involved in the 1990 sale of the property of the Schlage Lock -- I don't know why I can't pronounce it -- the Schlage Lock site to Tuntex?

A. Tuntex? Yeah, I was not involved in that transaction.

Q. Okay. And was your first involvement in this property in approximately 2014 when you stepped in to try to sell it?

A. Yes.

Q. Okay. So let's take a look at Exhibit 69, start with those.

A. Okay.

(Exhibit 69 marked for identification.)

BY MR. LOWENTHAL:

Q. Just let us know when you open it up, Mr. Krantz.

A. Okay. It's launching. Okay. It's open.

Q. Okay. So if you start with, like, with all these e-mail crazies, you start -- I think I can start you and lead you through the right order to look at the e-mails.

If you start at the second page which says "UP 63" on it, and at the bottom this looks to be

the start of the e-mail trail or chain, I'm sorry, from -- it's an e-mail from you to Howard Pearce dated March 10, 2014 at 2:09 p.m. Do you see that?

A. I see it, yes.

Q. And who was your -- and was this about the time you first became involved in -- I don't know where I went -- I disappeared.

When you first became involved in this Schlage Lock property?

A. Yes.

Q. Okay. Who did you understand Mr. Pearce to be?

A. He worked for -- jeez. Universal Paragon.

Q. And did you understand that Universal Paragon was the successor or attached, somehow related to the Tuntex entity?

A. Yes.

Q. And did -- here it says, "Hello, Howard, I wanted to introduce myself and let you know I've taken over the Bay Area in terms of sale of Union Pacific properties from Rick Gooch," G-o-o-c-h.

And did Rick have your position prior to you?

A. Yes. He retired and I took over for him.

Q. Okay. It says, then, "John Manley had

contacted me regarding dedication of a building that straddles the property line between UP's property and your property in San Francisco (the old Schlage Lock site)."

Who is John Manley?

A. My recollection is that he was a gentleman that -- there were some old sheds, property, railroad -- railroad sheds that he wanted to obtain, and I don't remember what he wanted to do with them, but he was interested in getting them, and there was one that straddled the property line, and that's why I got a hold of Howard.

Q. Okay. And if you move on to the second page there, 64, at the bottom, it says, "I was reviewing our file on the property we own abutting yours and saw that Dave Thatcher (now retired) had proposed a sale of Union Pacific's property to Universal Paragon." Do you see that?

A. Yes.

Q. And I guess I didn't ask you. This is your e-mail, correct?

A. Yes, it is.

Q. Okay. Then it says, "Please see the attached e-mail from Dave to you dated April 13th, 2010. I wanted to re-inquire with you whether there

would with be an interest by Universal Paragon in a purchase of the property. I've attached a print of Dave's e-mail that illustrates our property in red."

And I think if you go to page 65 that's -- is that a copy of Dave's e-mail that you attached to your e-mail?

A. Yes, it is.

Q. Okay. And copy of page 66, is that the attachment of the depiction that you sent of the properties to Mr. Pearce?

A. Go back and -- because I recollect I had asked them for a copy of the print, but let's see --

Q. 66 is some type of a depiction, if you take a look at that.

A. Yes, that's correct.

Q. Okay. So let's look at 66 just so we can acquaint ourselves with what's going on. The property that is the subject of -- well, the property that's owned by -- was sold to Mr. McNerney and is now owned by 424 Jessie is the property that's -- I guess outlined in -- I think it's like an orange color, and it says "UPRR" in the center; is that correct?

A. Yes.

Q. Lot -- I guess it says lot number 4 or

something to that effect. Is that your understanding of the property that we're talking about, right?

A. Yes.

Q. Above that says "JPB," what's JPB?

A. It's short for Peninsula Corridor Joint Powers Board, and we typically just denote that as JPB short for the longer name I just mentioned.

Q. Okay. And that's the railroad, right, there's an operating rail lines there; is that correct?

A. Correct. So JPB owns the abutting operating railroad corridor. We sold that to JPB, meaning Southern Pacific, in 1991, and we, meaning Union Pacific, have a freight easement within that corridor.

Q. Okay. And that's where -- like if I take Caltrain -- is that where the Caltrain also operates through that corridor?

A. Yes, it is.

Q. And then there's also freight trains that run through there, right?

A. That's correct.

Q. And then we're looking at the legend, I guess, down below the UPRR, that's where you own.

Then there's a, it looks like a greenish color, I suppose, and it says, "20-foot roadway." Do you see that?

A. Yes, uh-huh.

Q. Okay. And that's the access roadway easement from Sunnydale Boulevard, or Street, or whatever it is from Sunnydale that runs from Sunnydale to the UPRR property; is that correct?

A. Yes, it is.

Q. And then we have a couple of other easements. There's a -- the yellow one is drill and spur tracks, and that runs also from the area of a Sunnydale Avenue to the -- I suppose that runs to the -- to the subject property as well?

A. It abuts the access roadway, and it doesn't continue and connect to the property we sold to Patrick.

Q. Okay. But would the idea be you could use the access roadway to at least attach somehow to that spur track if necessary?

A. Yes, yes, absolutely.

Q. Okay. And then I guess there's something here that the signal cabinet, it says -- what's a signal cabinet for us uneducated --

A. Yeah. So a signal cabinet has various

controllers in it, electronic equipment that controls railroad signals, and railroad signals are -- let's say you're to come up to a railroad crossing and the crossing gates come down and the lights and bells start ringing and flashing, those are signals. And so it could -- in that particular instance, I don't know what that signal cabinet actually controlled. It could have controlled also switches.

There are electronic switches that switch tracks. So if a train is coming along and they want to divert it to a spur, then that cabinet would be able to switch a train from a mainline onto a spur track.

Q. That would be cabinet -- that could switch from the JPB train line to the yellow spur that's reflected on page 66?

A. Yes.

Q. Okay. And then there's a blue 20-foot ingress/egress easement that looks like it's just -- again, it's adjacent to the green roadway, but that appears to be a survey saying -- is that as adjunct to the 20-foot roadway as well?

A. I believe so. The way it was colored on this map -- now this is a map that Dave Thatcher had

prepared and he colored a portion of it, but it actually continues -- that easement continues further, kind of veers off to the -- I guess it would be to the north --

(Reporter clarification.)

THE WITNESS: To the north, that roadway -- or the access, sort of, goes in a northeasterly direction, and then veers further to the north, north only.

BY MR. LOWENTHAL:

Q. Okay. So now, going back to the -- to you. So you write this e-mail to Mr. Pearce on March 10th, 2014 at 2:09, and if you look at the top of page 63 -- sort of going back there.

A. Um-hum.

Q. I guess it's Mr. Pearce's response to you and copies Jonathan Scharfman on March 10th at 7:58 p.m. Do you see that on the top of page 53? I'm sorry, 63.

A. Yes.

Q. Okay. And he -- he responds to you, and maybe this is how the drawing got attached, but in any event, this is the drawing -- if you look at the second paragraph, "I've attached the drawing that Dave Thatcher provided on April 13th, 2010." Do you

see that?

A. Yes. That's correct. So that's the drawing we were just talking about, is the Dave Thatcher drawing of 4-13-2010.

Q. So, in fact, it was Mr. Pearce that provided that to you?

A. That's correct.

Q. At that time?

A. Yeah.

Q. Okay.

A. Yes.

Q. Okay. And he responds back to you that -- he responds to you about John Manley, and then he talks about providing access for the JPB through the street network in an alley that would extend off of A Street. Do you see that?

A. Yes. Uh-huh.

Q. And it says, "These street's alleys would replace the current easements."

A. Right, I see that.

Q. In your conversation with Mr. -- or in your exchange of communications with Mr. Pearce, did he ever contest that the easements existed?

A. No.

Q. Did he ever state on behalf of Universal

Paragon that the easements had been abandoned or terminated?

A. No.

Q. And, in fact, he acknowledged the existence of those easements in your communications; is that correct?

A. That's correct.

Q. Okay. And basically what he was saying was, Hey, we can trade you access through our new development in exchange for those easements. Was that sort of the bargain he was trying to make?

A. Yes.

Q. Did Mr. Pearce or anyone else from Universal Paragon -- well, strike that. Let's, I guess, get to this e-mail.

In this e-mail on page 63 we're dealing with -- he says at the end, "I'm looking forward to getting further along with the John Manley request." I guess no one had any problem giving Mr. Manley the sheds that were not being used; is that right?

A. That's correct.

Q. Okay. But I didn't -- I noted here he didn't respond to -- the main point of your inquiry, which was, Hey, do you want to buy our property.

A. That's correct.

Q. Okay. Then if you look at the first page of Exhibit 69, page 62, Bates 62. You respond to Howard and you thank him for his message and for giving you the print that we have attached at the back. Do you see that?

A. Yes.

Q. And you also thank him for providing the tentative map and to show how the properties or his proposed development would relate to the Union Pacific property, right?

A. Yes.

Q. But then you say, "Before the release of any retained Union Pacific easement areas as shown on Dave's print and on the map you provided can be considered, we would need to be sure that none of the retained easement areas would still be needed and that our property can definitely be served by the streets in your development," right?

A. Yes.

Q. So you weren't going to make any deal, give up any of your easements because you may need them to access the property, correct?

A. That's correct.

Q. And then you go back to -- you're now pushing them because that's your job, is to sell

property. Now you go back to them and say, Hey, how about buying some of this property, right? You say, "As Dave suggests in his 4/13/20 e-mail, subject to UP management approval, a purchase of our property by Universal Paragon, (with attendant easement releases) makes a lot of sense, particularly if there is no interest by the City of San Francisco to acquire this property now."

A. Yes, that's correct.

Q. And then you tell him, "If you're not interested in buying it, then I'm going to market it to third parties," right?

A. That's correct.

Q. So let's stay on -- well, I'm not sure this is the e-mail chain, but let's go to Exhibit No. 70 is the next one.

Okay -- oh, you know, I'm sorry, there's one -- one question I forgot to ask you. On Exhibit 69 and this color coded map that was attached, you see that in the legend at the bottom where it says, for example, "20-foot roadway," and then it says, "F187 IM.534, No. 2," you understood that to relate to the source document of the easement, right?

A. Right, I believe that refers to the

recording information.

Q. Of the 1990 easement when Southern Pacific sold the property to Tuntex and reserved the easements, correct?

A. Yes.

(Exhibit 70 marked for identification.)

BY MR. LOWENTHAL:

Q. Okay. So then Exhibit No. 70 is, I guess, a report -- it's -- it starts, I guess, in the middle, but it's an -- it's an e-mail from you to Chris Goble?

A. Goble.

Q. Dated July 9, 2014, I'm sure -- did I pronounce his name wrong? Who is Mr. Goble?

A. I don't know if it matters. It's Chris Goble, G-o-b-l-e. So at the time he was general director real estate. Now he's the assistant vice president of real estate for Union Pacific. So he runs the real estate group for Union Pacific.

Q. And at this time he was your boss or one of your superiors?

A. He was my direct report, correct.

Q. And through this e-mail -- and this is about -- let's see -- about four months after that, your communication with -- with Mr. Pearce, and

you're giving Mr. Goble a summary of where you are with this property, right?

A. Yes.

Q. Okay. And the first paragraph, you basically tell them that you're giving people a few weeks to make offers on the property and this would be third parties, right?

A. That's correct.

Q. Okay. The second paragraph says, "I have given abundant time consideration to Universal Paragon (UPC), the abutting owner, to submit an offer. The board met last Friday and proposed a land swap of two small parcels they own nearby that is part of their 'Baylands project'."

Can you describe for us what you understood Universal Paragon was offering you?

A. I don't recollect which properties they were offering us at this point.

Q. But they weren't offering you money. They wanted to give you a couple of other properties that he had in exchange for the subject property; is that correct?

A. That's correct.

Q. And later on in the paragraph you say, "The two smaller properties that they have offered would

be less developable and there's no information from them as to zoning and proposed land use for their parcels. I'm recommending we formally advise UPC that we are not interested in the land swap. I have been asking them to submit an offer for the past two-plus months."

Do you recall communications with UPC in which you said, Hey -- you know, after this initial e-mail, Exhibit 69, where you said, Hey, are you guys going to make an offer to buy this property from us?

A. Yeah, I don't remember exact conversations or even e-mails, but I had given them the opportunity to make an offer for the property, and they did advise me that they weren't interested because of the reasons mentioned in the e-mail, that they had basically too much on their plate with their -- with the Schlage Lock development and the Baylands project, so they didn't want to take on our property. They felt they could --

Q. And they were the logical purchaser because they were the adjacent property owner?

A. That's correct.

Q. And then you go on in the rest to say that you're favoring Mr. McNerney's -- Mr. McNerney who

we can't see any longer -- you're favoring his offer for -- because of a quick close and that he's incentivized because of an exchange to do the deal; is that right?

A. That's correct.

Q. I want to look at the second page that I've attached here to Exhibit 70, I wanted you just to describe for us what that is. And this is another, sort of looks like a, I guess, a map or a depiction of the easement -- easements. Do you see that?

A. Yes, I do.

Q. Okay. And on the legend -- and was this something produced or provided by Southern Pacific?

A. Yes, it's a Southern Pacific sale print.

Q. What's a sale print, so I understand?

A. So it illustrates -- I can't really see it here, but generally the Southern Pacific prints were generally colored with highlighter to show the sale area. And then, this instance, the easements that were reserved are shown there in the legend by different types of --

Q. And if you see this one is dated in the lower right corner March 20th -- I'm sorry, March 20th, 1990. Do you see that?

A. I'm trying to -- in here?

Q. In the right corner under the Southern Pacific logo.

A. Let me get my glasses.

Yeah, it's March 20th, 1990.

Q. So this was created at the very time that they ended up initially trying to sell -- proposed to sell this property, the Oyster Point Properties, and later -- which later we know from this litigation became Tuntex, right?

A. Yes.

Q. Okay. And so at the time they were selling this -- is this something that is customarily given by the buyer, the proposed buyer?

A. Yes, so a sale print like this is typically attached to a purchase and sale agreement and illustrates what we're selling to the buyer and what we're reserving back. So this was an attachment or would have been an attachment to the purchase and sale agreement with Oyster Point Properties as an Exhibit A to illustrate what we were selling them and, as shown in the legend, what was being reserved back in the sale.

Q. And one of the things that was reserved back in the sale was a nonexclusive easement for access roadway. Do you see that?

A. Yes.
Q. And that was -- that wasn't just to use in conjunction with a rail -- any railroad access to this property that was used to get to the property, right?
A. Yes, that's correct. So at the time the property that we sold to Patrick was leased by Schlage Lock, and it needed -- that was the only -- way to access it, was via the access road, otherwise it would be landlocked.
Q. And the nonexclusive easement for the access roadway is separate and apart from any railroad use, correct?
A. Not necessarily. It was used to access the property sold to Patrick, but directly abutting the access road is this rail easement. So that access road would allow, at the time, Southern Pacific forces, meaning employees, to use that nonexclusive access road to maintain the railroad tracks and the abutting easement area.
Q. The intent was also that when you sold to Patrick, for example, that he could use that access easement to access his property whether he was using it for railroad purposes or not?
A. Yes, that's correct.

Q. And that was the intent of Union Pacific when it sold the property to Patrick, correct?
A. Yes.
Q. And then it talks about possible future drill track right-of-way and the legend -- just relates to the different types of crosshatchings that's shown in this map, correct?
A. Correct.
Q. Okay. And if we look at the top of -- Exhibit 70, Chris tells you that he agrees with your assessment and that he agrees you should go ahead and proceed with this sale to Patrick; is that right?
A. Yes.
Q. Okay. So let's look at page -- Exhibit, I'm sorry, 71. And that is an e-mail -- let me know when you get it opened up.
A. Okay. It's open.
(Exhibit 71 marked for identification.)
BY MR. LOWENTHAL:
Q. Okay. So that's an e-mail, October 17th, 2014 from you to Douglas Feagan?
A. Feagan, um-hum.
Q. And who is Mr. Feagan?
A. He was our head property engineer in our

real estate group.

Q. Okay. And with respect to, for example, for the sale to Patrick, what were you looking for Mr. Feagan to do?

A. So I had a prior aerial sale print, and I wanted him to revise the print to show the buyer named Patrick McNerney and also to revise the print -- let's see -- yeah, so initially that sale print just showed the fee property, the sale area that we sold to Patrick, and I wanted Doug to revise the print to show Patrick as the buyer and to also include the various easements that we had reserved in the 1990 sale to Tuntex on the print as well to sort of mirror the print that Dave Thatcher had prepared.

Q. Because you wanted to make sure that Patrick was getting the same easements that you reserved in the sale to Tuntex; is that correct?

A. Yes.

Q. And you say at bottom here, "These easements will be conveyed along with the property to Patrick McNerney. He will need to have the easements for the benefit for access, et cetera, as he will be negotiating with Universal Paragon, which owns the abutting Schlage Lock property to quitclaim

those easements to them eventually in exchange for better access." Do you see that?

A. Yes.

Q. So the entire purpose of getting Patrick these easements was so that he would have access to the property that he was buying from you, correct?

A. Yes, um-hum. That's correct.

Q. Then if you look at the third page of this exhibit, it's -- and I guess it's the way I printed them. I probably printed them wrong. Maybe make it bigger on your screen. It's UP0227. I just wanted to know what this document was.

A. UP --

Q. It's the third page of Exhibit 71 and --

A. Yeah. So what that is is a -- it's a val map schedule of property. So what this -- schedule property, and you can see it says "Schedule Property for Sheet 6" at the top right. So what this does is record -- or show the grantor grantee information. Again, the instrument, the date of the instrument and the recording information pertaining to the sale of railroad property.

So -- and when I try to blow this thing up, it's not really legible, it's blurred out, but what it illustrates -- and I just -- because I'm familiar

with this particular page and this val map, schedule property, it shows the easements that were reserved in the sale to Tuntex.

Q. And this is part of the records of Southern Pacific originally, and later Union Pacific?

A. Yes.

Q. And what -- and this is something that's kept by the railroad to keep track of what happens to the properties and the easements that it reserves, correct?

A. Yes.

Q. Okay. And what did you call this again, val map --

A. Yeah. So I'll give you the full name and then the -- the abbreviation. So the full name is valuation map, or for short val, v as in Victor, a, l as in Larry, map. So instead of saying valuation map every time, we would say val map. And this particular val map is a schedule of property. So the val maps -- like for instance, that Dave Thatcher print, the one where he colored the easements, that's a portion of one of our valuation maps, our property valuation maps, and then -- so those maps illustrate the actual parcels and -- that we own, and what we still own or what we have sold,

and then this particular map, the schedule property shows the information about when we acquired and when we've conveyed out interests in real estate.

Q. Okay. Perfect. Okay. The next exhibit is 72, and that is an e-mail exchange that, I guess, starts between you and now Mr. Scharfman with a copy to Mr. Pearce. It's dated -- I guess the initial e-mail is dated, from you, is dated September 18th, 2014, and it addresses the tentative map. Do you see that?

(Exhibit 72 marked for identification.)

THE WITNESS: Yes, uh-huh. I do.

BY MR. LOWENTHAL:

Q. And it says in the first paragraph, "I was caught by surprise when we spoke on the phone the other day when you first mentioned a retaining wall shown on your T map." You mean tentative map when you say T map, right?

A. Yes, just abbreviation.

Q. "And this is a retaining wall that will replace existing smaller retaining wall on site today, which new wall will be much larger and run the entire length of the boundary between your property and ours." Do you see that?

A. Yes.

Q. Do you recall what the issue was with the respect to the retaining wall?

A. Yes, so when I met on the ground with -- you know, I did eventually meet with Howard and with Jonathan out on the ground. The site conditions at the time were that the Schlage Lock property and our property were pretty much at grade, although there was a small retaining wall between our property and their property but our property did have access from the Schlage Lock property.

And then, my understanding was that Schlage Lock, or not Schlage Lock -- Universal Paragon was planning to build a very large retaining wall between their property and our property. They were going to be importing a significant amount of fill material. Basically I think that was -- or I believe that was their remediation -- the Schlage Lock property was contaminated, had environmental contamination, so they were going to be importing a significant amount of fill to raise the elevation of the Schlage Lock property, and that fill would serve as the remediation. And in order to retain that fill, they were going to build this retaining wall, and basically that would put our property far below their property, sort of in a depression or a hole,

if you will. So our property, you know, wouldn't -- no longer have access, really, from their property.

Q. And so the significance was that by building that retaining wall they would render or somehow disturb the easement that you had running to your property.

A. Not necessarily. So in discussions with Universal Paragon, they were saying, well, yeah, your property would have access from the internal street system in our Schlage Lock development, but with that retaining wall, our property would be far below grade. So there's no way to get access from their development.

So I believe, again, the only way to access our property would be via the retained easements that, you know -- you know, we got in the -- or reserved in the sale to Tuntex in 1990. So those easements -- there's no way those easements would go away because they still provided access. They had to be retained.

Q. And just so we're clear, as of 2014, the railroad had not abandoned those easements, had it?

MR. PREONAS: Objection. Calls for a legal conclusion.

MR. LOWENTHAL: Okay.

Q. I'll let you do it. Let me just rephrase the question.

As of 2014, had the railroad abandoned the access and other easements that were reserved in the sale to Tuntex?

MR. PREONAS: Same objections.

THE WITNESS: No, we had not.

BY MR. LOWENTHAL:

Q. As of 2014, had the railroad terminated those easements?

MR. PREONAS: Objection. Calls for a legal conclusion.

BY MR. LOWENTHAL:

Q. Let me rephrase it. As of 2014, had the railroad terminated the easements for the benefit of the property that had reserved in the sale to Tuntex?

MR. PREONAS: Objection. Calls for a legal conclusion.

THE WITNESS: No.

BY MR. LOWENTHAL:

Q. Okay. Okay. What's your understanding of what abandonment means, Mr. Krantz?

A. That would mean where the railroad, you know, decides that it doesn't need those easements

anymore, and then would, you know, if -- you know, if somebody came to us and said, Hey, you know, we want you to abandon those easements, we would review it and see if we still needed them and make a decision at that time if, whether we would abandon those and quitclaim those easements. In this particular case, the easements were not abandoned, and, as stated in the e-mails, we would not quitclaim those easements until something was -- there would be a resolution from an access standpoint.

So they were not abandoned, and we don't abandon our easements until we decide what, you know, whether we will relinquish them.

Q. And as of 2014 you had the -- the railroad, Union Pacific, had not decided to relinquish those easements; is that correct?

A. Yes, that's correct.

Q. Okay. If you look at the second page of Exhibit 72, your e-mail to Jonathan copying Mr. Pearce, it says, "Concerning the access easement and other easement rights that inure benefit of UPRR and its property, at some juncture, it may be appropriate to discuss possible quitclaim of these easements. However, consideration of doing so must

make sense to UPRR and our proposed buyer (should they then own the land.) Right now the access easement particularly is critical in order to get to the property and will be needed for quite some time until our property is developed." Do you see where you write that?

A. Yeah, I see that.

Q. And that -- it was critical in 2014 to retain the access easement; is that correct?

A. Absolutely.

Q. And then you explain, "If there are issues concerning development of our property, then the access easement will be critical for UPRR to retain," correct?

A. Yes.

Q. And that would be the same for your buyer, Mr. McNerney. It would be critical for him to retain it until the issues concerning his development of the property were resolved, correct?

MR. PREONAS: Objection. Calls for speculation.

BY MR. LOWENTHAL:

Q. You can respond.

A. Okay. Yes.

Q. Yeah. And you know that from your history

storing any hazardous materials or other liquids of any sort or contaminated dirt, you know. And their abutting property was pretty contaminated, and so we would not want any of their soils to be stored there.

Q. Now, were you a little disturbed that these guys were going along with this tentative map that was going to affect Union Pacific's property without telling you anything about it?

A. Absolutely, yes.

Q. And can you explain for us why that was the case?

A. Well, our property was being planned by Universal Paragon and the City of San Francisco without any input from Union Pacific Railroad, and I found -- the only way I found out was actually meeting on site with Howard and Jonathan, that all of this was in the works. All of this stuff was going on for quite some time. There's a tentative map that they were working on, and first I knew about it is when I met with them on site.

Q. Is that -- I'm sorry, was that unusual for the railroad not to be consulted with respect to property that's being developed adjacent to it that would somehow affect its retained property?

A. Yes, that is unusual.
Q. Okay. So -- and you expressed, sort of, displeasure to the people at Universal Paragon about that, right?
A. Yes.
Q. And, in fact, you also communicated with the City and County of San Francisco about your displeasure on that issue; is that true?
A. Yes.
Q. So let's look at Exhibit 73.
(Exhibit 73 marked for identification.)
BY MR. LOWENTHAL:
Q. This is an e-mail that you sent to Patrick McNerney on December 15th, 2014. Do you see that?
A. Yes.
Q. Do you know if you were in contract with Patrick at that time, or was it -- or you were certainly negotiating with Patrick at that time, right?
A. I believe we were in contract at that time.
Q. Okay. And so what you were doing by this e-mail and its enclosures was disclosing with Patrick what was going on with tentative map and the positions that the railroad had taken with the City

and County and the City's and County's response and the like, right?

A. Correct.

Q. Okay. So because you wanted -- you wanted Patrick to -- I mean, you're a seller, you wanted your buyer to know what was happening, correct?

A. Yes, that's correct.

Q. Okay. So you say, "Hi, Patrick, below is a string of e-mails with the City of San Francisco Public Works department staff concerning the Schlage Lock tentative map and request that we made to the DPW pertaining to that map. I've attached three letters that accompanied the e-mails below. The first being a letter to Robert Hanley on October 1, 2014 with comments regarding the T map and overall development plan and its impact on UPRR's property."

Now, just so we're clear, when you're referring to UPRR's property, you're referring to the property you're selling to Patrick, right?

A. Correct.

Q. And so if we look at the first letter, it's Bates UP0212. It's your letter dated October 1, 2014, to Mr. Hanley, correct?

A. Yes.

Q. Okay. And here's where you make -- you

make reference in the third paragraph down, "Sheet C2 of the tentative map plan set suggests that these easements are either, 'to be abandoned' or 'to be quitclaimed'. In this letter I will refer to these easements collectively as to the 'UPRR Access Easements'." Do you see that?

A. Yes.

Q. And that's what you saw these easements are, was a way to access the property that you were selling to Patrick, correct?

A. Yes.

Q. Okay. And you made clear to the City and County on the next page, point number 1 on Bates 213, you set forth your specific objections to the tentative map. And point number 1, you say that, "UPRR has no plans to either quitclaim or abandon the UPRR access easements. Thus there's no factual support for the statement on the tentative map application that these easements will be quitclaimed or abandoned, doing so would effectively land lock the UPRR land. There's no road access to the UPRR land from the north due to the large grade separation caused by the railroad tunnel and the elevation of Blanken Avenue." Do you see that?

A. Yes.

have been addressed in such a way that the entire project can be completed in accordance with the development agreement and this tentative map." Do you see that?

A. Yes.

Q. That's sort of typical city and county language, right? As long as it's good for them it's good for everybody. Is that how --

A. Yeah, it wasn't sufficient.

Q. As long as they, as the judge and jury, decide it's okay, then it should be good for everybody else.

So was that language satisfactory to Union Pacific?

A. No.

Q. Okay. And then starting on page UP0220, this is your October 27, 2014, letter back to Mr. Storrs explaining why that language is not satisfactory?

A. That's correct.

Q. And particularly it's just -- it's exactly what you -- what you're saying is that down on the last one, two, three, fourth paragraph it says, "As described in more detail in my October 1, 2014, letter, access to the UPRR Land is severely

constrained. On the east is bordered by the railroad tracks. To the north there's a severe grade change due to the railroad tunnel. To the west, the UPC subdivision proposes to erect a new retaining wall 16 to 28 feet high. The present UPRR access easements are only from the south, and this is, considering the various grade changes, is the only logical place for the public road access to the UPRR Land." Do you see that?

A. Yes.

Q. Okay. And you weren't willing to abandon, terminate, give up, relinquish those easements because it was the only way to get to the property that you were proposing to sell to Mr. McNerney, correct?

A. Correct.

Q. And so you were telling Mr. Storrs that, Hey, you have to -- we're not going to give these easements up at all unless it's absolutely positively -- access -- absolutely or positively provided elsewhere and only until we assure ourselves that that occurs to our satisfaction, correct?

A. Correct.

Q. Okay. The next exhibit is 74.

(Exhibit 74 marked for identification.)
BY MR. LOWENTHAL:
Q. And there's some handwriting on it. And I guess my question is -- this is an e-mail from you to Mr. McNerney, but there's also a handwritten notation; is that your handwriting?
A. Yes, it is.
Q. Okay. And is this contemporaneous notes that you took with respect to your conversation with Mr. McNerney?
A. Yes.
Q. And you say, "C-o-n-v with Patrick McNerney. He had some questions re: use of easements. Not sure last time track easement used." Is that what he asked you or you told him?
A. I don't recollect.
Q. But you did tell him, "I used the access easement from Sunnydale in March of 2014 when I met with Scharfman and Howard Pearce. Not abandoned."
A. Correct.
Q. And you told Mr. McNerney that because it was true, correct?
A. Yes.
Q. Okay. The next exhibit is an e-mail. Exhibit 75, on the bottom, is an e-mail dated

January 8th, 2015, from you to David Phillips, with copies to others.

(Exhibit 75 marked for identification.)

BY MR. LOWENTHAL:

Q. Do you recall who David Phillips is?

A. He worked for Patrick's title company.

Q. Okay. And you were addressing the transfer of the property to Mr. McNerney?

A. Um-hum.

Q. Is that right?

A. That's correct.

Q. And you say, "The sale property is benefitted by the access easement reserved in the 1990 deed from Southern Pacific to Tuntex," correct?

A. Yes.

Q. Okay. "That particular easement was specifically reserved in the transaction, to allow continued access to the sale parcel, otherwise it would be landlocked."

A. Correct.

Q. Okay. And then it says, "UPRR, as successor in interest to Southern Pacific, is able to convey its interests in the various easements reserved in the Tuntex deeds." Do you see that?

A. Yes.

Q. And how did you know that?

A. Well, we're the -- UP was the successor to Southern Pacific. Those easements then become, you know -- you know, like I said it before, inure to our benefit, they are a property right that as successor to Southern Pacific we have benefit of and we're able to convey those out to -- in fact, the language in the -- in the deed that reserve them mentions that they are to the benefit of a successor (inaudible) signs (phonetic). So Patrick would be successor to Union Pacific, and he can convey those easements out as well.

Q. And as of this time, January of 2015, had anyone from Universal Paragon -- or by this time it might be known by the plaintiff's name. I keep forgetting what the plaintiff is. I just call them Visitacion -- Visitacion Investments, LLC.

Had Mr. Pearce or Mr. Scharfman whatever his name is, Jonathan, did anybody tell you that the railroad had abandoned or terminated the easements?

A. No.

Q. They never took that position prior to your sale to Mr. McNerney?

A. No. They were hoping that we would, you know, eventually quitclaim the easements to them,

but they never said they were abandoned.
Q. In fact, they acknowledged you the existence of the easements; isn't that correct?
A. Okay.
MR. PREONAS: Objection. Calls for a legal conclusion.
BY MR. LOWENTHAL:
Q. And when you told Universal Paragon about this access easement and how it was crucial to the property, did they ever tell you that there was no such access easement to the property?
A. No.
Q. In fact, Universal Paragon's representatives acknowledged the existence of the access easement to the property, didn't they?
A. They did.
Q. Okay. Now, eventually you closed the transaction, I think it's in February of 2015, to Patrick; is that right?
A. Yes.
Q. And there was an agreement with Patrick that he would build a fence between his property -- between the property he was acquiring from you, and the JPB property; is that right?
A. Yes.

Q. Okay. And that's for safety reasons so that no -- there's nobody going over the -- to the -- getting hurt by the tracks and make sure that everybody stays on that property?

A. That's correct. It's strictly to prevent trespass onto the railroad right-of-way, to create a barrier between sale parcel and operating railroad property for trespassing and safety purposes.

Q. Okay. Now, do you recall some time after the sale, like a year later, you got an e-mail from Doug Walsh, general counsel, to Universal Paragon Corporation?

A. That's not ringing a bell.

MR. LOWENTHAL: Yeah. Nancy, this is Exhibit 48, and this is the one that I -- this is the only other one. I'm getting to the end, I promise.

Is there any -- or maybe the court reporter can do it. I wanted to show him Exhibit 48, which we've previously used, and I have no idea how to do it.

MS. JOHNSON: I can do it.

MR. LOWENTHAL: Okay.

MS. JOHNSON: Rob, do you have access to your e-mail?

THE WITNESS: Yes.
MS. JOHNSON: I e-mailed you Exhibit 48.
MR. LOWENTHAL: Okay. Cool. It's couple of four pages.
(Discussion held off the record.)
(Exhibit 48 marked for identification.)
MR. LOWENTHAL: So back on the record.
Karen, are we good to go?
THE REPORTER: Yes, we are.
BY MR. LOWENTHAL:
Q. Mr. Krantz, so showing you this Exhibit 48, if you could go to the second page, it's an e-mail from Doug Walsh to you copying Howard Pearce dated May 5, 2016. Do you see that?
A. Yes.
Q. The second page is Bates 3075.
A. I see that.
Q. It says, "Dear Mr. Krantz, I'm general counsel for Universal Paragon Corporation, UPC. I've been with UPC a little over a year and I'm trying to tie up some loose ends with regard to some old RR easements. I've attached a drawing that shows three easements I'm concerned about highlighted in yellow. They were reserved to the RR when title to the property was transferred to Tuntex

U.S.A., Inc., in August 1990, they are described as" and it has "Mainline, drill, spur and drill and spur track." "Although these easements have been physically abandoned, they are still showing up on title reports as existing easements. I've been tasked with getting them cleared from title and wonder if you have time to meet with me and our civil engineer, Howard Pearce, in the next week or two. We would be happy to travel to your offices to discuss. Thanks."

And then he attaches a -- some type of -- it says, "Corporation quitclaim deed," is the last page, 3077.

A. Um-hum.

Q. Do you see that?

A. Yes.

Q. Okay. Did you -- nowhere here does he identify in his -- in his e-mail to you, the access roadway easement, but, in fact, that is shown or appears to be shown to me on the last page, 3077.

Can you tell from looking at this whether -- what he was trying to -- trying to get you to -- to do?

A. Identifying the roadway here. It actually doesn't look to connect to the sale property. I

think he's just referring to the railroad easements, because the roadway doesn't show here as leading to the sale property. I'm looking here at the sale property. It shows EPN 5087-004. There's nothing connecting -- that's what we sold to Patrick, that's the fee parcel. So he's only referring to the railroad easements and the signal case easements.

Q. And so he wasn't -- as far as you understood, he wasn't referring to the crucial access roadway easement that we've been talking about earlier in your deposition?

A. That's correct.

Q. Okay. And if you look at the first page of Exhibit 48, you basically say, as Union Pacific no longer holds an interest in the referenced easements and that these interests were conveyed to Mr. McNerney, please contact him to discuss your interest in having the easement rights quitclaimed to UPC.

A. Yes, I see that.

Q. And I assume you never heard back from Universal Paragon after this, did you?

A. Not that I recollect, no.

Q. Okay. So then I just want to -- and Steve was nice enough -- I just want to make sure that

MR. LOWENTHAL: Oh, I thought -- hold on a second. Where's the 1990 one? Oh, here it is. Maybe it's -- August 10th, 19- -- hold on. Let me check.

Yeah, here it is. "Deed correcting" -- what the --

Steve, where did you get these exhibits?

Steve, in any of these exhibits that you sent along, is the original 1990 deed in there?

MR. PREONAS: No, these are different deeds.

MR. LOWENTHAL: Oh, I'm sorry.

Nancy, I need you to send 3 and 5. Can you send -- I just want -- while you're doing that, let me ask you a couple of questions.

BY MR. LOWENTHAL:

Q. Mr. Krantz, was -- Southern Pacific, in 1990, was also in the communications business, was it not? It had communications departments or --

A. Yes.

Q. Can you describe what its communications business was in 1990?

A. So there was a subsidiary company called SP Telecom, and the owner of Southern Pacific at the time would -- well, there were fiber optic lines in

the railroad right-of-way, and SP Telecom was in the business of -- fiber optic business, and basically over the ten-year period that Phil Anschutz owned Southern Pacific Railroad, he laid, in a very significant fiber optic -- commercial fiber optic, network into the railroad right-of-way, and then that eventually became Qwest Communications.

Q. And so that was a business that -- Southern Pacific was interested in the communications business through this subsidiary in 1990; is that true?

A. Yes.

Q. Okay. And when Southern Pacific became Union Pacific, did Union Pacific continue to have various sub- -- and to this day has various subsidiaries that are involved in sort of general communication and data processing type of businesses; isn't that correct?

A. I really don't know what UP has in terms of subsidiaries like that. This was all in the Southern Pacific era that there was the SP Telecom, the subsidiary. But during the course of -- so my understanding is that when Anschutz, Phil Anschutz sold Southern Pacific to Union Pacific, he retained the SP Telecom rights, did not convey that to UP,

then that SP Telecom became Qwest, which then became Mountain Bell because he bought Mountain Bell, and then that is now a company called CenturyLink.

Q. Okay. And so when SP and, prior to these transactions, when SP was reserving easements, it would also reserve the right to have these communication fiber optic lines within the easement areas; is that right?

A. Yes. And that's -- the 1990 deed did reserve that.

Q. And that was separate and apart from the rail lines, for example, correct?

A. Yes.

MR. PREONAS: Objection. Calls for a legal conclusion.

BY MR. LOWENTHAL:

Q. And the reason they -- your understanding of the reasons Southern Pacific did that is to enable it to lay these fiber optic lines and use that as a business enterprise, right?

A. Yes.

Q. And that had value to Southern Pacific separate and apart from running trains, correct?

A. That's correct.

Q. Okay.

were -- pardon me?

A. Yes, I see it.

Q. And is that true that the Exhibit 5 is the document that corrected the legal descriptions in the Exhibit 3 grant deed reserving the easements in the sale of the Schlage Lock property to Tuntex?

A. Let's see here.

Refers to the 1989 --

Q. It's just dated 1989. It was recorded in 1990. Purchase and sale agreement was 1989, if you look --

A. Right.

Q. On --

A. Right. Okay. Yep.

MR. PREONAS: You have to ask him a question, Jeff, come on.

BY MR. LOWENTHAL:

Q. All I want to know is, is the Exhibit 5, the document which created certain legal descriptions in the easements that were reserved in the Exhibit 3, grant deed, evidencing the conveyance from Southern Pacific to Tuntex?

A. Let me read this here.

I'm sorry, repeat your question.

Q. Yeah, if you look at Recital C, Recital C

references the grant deed, which is Exhibit Number 3, it says, "In that certain executed letter, SP acknowledged and agreed that the legal descriptions of the easements as set forth in Exhibit B to the grant deed executed and recorded on August 10, 1990," which I'll represent to you is the one that you just previously looked at, "in the official records, was not prepared by a surveyor and that would be necessary to substitute, therefore, a legal description based on a survey."

And if you look at the second page, it says, "Now, therefore, in consideration, it deletes the legal descriptions of the easements set forth in the original grant deed and substitutes the new legal description."

A. I see that.

Q. Okay. And these were the easements that we have been talking about today, right?

A. Let me page through.

Q. Okay.

A. "Railroad easement. Mainline easement" -- yes, that's correct.

Q. That's -- let me just quickly look at my notes.

MR. LOWENTHAL: I think that's all I have

question. If you want to rephrase it, then he can answer a different way. But he's answer it. It didn't include the mainline railroad.

MR. PREONAS: Move on.

Q. Turning back to Exhibit 2, Mr. Krantz. I would like you to look at page 2 of the PDF, bearing Bates number V2930 towards the middle of the page, highlighted portion, entitled "Fence covenant"?

A. Yes.

Q. Okay. Did you personally review this document before in connection with the transfer of the JHP property, Mr. McNerney in 2015?

A. Yes.

Q. What is your understanding of what this fence covenant was intended to accomplish?

A. Covenant was intended to accomplish a separation of the sale parcel from the mainline railroad to prevent trespass access or encroachment onto the mainline railroad. It was for security purposes, to keep people from going onto the railroad right-of-way.

Q. The owner of the JHP property that was going to obtain ownership by way of this 2015 grant deed didn't need to access the mainline right-of-way anyway because that was not something that was

what's your understanding of when the last time they were actually -- there was actually rail in the easements?

A. I don't know.

Q. Do you have any records of when there was last rail in the easements?

A. No.

Q. Have you ever seen any rail in the easements?

A. I don't recollect.

Q. Okay. Do you recollect the first time you ever walked those easements?

A. When I met Howard and Jonathan -- Jonathan Scharfman and Howard Pearce on the property.

Q. Do you have an estimate as to when that was?

A. That would have been in -- I believe -- yeah, 2014.

Q. At that time you didn't see any rail easements?

A. I don't recollect. I don't remember if there was rail there or not.

Q. Did you ever have any discussions with Mr. Scharfman about the use of the easements for railroad purposes?

A. You're talking about Exhibit 2 now?
Q. Yes.
A. 2. Okay.
Q. I don't need you to look at it. I'm just trying to get your general understanding of -- when we say "the easements," what specifically, in your mind, does that mean?
A. Well, we conveyed the easement rights that we reserved in the 1990 sale to Patrick, that would be the access easement, and there were two access easements, a railroad easement and a signal box easement.
Q. So you've listed what your understanding of those three easements are, and I appreciate that. I would like --
MS. JOHNSON: I believe he was referring to access easements plural, which would be two.
BY MR. PREONAS:
Q. Let's just take the rail easement, Mr. Krantz. What's your understanding of what that rail easement was used for historically?
A. It was used for railroad purposes and communication purposes. It's part of the reservation -- reserved communication rights in there as well for fiber optic telephone, telegraph.

I don't have the exact --

Q. Do you have any of personal knowledge as to the communication uses of the access easement?

A. No. I don't know if there are communication lines in there.

Q. Did you see any in 2014 when you visited the easements?

A. Well, I don't recollect seeing anything, and if there was anything, it probably would be subterranean.

Q. But you're not aware of any records of the railroad that would indicate the location of subterranean communication lines within the easements?

A. No.

Q. And if you had located them, you would have produced them pursuant to --

A. Yes.

Q. So you looked for them but didn't find them?

A. I looked for and produced whatever was responsive to the subpoena, so...

Q. And same question with respect to actual rail within the easements, you don't have any records of the railroad that you located that relate

to the location of rail within the easements?
A. No. The only thing I can say is that in 1990 -- reserve of railroad easement tracks.
Q. How do you know that?
A. Well, just based on experience.
Q. I believe you said you weren't involved with the 1990 transaction, correct?
A. That's correct. I guess I couldn't speculate, but that would normally be the case for reservation of a railroad easement, is if there were tracks there. I do know that there were tracks at one point, I don't know when they went away, but they crossed Bayshore Boulevard and served a property across the street to the west, so that's what I understand.
Q. Do you have an estimate as to when they were removed?
A. No, I don't.
Q. Do you have any other personal knowledge about the location of rail or fiber optic that we haven't discussed yet?
A. I know there is fiber optic in the mainline right-of-way. I was looking at the valuation or val map and -- or I did see a reference to Sprint, which actually used to be a subsidiary of Southern

Pacific.

Q. Okay. All right. Regarding Sprint, I think your testimony before the break was that Sprint set up a separate entity to -- as a telecommunications provider; is that accurate?

A. Well, Sprint is different than SP Telecom. Sprint was a subsidiary of Southern Pacific Railroad that was spun off in -- somewhere around 1980, and became a separate fiber optics company, but subsequent to that, a new company was created called SP Telecom, so there's a difference there.

Q. Okay. So at some point Union Pacific purchases SP, correct?

A. Correct.

Q. And do you know when that was?

A. 1997.

Q. And were you involved in that purchase personally, or was it somebody else --

A. I was not involved.

Q. I believe your testimony earlier was that in connection with Union Pacific's purchase of Southern Pacific, Southern Pacific did not transfer its interest in SP Telecom to Union Pacific; is that correct?

A. That's my understanding, yes. It was

there might be. I don't know. It's not part of what I do.

Q. You've never leased property to -- you've never been involved in a lease of Union Pacific property to a telecommunications provider?

A. Personally, no.

Q. But you do do your commercial leases at Union Pacific property in connection with your duties?

A. No, I'm not involved in leasing railroad property. Just strictly selling.

Q. Have you ever been involved in a sale of Union Pacific property to a telecommunications provider?

A. No, but I do know that when we sell UP property, we ascertain whether or not there is fiber optic impacting the sale property, and if there is we reserve an easement for the fiber optic line.

Q. But you didn't do that in the case of the 2015 deed, did you?

MR. LOWENTHAL: Objection. Calls for a legal conclusion.

THE WITNESS: No, I did not. But I do know that the easement had communication rights associated with it.

BY MR. PREONAS:

Q. Associated with the railroad use of the easements, correct?

MR. LOWENTHAL: Objection. Mischaracterizes --

THE WITNESS: Associated --

MR. LOWENTHAL: -- his testimony.

(Reporter clarification.)

THE WITNESS: It's not strictly railroad related. It's for, you know, any railroad or successors --

BY MR. PREONAS:

Q. Railroad use?

A. No, not for railroad uses.

Q. For what kind of uses, then?

A. Well, the communication rights aren't associated with a railroad use. It's for any commercial use.

Q. Okay. I would like you to go back to Exhibit 5, please.

A. Okay.

Q. I would like you to go to page 5, please.

MR. LOWENTHAL: I'm sorry, Steve, what exhibit are we on?

MR. PREONAS: Exhibit 5, page 5.

described in this e-mail, Exhibit 69, that we just looked at.

THE WITNESS: Again, there are two access easements: There's the roadway access from Sunnydale all the way to the sale parcel, the fee parcel; and then there's a separate one that kind of heads off in a northeasterly direction and then transitions northerly, but does not connect to the sale property. That's the one, maybe, he's referring to. Not my opinion. As far as I'm concerned, those are easements in favor of Union Pacific.

You know, Dave had his opinion in 2010. We conveyed those to Patrick for whatever use he would be able to make of them and whatever rights would go along with those easements.

BY MR. PREONAS:

Q. So going back to 5 for one moment. I thought we were done, but something came up that I wanted to talk about.

A. Okay.

Q. And I'd like to look at page 5 of Exhibit 5, please.

A. Page 5. Okay.

Q. And the second half of the first paragraph,

beginning with the words "Upon abandonment or termination."

A. Okay. Yeah, I see it.

Q. Okay. So you presumably in your vast experience with Union Pacific Railroads dealt with the abandonment and termination of easement rights, correct?

A. Yes.

Q. Is this type of language common in other easement grants reserved by -- or granted to Union Pacific that there's a provision for their abandonment?

A. Yeah, so these are perpetual, exclusive easements in favor of railroad. We do not abandon any easements until we determine -- in our sole and absolute discretion whether or not we are willing to terminate the easements. They are not abandoned until we take specific action, meaning a quitclaim.

Q. Under what circumstances has Union Pacific previously abandoned or terminated easements and executed a quitclaim deed in a form satisfactory --

MR. LOWENTHAL: That's actually compound.

MS. JOHNSON: Quite broad.

BY MR. PREONAS:

Q. You can answer.

A. If someone came to us and they wanted an easement quitclaimed, we would look at the specific situation, that we determine that in our sole and absolute discretion whether or not we wanted to quitclaim the easement. Then we would go out internally to different departments to make sure the easement wasn't needed any longer. And if we got feedback from various internal sources that it wasn't and we received appropriate compensation from the party requesting the quitclaim, then we would look to -- and I would get my management's formal approval. I have to go through a very formal extensive process internally to get the release and quitclaim it, any easement that we have, and that means monetary consideration, that means internal feedback from up to 12 different departments at the railroad, and just to make sure that it isn't needed. And then we go from there to work with the requesting party to formalize a -- first we enter into an agreement for release of easement, spells out all of the terms of the release, including proper as-is released and indemnification language to the railroad, and then spelling out the compensation that we're going to be paid. And then once the party executes the agreement, we're

effectively in contract at that point, and then we will execute the release and quitclaim of easement deed.

Q. Thank you.

A. You're welcome.

Q. What are those 12 departments?

A. Oh, gosh. Our operating department, our manager or track maintenance, our engineering department, our property management people, our track maintenance people, our industrial development department. Fiber optics department. Gosh -- there's like 12 different departments that I have to approach, and it's like herding cats to get everybody to respond --

Q. Thank you. I have other cases where I'm asking railroads to do that, so it's a good peek behind the curtain for my personal selfish reasons.

But did you ever do any of that, take this issue to committees like those?

MR. LOWENTHAL: With respect to what? Any easement or --

MR. PREONAS: With respect to these particular easements I'm talking about today.

Q. Is there any internal discussions with Union Pacific regarding releasing the easements

Q. All right. And when we were reviewing this exhibit earlier, I believe you testified that JHP property at that time -- and if I've got it wrong, let me know -- was leased by the Schlage Lock Company at some point.

A. I'm sorry, I was distracted for a second. Could you repeat that, please?

Q. It was a bad question anyway.

At some point when we were discussing Exhibit 70 before lunch, there was a mention that JHP property at one point was leased by the Schlage Lock Company.

A. Yes.

Q. And what's your understanding of what that lease entails and was for?

A. So as you're aware, Schlage Lock had a manufacturing facility directly abutting the property we sold to Patrick. They leased that property, I understand, for a very long period of time, and they had buildings on there associated with their adjoining property, it was part of their manufacturing operation, I believe, or some ancillary use, anyway, related to their lock manufacturing operation.

Q. Do you have any estimate as to the time

frame of that leasing of the JHP property by Schlage for that purpose, to support its manufacturing operations on the adjacent --

A. I believe they leased it for -- you know, I'm just -- leased for 50 years, for a very long time.

Q. So this e-mail describes your discussions with, you know, Visitacion Valley representatives regarding somehow purchasing this property or exchanging this property, correct?

A. Yes.

Q. Okay. And in your e-mail about -- in the second paragraph about halfway through there's a sentence begins with "The two smaller properties they have offered," let me when you have found that.

A. Yes, I see that.

Q. Okay. So I think your testimony was you wanted -- you suggested that UPC purchase this property, and they said, no, we want to do an exchange, correct?

A. That's correct.

Q. And in your sentence says, "The two small properties would less developable." What's your meaning with "less developable"?

A. Again, just from my recollection, the

that I wasn't sure the last time that the track easement was used.

Q. So you don't know -- your best recollection today, you can't tell me whether -- strike that.

You don't know whether or not -- you're not sure the last time the track easements were used or Mr. McNerney was not sure, correct?

A. Yeah, I would say so.

Q. I think we have covered this previously, but you don't have any personal knowledge as to the last time the track easements were used, do you?

A. No, I don't.

Q. You weren't able to locate any records of such use, correct?

A. No, I wasn't.

Q. Okay. And turning to the second -- or the third sentence of your contemporaneous notes, Mr. Krantz.

A. Yes.

Q. It says you used the access easement from Sunnydale in March 2014, correct?

A. Yes.

Q. Do you recall how you used that access easement?

A. Yeah, I came in off of Bayshore Boulevard

on Sunnydale and then drove on the roadway that led to the property, and that's how I accessed it.

Q. Did you see any other vehicles at that time using that roadway to do that?

A. I believe -- that's when I met with Jonathan Scharfman and Howard Pearce, so they may have come in that way as well, but I don't remember. It was a long time ago.

Q. Passenger vehicles, though, right?

A. Passenger vehicles, yeah.

Q. Do you recall ever seeing any heavy trucks use that roadway to access the JHP property?

A. No, I don't recollect seeing any trucks using it.

Q. Okay. And you don't have any records that you located regarding the use of that roadway for heavy trucking?

A. No.

Q. Or light trucking?

A. No.

MR. LOWENTHAL: You don't have to use up the entire two hours. You can just pass it back to me and we'll get out of here, I promise.

MR. PREONAS: I'm getting close. I'm not wasting any time here. I'm being very efficient.

Jeff.

FURTHER EXAMINATION

BY MR. LOWENTHAL:

Q. Okay. So, Mr. Krantz, you came here and you're testifying here today on behalf of Union Pacific railroad, correct?

A. Correct.

Q. Okay. And you testified that you weren't expressly involved in the 1990 sale to Tuntex, but you were able to review the books and records and documents of Union Pacific Railroad and obtain information concerning that transaction; isn't that correct?

A. Basically just what was in my sale file related to that sale.

Q. Right. So you took a look at -- for example, the easements, right?

A. Correct.

Q. And then if you look at it, you also took a look at the -- some of the documents we took a look at today, like Exhibit -- in fact, the one that was just up on the screen that -- or that we just looked at, it's also in Exhibit 70, the second page, the -- the map of the property that was sold to -- well, it

wasn't sold to Oyster, but sold to Tuntex in 1990, that was part of the records that you looked at to gain your understanding of what was going on, right?

A. Yes.

Q. And also -- and, oh, by the way, looking at that map, do you see up in the upper -- the one that Steve just had you take a look at, in the upper left-hand corner it says, "GTE Sprint," and it points to a little box that's right adjacent to the -- what we're calling now the JHP property?

A. Correct.

Q. So there was some kind of telecommunication lines right there adjacent to the JHP property, at least when this was prepared, correct?

A. That's correct.

MR. PREONAS: Objection. Calls for speculation.

THE WITNESS: It's denoted on our valuation map, so it's there.

BY MR. LOWENTHAL:

Q. Okay. Yeah. And it's also noted on -- if we look at Exhibit 71, I think that's your valuation -- that's the color-coded valuation map, right?

A. Let's --

Q. The second page of Exhibit 71.
A. Okay.
Q. I think it says US [sic] Sprint.
A. The second page?
Q. Of Exhibit -- maybe it's the -- no second page of Exhibit -- the Exhibit 71.
A. Yes. There it is, yeah, uh-huh. It says U.S. Sprint. Williams MC I-conduits (phonetic).
Q. Yeah. So it's shown on that. That's part of the books and records of Southern Pacific Railroad, right?
A. Yes.
Q. And Exhibit 83, which we just looked at that Steve put up, the new one, that's part of the books and records of Southern Pacific, right?
A. Yes.
Q. And also you looked -- if you look at page -- the third page of Exhibit 71 the -- the schedule of property that describes the various easements, that's part of the books and records of Southern Pacific, right?
A. Yes.
Q. Okay. So you could gain -- among other things, you gained your knowledge from those items. Did you have any conversation with anybody prior to

your deposition here, other than your lawyers, with respect to these easements?

MR. PREONAS: Objection. Compound. You asked him a couple of things there.

BY MR. LOWENTHAL:

Q. Anyway. Did you talk to anybody about the 1990 easements or the transaction -- Mr. McNerney prior to your deposition here today?

A. No, I didn't.

Q. Other than -- okay.

But in any event, by looking at the books and records, you also are pretty familiar with the custom and practice of Southern Pacific and later Union Pacific concerning reserving easements to properties as well, are you not?

A. Yes, I am.

Q. Okay. And so given the -- your review of the books and records, your file, and the custom and practice you felt you were able, and qualified, to testify here concerning the subject matter that you were designated; is that true?

A. Yes.

MR. PREONAS: Objection. Overly broad.

BY MR. LOWENTHAL:

Q. Now, there was some questions by Steve

about -- referring to the phrase "excess property." Excess property doesn't necessarily mean that you've abandoned all the easements that are appurtenant to that property, does it?

A. That's correct, yeah. It's surplus property that we can sell, along with any easements that are appurtenant to the property.

Q. Right. Because, for example -- and that's important for an access easement, because without the access easement, you would be selling landlocked property and there wouldn't be a big market for it, right?

A. Right, and you can't sell landlocked property in the state of California.

Q. Can you explain to me as a novice, what's a drill track as opposed to, say, a spur track? What are those -- as opposed to a mainline, can you just tell us what those are?

A. Sure. So a mainline right-of-way is -- something that you might be able to understand or relate to would be, like, the Caltrain line that runs from San Francisco, down to San Jose and south to Gilroy, that's a mainline railroad.

A drill track is a track that comes off of a mainline, and kind of like what it says, it drills

A. Yes, um-hum.

Q. And so it's a benefit for those adjacent properties?

A. Yes.

Q. Okay. Have -- now, we talked about that fence covenant, and I think you testified that the main purpose of it was for safety purposes, correct?

A. Right, to prevent, you know, trespassing or encroachment onto the abutting mainline.

Q. Okay. And now it wasn't -- it wasn't -- the purpose of a fence covenant isn't to prevent the adjacent properties from utilizing the benefit of the mainline, is it?

A. No, no. So let's say there was a rail user, you know, beyond there would be -- in a lot of instances there will be like a gate, swing gate that will open -- let's say a car needs to come off the mainline to serve an industry, you know, a fence might have a gate that could be operated by the locomotive engineer, and then he has a railroad lock, basically, that he'll secure the gate, he'll open the lock, take the chain off, open the gate and then deliver a railcar through there on a spur track, for instance. It's not to preclude railroad use.

Q. Now, in this litigation I'll tell you that they -- that Steve's client, the bad guys -- just kidding -- that Visitacion is making the argument that if the easement wasn't directly related to rail use, it's no longer in existence. That certainly wasn't your understanding with respect to the access roadway easement, was it?

A. Yeah, no, it's definitely not.

Q. Because if that was the case, you would never be able -- again, never be able to sell excess property because by definition it's not for railroad use, right?

A. Right. Yeah. I mean, we couldn't have sold that property without access.

Q. Okay. Now, we were looking at the -- that -- the easement, I think it's Exhibit 5, and the preamble to it talks about both existing and future use. Do you remember that language?

A. Is that the deed?

Q. Yeah. Well, let's look at Exhibit 5. I'm sorry. I was trying to short-circuit all this.

A. Sorry. I just want to make sure I've got the --

Q. Yeah, Exhibit 5 and page -- I'm sorry, it's Exhibit 3, page V5 at the bottom is what you were

looking at, Exhibit 3. It's the "Form of Railroad Easement" -- its title.

A. Right. And what page is the PDF?

Q. It's the page -- I think it's page 5 of the PDF as well.

A. Okay. Yes, I see it.

Q. Okay. And that grant of the perpetual, exclusive easement relates to both the existing -- the then existing use and any future uses which may be made of the easements that are being granted, correct?

MR. PREONAS: Objection. Calls for a legal conclusion. Misstates the document.

THE WITNESS: Yes.

BY MR. LOWENTHAL:

Q. So that -- the fact that a particular easement wasn't currently in use didn't mean that it wasn't being granted by this grant deed -- I'm sorry, being reserved by this grant deed, correct?

A. That's correct.

MR. PREONAS: Same objection.

BY MR. LOWENTHAL:

Q. Do you know -- you know, you talked about that lease -- basically the leased JHP property -- or whatever we call it, the -- my client's property,

Patrick's property, and that it was previously leased to Schlage Lock for a number of years, according to your acknowledge, right?

A. Correct.

Q. Do you know if that particular parcel utilized the railroad; in other words, it had railcars or utilized it for shipping during the time of its -- that it was a lessee?

A. You know, I don't know. I don't know for sure.

Q. Okay. And lastly, are you aware of any private ownership of railroad cars and railroad tracks on -- just on private property?

A. Yeah. There's lots of instances of private track. Lots of industries will construct and -- well, will pay for the construction of track that goes into a facility on an abutting piece of property and it's private industry track, and those types of situations are administered by what the -- the acronym is ITA, Industrial Track Agreement, and it calls for -- you know, it will spell out, you know, the industry's payment for and maintenance of a spur track into their facility private track.

Q. And there's nothing that would -- there was nothing in your deal with Patrick that prevented him

from having private track on his property and using it, presuming he complied with the ITA?

MR. PREONAS: Objection --

THE WITNESS: That's correct.

MR. PREONAS: -- calls for speculation. Calls for a legal conclusion.

THE WITNESS: I mean, if he wanted to get rail service and -- yeah, if he called me up and said, Hey, Rob, I want to get rail service into this property, I would hook him up with our industrial development folks and work out a, you know, an industrial track agreement and construction of track into that property.

MR. LOWENTHAL: Okay. I don't have any further questions. Thanks.

MR. PREONAS: I just have a few more.

MR. LOWENTHAL: Outside the scope.

MR. PREONAS: Does that even matter right now? I don't know.

FURTHER EXAMINATION

BY MR. PREONAS:

Q. We've talked about the accesses, and we have discussed that this is -- to your understanding, primarily vehicular and pedestrian

REPORTER'S CERTIFICATION

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: May 21, 2021

Karen Aligo

KAREN ALIGO
CSR No. 13418

EXHIBIT 13

EXHIBIT
70 Krantz, R., 5/20/21
exhibitsticker.com

Re: LOI's for Former Portion of Southern Pacific Railroad Property (Schlage Lock--Folder 1567-58)--UPDATE

Robert M. Krantz 07/10/2014 08:02 AM

Rob - I am in complete agreement with your assessment. Great work!

Robert M. Krantz Chris, I wanted to give you an update and my th... 07/09/2014 07:05:53 PM

From: Robert M. Krantz/UPC
To: Chris D. Goble/UPC@UP
Date: 07/09/2014 07:05 PM
Subject: LOI's for Former Portion of Southern Pacific Railroad Property (Schlage Lock--Folder 1567-58)--UPDATE

Chris, I wanted to give you an update and my thoughts on moving forward. I have given folks a couple of weeks more and have received a total of three offers for the Schlage Lock property as shown in the table below, inclusive of the one from River West that I mention in my 6/23/14 email. I had contacted a number of parties that would be potentially interested in this site and also posted the Property on Loopnet for the past couple of weeks. The AMG offer came from Loopnet and I have fielded other calls as well. Things have gone quiet now re. possible other interest and those who were kicking the tires have decided not to submit offers for various reasons.

I have given abundant time consideration to Universal Paragon (UPC), the abutting owner, to submit an offer . Their Board met last Friday and have proposed a land swap for two small parcels they own nearby that is part of their "Baylands" project. The Baylands is a 500 acre former SPTCo. yard that we sold to them in 1991 that abuts the Schlage Lock property. I advised UPC that we typically are not interested in such transactions. I met with them in San Francisco yesterday at the Board of Supervisor's meeting where their project was to be approved, and discussed their proposed swap. The property they want to swap, besides being former railroad property (unsure of contamination issues), is made up of two smaller parcels than our one larger Property, and their Baylands project is years away from happening. If we did an exchange, we would be stuck with land with limited development and sale potential in the near term. The two smaller properties they have offered would be less developable and there is no information from them as to the zoning and proposed land use for their parcels. I am recommending that we formally advise UPC that we are not interested in a land swap. I have been asking them to submit an offer for the past two + months. While UPC is the most logical purchaser, they have advised they have too much on their plate with their Schlage redevelopment and Baylands project and seem disinclined to spend the necessary money to acquire our land, thus the land swap proposal. This may potentially change if we tell them we are not interested in the land swap but I believe we have given them an adequate amount of time to put their best foot forward. As information, UPC's Schlage project was continued to next week by the SF Board of Supervisors yesterday, accounting labor disputes re. UPC's project.

I have not received any other offers other than those shown and I am inclined to proceed with Patrick McNerney. His price is the highest and Feasibility and Closing time frames the shortest and he will pay his real estate agent's fee, putting more money in UP's pockets than the other offers. His agent, Chris Harney, who owns HC&M Commercial Real Estate in S.F., is someone I have known for a number of years and is well connected in San Francisco. Chris advised that Mr. McNerney has a $20 million exchange and just closed with Chris on a $7 million property in San Francisco. McNerney develops residential housing in San Francisco and owns Martin Building Company, a large developer there. This is a positive as he has significant development experience in San Francisco and knows his way around. Mr. McNerney is very motivated to close escrow due to his exchange needs. There is a good likelihood he can close the sale this year, not accounting any unforeseen issues. I plan to submit an appraisal request to LLB unless you feel otherwise. I believe the offered price for a quick close, is consistent with what we have been selling our other industrial properties for in San Francisco. An extended closing time frame (for more money to UP) did not seem to be of interest to the three potential buyers.

EXHIBIT 70

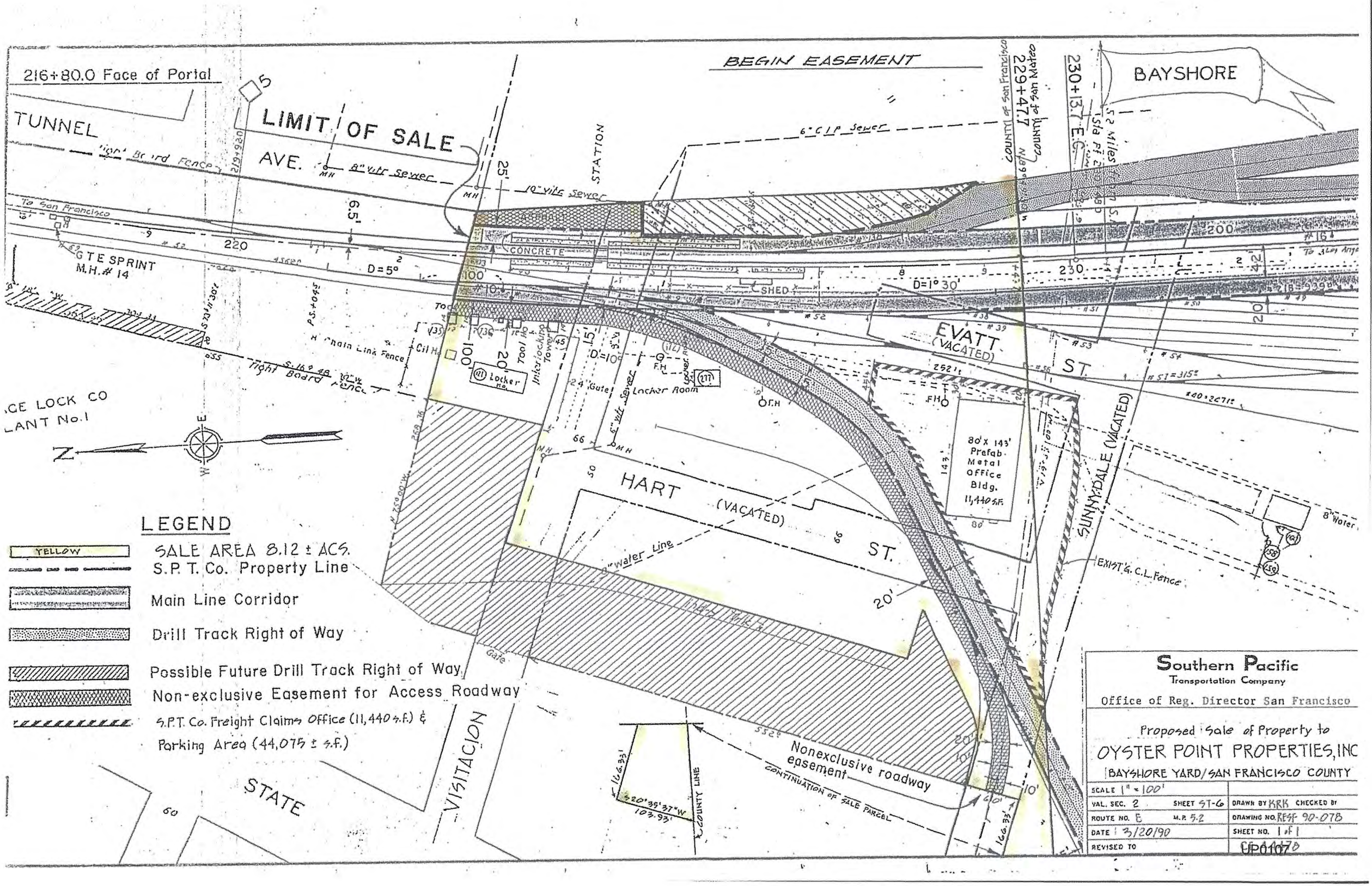

216+80.0 Face of Portal
TUNNEL
LIMIT OF SALE
AVE.
BEGIN EASEMENT
STATION
BAYSHORE
230+13.7 E.C.
229+47.7
COUNTY of San Francisco
COUNTY of San Mateo
6" C.I.P. Sewer
8" V.C.P. Sewer
10" V.C.P. Sewer
To San Francisco
GTE SPRINT M.H. # 14
CONCRETE
SHED
Locker Room
Interlocking Tower
Tool House
Oil House
Chain Link Fence
Right Board Fence
24" Gate
5" V.C.P. Sewer
D=5°
D=1° 30'
D=10°
EVATT (VACATED)
ST.
HART (VACATED)
6" ST.
80' x 143' Prefab. Metal Office Bldg. 11,440 S.F.
SUNNYDALE (VACATED)
8" Water
EXIST'G. C.L. Fence
8" Water Line
Gate
VISITACION
STATE
COUNTY LINE
Nonexclusive roadway easement
CONTINUATION OF SALE PARCEL
N 25°00'00" W
S 20°35'37" W 103.93'
166.33'
S 23°13'30" E
S 16°48' 00" W
N 69°
S 52°
LEGEND
YELLOW
SALE AREA 8.12 ± ACS.
S.P.T. Co. Property Line
Main Line Corridor
Drill Track Right of Way
Possible Future Drill Track Right of Way
Non-exclusive Easement for Access Roadway
S.P.T. Co. Freight Claims Office (11,440 s.f.) &
Parking Area (44,075 ± s.f.)
Southern Pacific
Transportation Company
Office of Reg. Director San Francisco
Proposed Sale of Property to
OYSTER POINT PROPERTIES, INC
BAYSHORE YARD/SAN FRANCISCO COUNTY
SCALE 1" = 100'
VAL. SEC. 2
SHEET ST-6
DRAWN BY KRK CHECKED BY
ROUTE NO. E
M.P. 5.2
DRAWING NO. RE&F 90-078
DATE 3/20/90
SHEET NO. 1 of 1
REVISED TO
CP0107

EXHIBIT 14

EXHIBIT
71 Krantz, R., 5/20/21
exhibitsticker.com

Revised Sale Print for Property in San Francisco--Schlage Lock (Folder No. 1567-58)

Robert M. Krantz to: Douglas K. Feagan 10/17/2014 06:40 PM

Hi Doug. Please see attached aerial sale print dated 6/4/14. I would appreciate having the print revised to show the Buyer name as follows: **Patrick McNerney.**

I have also attached a print that Dave Thatcher had prepared that shows some easements that were reserved in the sale from SPTCo. to Tuntex in 1990. Along with the print is the Schedule of Property from val map SPTCo. CA V-2/6 (I) that illustrates Cust'd No. **67700** highlighted in yellow The Schedule shows the deed from SPTCo. to Tuntex (USA) Inc. and an easement from Tuntex Property Inc. to SPTCo. as filed with the Deed 67700. This deed is what reserved the various easements shown in the DPT print. Also attached are some maps provided by Universal Paragon, the abutting property owner. The two maps as prepared by BKF Engineers, and specifically map C2 show the reserved easements.

Please update the sale print to also show the various easements as reserved in Deed **67700** that benefit the sale property. These easements will be conveyed along with the Property to Patrick McNerney. He will need to have the easements for his benefit for access etc. as he will be negotiating with Universal Paragon, which owns the abutting Schlage Lock property, to quitclaim those easements to them eventually in exchange for better access. The better access is shown in the BKF map (1st page).

Thank you Doug. Please let me know if you have any questions.

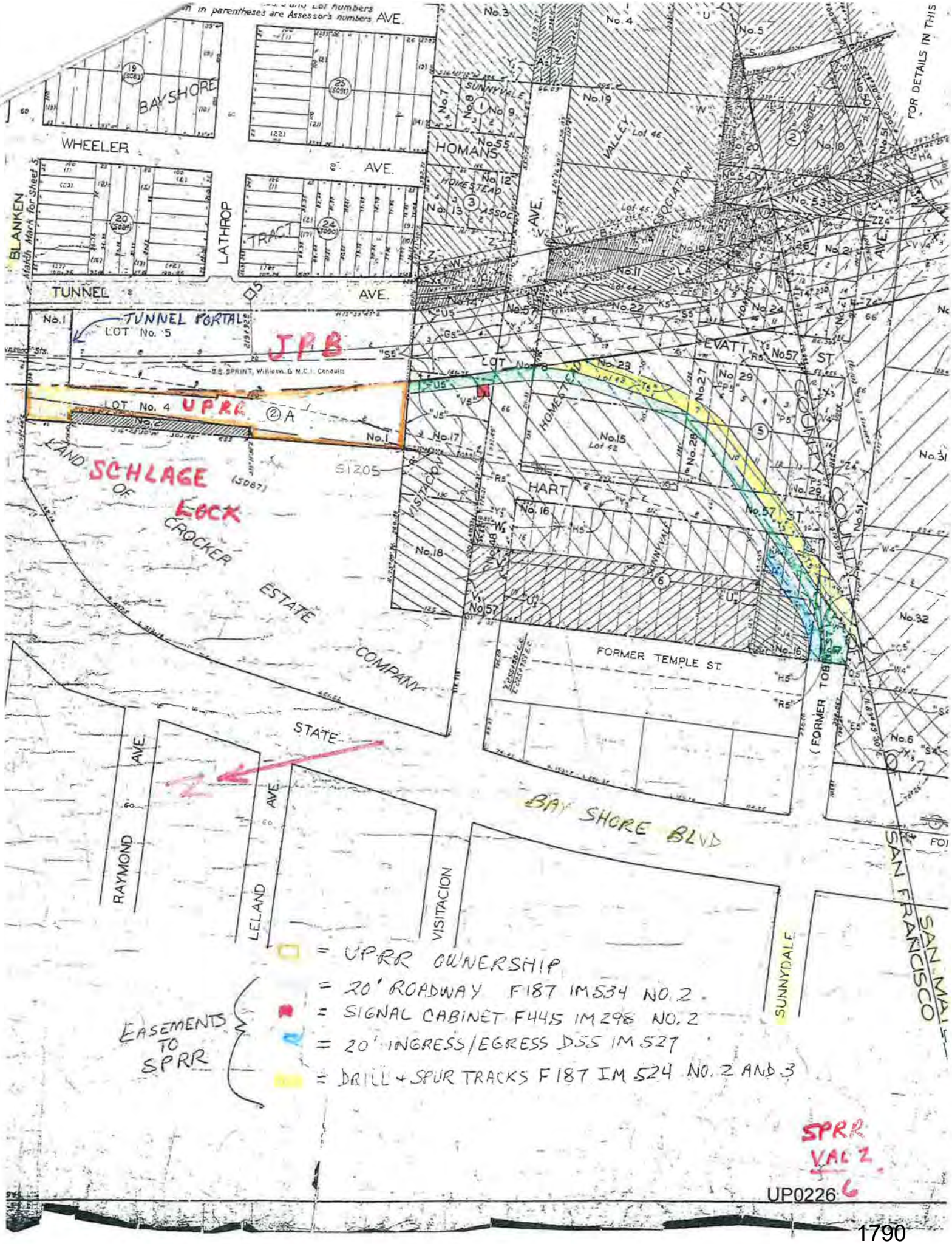
Robert M. Krantz, Director-Real Estate
Union Pacific Railroad
2603 Camino Ramon, Suite 200
San Ramon, CA 94583

Direct: 925-242-2100
Fax: 925-248-0301
Email: rmkrantz@up.com

San Francisco Schlage Lock DPT Print with Easements and Val Map Schedule V2 6 and 6 (I).pdf

San Francisco Schlage Lock Aerial Sale Print.pdfSan Francisco Schlage Lock BKF Maps.pdf

EXHIBIT 71
UP0225


BAYSHORE
WHEELER
AVE.
HOMANS
SUNNYVALE
VALLEY
ASSOCIATION
HOMESTEAD
ASSOC
TRACT
LATHROP
BLANKEN
TUNNEL
TUNNEL PORTAL
LOT No. 5
JPB
U.S. SPRINT, Williams & M.C.I. Conduits
LOT No. 4
UPRR
LOT No. 3
LOT No. 2
LOT No. 1
LAND OF SCHLAGE LOCK
CROCKER ESTATE COMPANY
HART
EVATT
HOMER
VISITACION
FORMER TEMPLE ST.
(FORMER TOBIN ST.)
STATE
BAY SHORE BLVD
RAYMOND AVE
LELAND AVE
VISITACION
SUNNYDALE
SAN FRANCISCO
= UPRR OWNERSHIP
= 20' ROADWAY F187 IM534 NO. 2.
= SIGNAL CABINET F445 IM298 NO. 2
= 20' INGRESS/EGRESS D55 IM527
= DRILL + SPUR TRACKS F187 IM524 NO. 2 AND 3
EASEMENTS TO SPRR
SPRR VAL 2
UP0226 6

SCHEDULE OF PROPERTY FOR SHEET 6

NO.	LTR.	GRANTOR	GRANTEE	INST.	DATE	RECORD	CUST. NO.	AREA SQ. FT.	AREA ACRES	A.F.E.	REMARKS
un. var.	S4-A5	S. P. Tptn. Co.	Oyster Point Prop. Inc.	Grant	Dec. 28, 1989	O.R. 89 177116; Dec. 29, 1989	67699				884.478 acs. disposed of shown hatched as follows: 0.479 acs. in Par. 6 (ltr."S4"), 0.287 acs. being all of Par. 21, 0.166 acs. in Par. 24 (ltr."T4"), 0.121 acs. in Par. 26 (ltr."U4"), 0.144 acs. in Par. 29 (ltr."V4"), 1.235 acs. in Par. 30 (ltr."V V4"), 1.429 acs. being all of Par. 31, 1.289 acs. in Par. 32 (ltr."W4"), 18.223 acs. being all of Par. 34 & 35, 45.287 acs. in Par. 36 (ltr."X4"), 3.792 acs. being all of Par. 37 & 38, 0.858 acs. in Par. 39 (ltr."Y4"), 29.442 acs. being all of Par. 40, 41 & 49, 1.047 acs. in Par. 51 (ltr."Z4"), 0.462 acs. being all of Par. 52, 0.018 acs. in Par. 53 (ltr."Z24"), 0.071 acs. being all of Par. 58-60, 780.128 acs. shown on sheets 7, 7A & 8. Also reserves easements for railroad purposes erroneously described, see correction deed f/w 67699 (ltr."A5").
un. var.	B5-D5	S. P. Tptn. Co.	Tuntex Prop. Inc.	Easement	Aug. 10, 1990	O.R. 90107436.; Aug. 10, 1990	f/w 67699				Reserves 23.81± acs easement for Main Line railroad purposes (ltr."B5"), 7.42± acs. for spur & drill tracks purposes (ltr."C5"), 0.001 acs. for signal case purposes (ltr."D5"). Also shown on maps 7, 7A & 8.
un. var.	E5-V5	S. P. Tptn. Co.	Tuntex (U.S.A.), Inc.	Grant	Aug. 1, 1990	O.R. E761808, Aug. 10, 1990	67700				8.255 acs. disposed of shown hatched as follows: 0.235 acs. in Par. 6 (ltr."E5"), 0.041 acs. in Par. 11 (ltr."F5"), 0.493 acs. in Par. 14 (ltr."G5"), 0.862 acs. being all of Par. 15, 1.094 acs. in Par. 16 (ltr."H5"), 0.445 acs. in Par. 17 (ltr."J5"), 0.308 acs. in Par. 22 (ltr."K5"), 0.862 acs. being all of Par. 23, 0.432 acs. in Par. 24 (ltr."L5"), 0.001 acs. in Par. 25 (ltr."M5"), 0.105 acs. in Par. 26 (ltr."N5"), 0.192 acs. being all of Par. 27 & 28, 1.007 acs. in Par. 29 (ltr."P5"), 0.140 acs. in Par. 32 (ltr."Q5"), 2.038 acs. in Par. 57 (ltr."R5"). ALSO reserves easements as follows. 1.503 acs. for Main Line railroad purposes (ltr."S5"), 0.835 acs. for spur & drill tracks purposes (ltr."T5"), 0.826 acs. for roadway (access) purposes (ltr."U5"), & 0.012 acs. for signal box purposes (ltr."V5").
un. S	W5	S. P. Tptn. Co.	Bruce R. & Kurt J. Papenhause	Grant	June 5, 1991	O. R. E930516; June 28, 1991	68095			3-89595-1991	0.003 ac. disposed of shown hatched. Mineral rights reserved.
un. S	X5	S. P. Tptn. Co.	Bruce R. & Kurt J. Papenhause	Grant	June 5, 1991	O.R. 91-082043; June 28, 1991	68096			3-89595-1991	0.514 ac. disposed of shown hatched as follows: 0.094 ac. in Par. 5 & 0.42 ac. shown on Sheet S-7A-A. Mineral rights reserved.
un. var.	E5-V5	Tuntex Prop. Inc.	S. P. Tptn. Co.	Easement	July 30, 1991	O.R. E982735; Aug. 22, 1991	f/w 67700				Corrects reserved easement in sale deed 67700.
un. var.	Y5-B6	S. P. Tptn. Co.	P.C. J.P.B.	Grant	Dec 4, 1991	O.R.F. - 047344, Dec. 27, 1991	68484				32.976 acs. disposed of shown hatched as follows: 1.938 ac. in Par. 1 (ltr. "Y5") 13.038 acs. shown on maps 1 thru 5. Also conveys 34.428 acs. of reserved railroad easement as follows: 2.061 acs. this map (ltr. "Z5") reserved by sale deeds 63832 and 67700 and shown on maps 1 thru 5 and Val. Sec. Col. V-75, maps 1 and 2. Reserves an easement for railroad purposes by terms of the Trackage Rights Agreement under Doc. No. 179487. Also reserves a five foot wide easement for fiber optic purposes. (ltr."A6") Also reserves an 22.546 acs. easement for construction and trackage rights purposes from M.P. 3.1 to 5.3. (ltr. "B6")
un. var.	C6-E6	S. P. Tptn. Co.	P.C. J.P. B.	Grant	Dec. 4, 1991	O.R. 91171427; Dec. 27, 1991	68486				See Note 31.
Un. var.	E7	S. P. Tptn. Co.	Tuntex Properties	Quitclaim	Nov. 3, 1994	O.R. 94-180881- Nov. 29, 1994	70310			3-88180-1990	Quitclaims all interest in 0.710 acs. being a portion of easement conveyed by deed 67699.

NO.	LTR.	GRANTOR

NOTES

Note 26 : Disposals cont. for Par. 24: 0.166 acs. by deed 67699 (ltr."T4"), 0.432 acs. by deed 67700 (ltr."L5")

Note 27 : Disposals cont. for Par. 26: 0.121 acs. by deed 67699 (ltr."U4"), 0.105 acs. by deed 67700 (ltr."N5")

Note 28: Disposals cont. for Par. 14: 0.493 acs. by deed 67700 (ltr."G5")

Note 29 : Disposals cont. for Par. 25: 0.001 acs. by deed 67700 (ltr."M5")

Note 30: Disposals cont. for Par. 51 : 1.047 acs. by deed 67699 (ltr."Z4")

Note 31: 230.816 acs. disposed of shown hatched on maps 8 thru 12, Cal. V-74 maps 1 thru 10 & Cal. V-74b, map 8. Also conveys 36.764 acs. of reserved railroad easement as follows: 6.892 acs. this map (ltr."C6") reserved by deed 67699 and 29.872 acs. shown on maps 7, 8 & 10 and Val. Sec. Col. V-74, maps 1 thru 5, 8 & 9. Reserves an easement for railroad purposes by terms of the trackage rights agreement under Doc. No. 179487. Also reserves a five feet wide easement for fiber optic purposes (ltr."D6").

SPRR
V2
6 (1)
UP0227

EXHIBIT 15

EXHIBIT
69 Krantz, R., 5/20/21
exhibitsticker.com

To: Howard Pearce <hpearce@universalparagoncorp.com>,
Cc: Jonathan Scharfman <jscharfman@universalparagoncorp.com>, Austin Fearnow/UPC,
Bcc:
Subject: RE: UPRR Sheds--Former Schlage Lock Property, San Francisco

Hi Howard. Thank you for your message and for also including the print Dave Thatcher had supplied as well as your Tentative Map.

Regarding the shed that straddles our property lines, our Property Manager, Austin Fearnow, and I are looking into what is involved in possibly donating the building to John Manley's group. Austin is out of the office now but he and I will touch bases on this matter further.

I appreciate your providing your Tentative Map which shows the proposed "Street A" and how it would serve Union Pacific's Property and that of JPB. Before the release of any retained UP easement areas as shown in Dave's print and on the map (sheet C2) you provided can be considered, we would need to be sure that none of the retained easement areas would still be needed and that our property can definitively be served by the streets in your development.

As Dave suggests in his 4/13/10 email, subject to UP management approval, a purchase of our property by Universal Paragon (with attendant easement releases) makes a lot of sense, particularly if there is no interest by the City of San Francisco to acquire this property now. I would think that development of our property in conjunction with the rest of your development would make for a better and more cohesive project. If this is of interest, we should discuss this further. Alternatively, if there is no interest by Universal Paragon or the City in purchasing our property, I will market it for sale to third parties that might have an interest in development of our property in conjunction with your project.

I too look forward to meeting you Howard. If you would like to discuss the possible building donation or potential property purchase further, please feel free to call me. Thank you Howard.

Regards,
Rob Krantz

Robert M. Krantz, Director-Real Estate
Union Pacific Railroad
2603 Camino Ramon, Suite 200
San Ramon, CA 94583

Direct: 925-242-2100
Fax: 925-248-0301
Email: rmkrantz@up.com

Howard Pearce Robert, It is nice to meet you through the cybers... 03/10/2014 07:58:55 PM

From: Howard Pearce <hpearce@universalparagoncorp.com>
To: "Robert M. Krantz" <rmkrantz@up.com>
Cc: Jonathan Scharfman <jscharfman@universalparagoncorp.com>
Date: 03/10/2014 07:58 PM
Subject: RE: UPRR Sheds--Former Schlage Lock Property, San Francisco

Robert,
It is nice to meet you through the cyberspace, hopefully we can actually meet face to face. UPC is definitely interested donating our half of the shed that straddles our common property with that of the UPRR. We welcome the idea and will cooperate with the UP and John Manley's group in facilitating moving the shed.

EXHIBIT 69

RE: UPRR Sheds---Former Schlage Lock Property, San Francisco

Howard Pearce to Robert M. Krantz 03/10/2014 07:58 PM
cc Jonathan Scharfman

Robert,
It is nice to meet you through the cyberspace, hopefully we can actually meet face to face. UPC is definitely interested donating our half of the shed that straddles our common property with that of the UPRR. We welcome the idea and will cooperate with the UP and John Manley's group in facilitating moving the shed.

I have attached the drawing that Dave Thatcher provided in this 4/13/2010 email at your request. Dave's drawing highlights the UPRR's ownership and associated easements. I have also attached for your convenience a pdf copy of our Tentative Map for the former Schlage Lock site that is under review by the City of SF. Back in 2010 the easements that we discussed with the JPB are shown on our Tentative Map on the Sheet C2 Existing Conditions Plan. (The sheet that John Manley forwarded is sheet C2 of the Tentative Map.) In our Tentative Map (see sheet C3) we show how we will provide access for the JPB through the street network and an alley that would extend off of Street A. These streets/alley would replace the current easements.

The UPRR parcel was at one time considered for acquisition by the City of SF Redevelopment Agency for a park. Unfortunately, the City of SF Redevelopment Agency no longer exists to acquire the UPRR parcel. Our current plan now considers this park only as an alternate. However this may be revisited in some form in the future.

I am looking forward to getting further along with John Manley's request.
Please let me know how we can cooperate.
Sincerely,

Howard R. Pearce, P.E., L.S., LEED AP
Project Manager
Universal Paragon Corporation
150 Executive Park Blvd., Suite 1180
San Francisco, CA 94134

Email: hpearce@universalparagoncorp.com
Phone: 415-468-6676 x114
Fax: 415-468-6678

From: Robert M. Krantz [mailto:rmkrantz@up.com]
Sent: Monday, March 10, 2014 2:09 PM
To: Howard Pearce
Subject: Fw: UPRR Sheds---Former Schlage Lock Property, San Francisco

Hello Howard. I wanted to introduce myself and let you know that I have taken over the Bay Area in terms of the sale of Union Pacific properties, from Rick Gooch. John Manley had contacted me regarding dedication of a building that straddles the property line between UP's property and your property in San Francisco (the old Schlage Lock site). We are looking into what would be involved in possibly donating

that building to Mr. Manley's group in conjunction with Universal Paragon.

I was reviewing our file on the property we own abutting yours and saw that Dave Thatcher (now retired) had proposed a sale of Union Pacific's property to Universal Paragon. Please see the attached email from Dave to you dated 4/13/2010. I wanted to re-inquire with you whether there would be an interest by Universal Paragon in a purchase of our property. I have attached a print to Dave's email that illustrates our property in red.

Also, Dave refers to a couple of maps in his attached email in the first sentence of his message. Unfortunately, I do not have a copy of these maps in my file. Dave mentions a map which was a portion of SPRR Valuation 2 Map 6 colored yellow, green, blue and red (easements) with the main sale area in orange. As that map was an attachment to an email he sent you, I would appreciate if you could re-forward that map to my attention as it would be useful to see the easements and other coloring on the map that Dave refers to without my having to reinvent the wheel if you will. I also do not have the drawing you supplied that Dave refers to in the first sentence ("....referred to in the drawing you supplied"), so it would be helpful to have that as well. Thank you in advance for forwarding these maps to me, assuming you still have them.

Thank you Howard. I look forward to hearing from you and perhaps discussing the terms of a possible sale to Universal Paragon. Thank you.

Regards,

Robert M. Krantz, Director-Real Estate
Union Pacific Railroad
2603 Camino Ramon, Suite 200
San Ramon, CA 94583

Direct: 925-242-2100
Fax: 925-248-0301
Email: rmkrantz@up.com

From: John Manley <[redacted]>
To: [redacted]
Date: 03/06/2014 04:19 PM
Subject: Fwd: UPRR Sheds

Hi Robert
This is the map of which we spoke about the other day on the phone. Ive also included a pic of what the building look like now. Of coarse not the best of shape as you will see. Howard Pearce is the project manager for Universal Paragon the other property owner. let me know if there's anything i left out.

John Manley

David P. Thatcher/UPC
04/13/2010 10:40 AM

To hpearce@universalparagoncorp.com
cc Chris D. Goble/UPC@UP, Robert C. Bylsma/UPC@UP, James A. Levy/UPC@UP
bcc
Subject File 1567-58: Release of RR Easements, Bayshore Yard/Schlage Lock Site, San Francisco

Howard:

Per our conversation and your e-mail on above 4/9, attached below is a segment of SPRR Valuation 2 Map 6 which shows in yellow, green, blue and red the various easements retained by Southern Pacific as referred to in the drawing you supplied. ALSO SHOWN OUTLINED IN ORANGE is what I believe to be - based on review of Southern Pacific land maps and subject to survey - Union Pacific's remaining parcel of land which separates the former Schlage property (now Universal Paragon's) from the operational JPB-owned main line RR corridor. Schlage once had a building and a parking area on this SP land and leased the property for those uses. As to the easements, note that the green 20' wide roadway provides the access to both our land from Sunnydale Ave. AND a RR signal cabinet (red) which aerial photos indicate is still in place and presumably needed by JPB. The yellow spur track corridor easements plus the blue roadway easement no longer appear necessary but I do not see how we could release the green roadway easement while we own the orange area. Any release of the signal cabinet easement appears to need JPB input.

Subject to approval by our management, I'd therefore like to discuss with you SALE of the Union Pacific tract to Universal Paragon which would be part of a "package" including easement releases. City of San Francisco has recently asked for our OK to have an appraisal prepared on this UPRR land and I understand they have been in touch with your people about this. I also believe you are aware of environmental issues impacting the site, most likely being the same as the adjacent Schlage land. Your acquisition of the UPRR property seems to be the most logical use in line with your overall development program. Please review the attached and contact me if any questions.

Dave Thatcher, UPRR Real Estate, Omaha (402) 544-8599

----- Forwarded by David P. Thatcher/UPC on 04/13/2010 09:15 AM -----

Mike Sattler/UPC
04/13/2010 08:11 AM

To David P. Thatcher/UPC@UP
cc
Subject

Mike Sattler
Sr. Manager - Real Estate
Union Pacific Railroad Company
1400 Douglas St, Stop 1690
Omaha, NE 68179

phone: 402-544-8641
fax: 402-501-2583 or
402-501-0340
email: msattler@up.com
----- Forwarded by Mike Sattler/UPC on 04/13/2010 08:11 AM -----

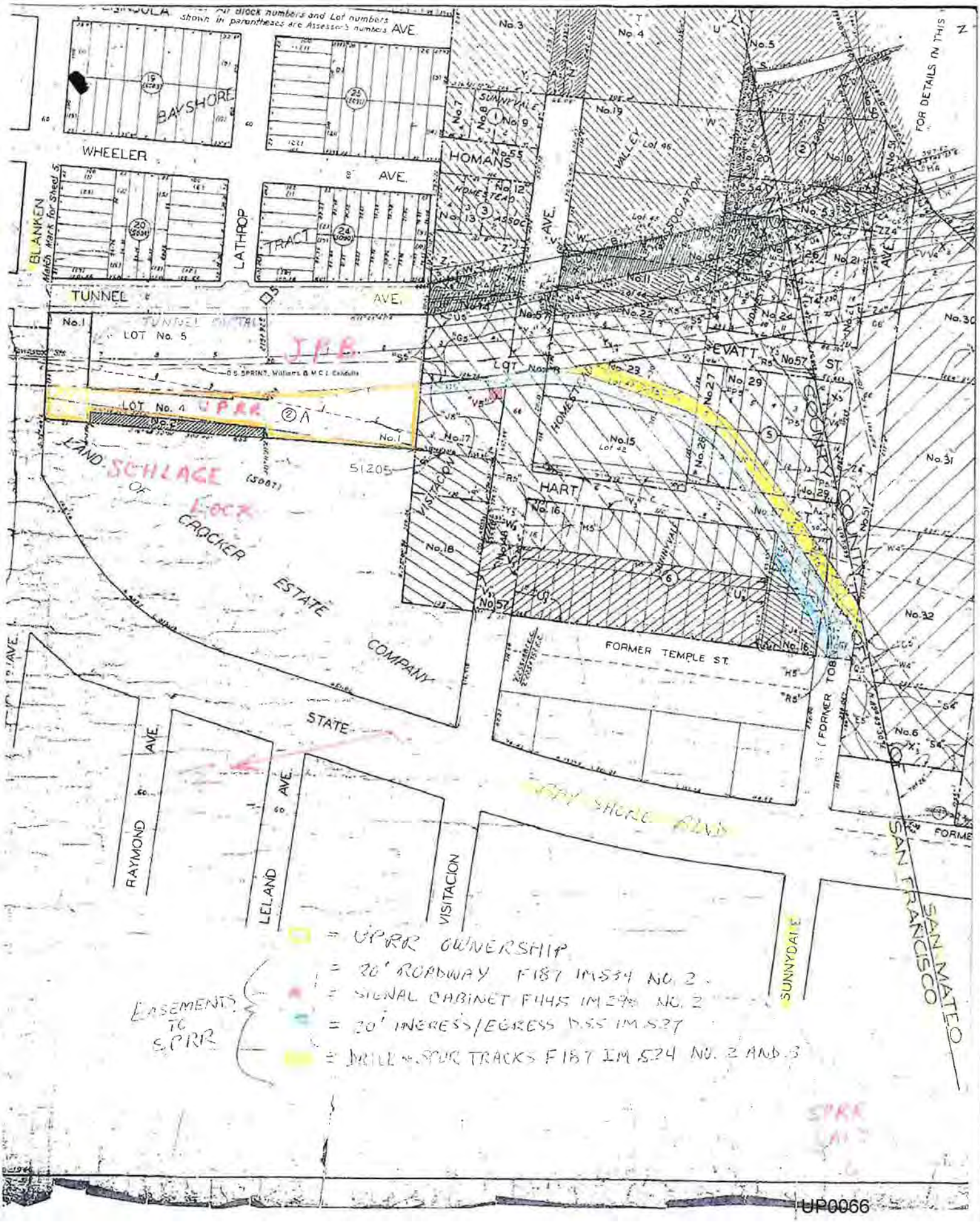

All block numbers and Lot numbers shown in parentheses are Assessor's numbers
BAYSHORE
WHEELER
AVE.
HOMANS
SUNNYVALE
VALLEY
LATHROP
BLANKEN
TRACT 1
TUNNEL
LOT No. 5
LOT No. 4
UPRR
JPB
SCHLAGE
LOCK
CROCKER
ESTATE
COMPANY
51205
EVATT
HART
HOMESTEAD
VISTACION
FORMER TEMPLE ST.
FORMER TOBIN
STATE
RAYMOND
LELAND
VISITACION
SUNNYDALE
SAN FRANCISCO
SAN MATEO
FOR DETAILS IN THIS
= UPRR OWNERSHIP
= 20' ROADWAY F187 IM524 NO. 2
= SIGNAL CABINET F145 IM524 NO. 2
= 20' INGRESS/EGRESS D55 IM527
= MILL & SVC TRACKS F187 IM524 NO. 2 AND 3
EASEMENTS TO SPRR
SPRR
UP0066

EXHIBIT 16

EXHIBIT
72 Krantz, R., 5/20/21
exhibitsticker.com

Fw: RE: UPRR Sheds---Former Schlage Lock Property, San Francisco
Robert M. Krantz to: jscharfman 11/19/2014 11:42 AM
Cc: hpearce
Bcc: Chris D. Goble, Pat R. McGill

Hi Jonathan. In response to your recent voice message, UPRR has issued a PSA to our proposed Buyer. In terms of a potential meeting, as I anticipate getting under contract in the near future, it would make sense to defer meeting until we are in contract. This way, our Buyer, who has a vested interest in any discussions, can participate. I will get a hold of you when I know more. Thank you.

Robert M. Krantz, Director-Real Estate
Union Pacific Railroad
2603 Camino Ramon, Suite 200
San Ramon, CA 94583

Direct: 925-242-2100
Fax: 925-248-0301
Email: rmkrantz@up.com

---- Forwarded by Robert M. Krantz/UPC on 11/19/2014 11:32 AM ----

From: Robert M. Krantz/UPC
To: jscharfman@universalparagoncorp.com
Cc: hpearce@universalparagoncorp.com
Date: 09/18/2014 05:31 PM
Subject: Fw: RE: UPRR Sheds—Former Schlage Lock Property, San Francisco

Jonathan, I appreciate Howard's re-forwarding the Tentative Map sent in March and the most recent set sent on 9/16/14.

I was caught by surprise when we spoke on the phone the other day when you first mentioned the retaining wall shown in your T Map. This is the retaining wall that will replace the existing, smaller retaining wall on site today, which new wall will be much larger and run the entire length of the boundary between your property and ours. You seemed surprised that I was not aware of the extent of the new retaining wall, and seemed to think that from a review of your T Map Grading Plan, it would have been obvious and that UPRR would have engaged an engineering company to have reviewed your maps. Your T Map from March does not clearly delineate the retaining wall nor does it show that the wall runs the entire length of our Property. The heavy black line in the grading plan drawing is also a much more extensive property boundary line. There is a notation on the map regarding a retaining wall, but it has only one arrow to the thick black line at a point further north and does not depict the extent of the length of the wall accurately. The length of the retaining wall is much more clearly depicted in the attached print Howard supplied the other day which is colored. It would not be a normal course for UPRR to hire an engineering firm to review your maps, especially when at the time I received them, I did not know how imminent your development was in terms of approval. Also, over the past few years, the railroad had not been consulted by your firm nor by the City on the proposed development of your site and itsT Map, the planned zoning and GP change to our Property, nor on your environmental remediation plan. I first found out the other day that your site remediation involves the import of large quantities of fill to raise the elevation of your property (and proposed internal streets) in relation to our Property. There was ample opportunity when we met on-site months ago and in subsequent conversations when you wanted to address our existing access easement and your internal street layout, to mention how your property would be developed and the grade differential in relation to our land. When one is on site today, our Property from mid point to the most southerly end, is mostly at grade with your land, so one would be hard pressed to understand what the vision is for your property unless someone walked them through it at some length, which has never been done for me. As a result of this new information, UPRR will be engaging a property

EXHIBIT 72

engineering firm to review your Tentative Map. We would also need to see any other relevant plans you may have such as a drainage plan. We will need to see this to know how your property drains in relation to ours. I would let our engineer also advise what additional information might be needed for review. I will provide as needed, the information that Howard sent (rec'd yesterday morning.) on a CD-ROM re. the Infrastructure Plan, and Streetscape and OS Master Plan.

With all of the above being said regarding the grade differential, I appreciate your thoughts the other day on how our land could be developed. This may be viable but much more analysis will need to take place. I have explained the grade differential and retaining wall matter to our proposed buyer. I believe they may be able to work with a proposed development scenario as discussed the other day (i.e. garage and/or storage below with residential above). We are not yet under contract and this is some weeks off yet, but once we are at that point, you will be hearing from our proposed buyer. In terms of the retaining wall itself, I am not sure if you have specific construction details for that wall. Feedback I have received is such that neither the retaining wall nor its footings should encroach onto UPRR's property. This seems obvious of course, but sometimes material things like this can be overlooked. Also, the structural engineer should allow for some seismic drift in the retaining wall layout (which requires a approximately 1' separation between the back side of the retaining wall and the property line). I imagine there will be many more specific comments as things progress.

Concerning the access easement and other easement rights that inure to the benefit of UPRR and its Property, at some juncture, it may be appropriate to discuss possible quitclaim of these easements. However, consideration of doing so must make sense to UPRR and/or our proposed buyer (should they then own the land). Right now, the access easement particularly is critical in order to get to our Property and will be needed for quite some time until our Property is developed. If there are issues concerning development of our Property, then the access easement will be critical for UPRR to retain. Ultimately, there may be something that might be worked out between Universal and our proposed buyer that might make sense for joint use of internal roadways you might construct or use of other access points in exchange for the quitclaim of the easements. Until there is a project that might be approved for UPRR's property, I cannot imagine a scenario at this point where we would willing to quitclaim these property rights in the near term. In terms of utilizing UPRR's Property for a lay down area for your construction, UPRR or the buyer may be willing to discuss this at some point, Specific details would be needed in terms of the exact proposed use of our Property and what equipment and/or materials would be stored on our Property for more detailed consideration. No contaminated soils would be allowed on UPRR's property for storage. Please note that any utilization of UPRR's property in relation to your project is strictly prohibited unless and until some sort of agreement might be worked out. This should not be constructed as a contract or commitment by UPRR to relinquish its easement rights or to enter into an agreement for the use of UPRR's property.

Regards,

Robert M. Krantz, Director-Real Estate
Union Pacific Railroad
2603 Camino Ramon, Suite 200
San Ramon, CA 94583

Direct: 925-242-2100
Fax: 925-248-0301
Email: rmkrantz@up.com

[attachment "San Francisco Schlage Lock BKF Map Retaining Wall Depiction.pdf" deleted by Robert M. Krantz/UPC]

Howard Pearce Robert - I am resending you the Tentative Map a... 09/15/2014 06:24:52 PM

From: Howard Pearce <hpearce@universalparagoncorp.com>
To: "Robert M. Krantz" <rmkrantz@up.com>
Cc: Jonathan Scharfman <jscharfman@universalparagoncorp.com>

EXHIBIT 17

EXHIBIT
73 Krantz, R., 5/20/21
exhibitsticker.com

Fw: Schlage Lock Tentative Map PID 7182 and Tuntex Deed
Robert M. Krantz to: pmcnerney 12/15/2014 01:07 PM
Cc: charney

Hi Patrick, below are a string of emails with the City of San Francisco Public Works Dept. staff concerning the Schlage Lock Tentative Map, and requests we have made to the DPW pertaining to that map. I have attached three letters that accompanied the emails below, the first being a letter to Robert Hanley on 10/1/14 with comments regarding the T Map and the overall development plan and its impact on UPRR's Property. The second letter is Bruce Storrs' 10/20/14 response to my first letter. The third letter is a 10/27/14 reply to Mr. Storrs's 10/20/14 letter requesting that the City not approve the T Map without dedicated vehicular access to UPRR's Property. City of San Francisco Planning Dept. Staff was copied on both UPRR letters so that they are aware of the situation in regard to the Schlage Lock development and impact on UPRR's Property.

I believe you will find this correspondence with the DPW to be useful and makes known the railroad's opinion regarding the proposed Tentative Map and protects ours and what would be your position likely in a proposed purchase and what happens with the Schlage Lock/UPC Tentative Map.

Additional information that will be helpful to you is the attached deed from the sale by Southern Pacific Railroad of its former 500 acre Bayshore railroad yard to Tuntex in 1991. This deed reserves the various easements that would be conveyed to you in the sale of the Property and as reflected in the PSA. UPC, as the successor to Tuntex, needs to have these easements quitclaimed to them in order to be able to start construction of their development as I had mentioned to you last week. I had met with Jeffrey Brooks and Brad Mooney of Bayside Development as you know on 12/5/14 (previously emailed you their business cards), and this information was conveyed to me at that meeting.

I wanted to get this information to you as it pertains to the Property.

Regards,

Robert M. Krantz, Director-Real Estate
Union Pacific Railroad
2603 Camino Ramon, Suite 200
San Ramon, CA 94583

Direct: 925-242-2100
Fax: 925-248-0301
Email: rmkrantz@up.com

San Francisco Schlage Lock Letter to Rober Hanley.pdf

San Francisco Schlage Lock Storrs 7182 response to UPRR 10-20-2014.pdf

San Francisco Schlage Lock Letter to Bruce Storrs.pdfSan Francisco Schlage Lock Tuntex Deed DA 67700.pdf

---- Forwarded by Robert M. Krantz/UPC on 12/15/2014 11:57 AM ----

From: "Hanley, Robert" <Robert.Hanley@sfdpw.org>
To: "Robert M. Krantz" <rmkrantz@up.com>
Cc: "Mabry, Paul (DPW)" <paul.h.mabry@sfdpw.org>, "Storrs, Bruce" <Bruce.Storrs@sfdpw.org>
Date: 11/26/2014 11:01 AM
Subject: RE: Schlage Lock Tentative Map PID 7182

EXHIBIT 73

UNION PACIFIC RAILROAD COMPANY
REAL ESTATE DEPARTMENT

2603 Camino Ramon, Suite 200, San Ramon, CA 94583
(925) 242-2100 · Facsimile (402) 501-0340 · rmkrantz@up.com

R. M. Krantz
Director, Real Estate

October 1, 2014

In reply, please refer to:
San Francisco-Schlage
Folder No. 1567-58

Via Email and UPS Air

Mr. Robert Hanley
Department of Public Works
Office of the City and County Surveyor
1155 Market Street, 3rd Floor
San Francisco, CA 94103

RE: Tentative Map Application
Visitacion Valley Redevelopment, Zone 1
Universal Paragon Corporation (Schlage Lock Site)

Dear Mr. Hanley,

This letter will constitute comments from Union Pacific Railroad ("UPRR") on the above-referenced tentative map application to subdivide land, which for convenience will be referred to as the UPC Site. I have also copied on this letter, City of San Francisco Planning Staff concerning other remarks herein regarding land use.

UPRR owns a parcel of land (the "UPRR Land") just east of the northerly portion of the UPC Site. The UPRR Land totals approximately 1.2 acres, and is between the UPC Site and the JPB parcel to the east (which was sold by UPRR to the Joint Powers Board for railroad use). The UPRR Land is illustrated on the attached aerial depiction (Exhibit "A").

For reference purposes, the UPRR Land is also shown on the "Existing Conditions Plan," sheet C2, of the proposed Tentative Map, also attached hereto. Also shown on sheet C2 are several existing easements for access to the UPRR Land from the south and west that run from the southwest corner of the UPC Site. Sheet C2 of the Tentative Map plan set suggests that these easements are either "to be abandoned" or "to be quitclaimed." In this letter I will refer to these easements collectively as the "UPRR Access Easements."

UPRR and City Staff engaged in communications earlier this year when it appeared that the UPRR Land was to be included as part of the UPC Development Agreement as though it were owned by the applicant. My understanding of the result of these conversations was that the UPRR Land was excluded from the Development Agreement and references in the Design for Development and the Open Space and Streetscape Master Plan were changed to remove any references that the UPRR land was part of the UPC development. In this same regard, the City

no longer proposed to change the zoning on the UPRR Land from its current M-1 designation, which would potentially allow both industrial and residential uses. As a result of these communications, the City acknowledges that the UPRR Land is a developable piece of property.

In light of these discussions we are disappointed to note the continuing depiction of the UPRR Land in the June, 2014 revisions to both the "Visitacion Valley Schlage Lock Design for Development" and the "Visitacion Valley Schlage Lock Open Space and Streetscape Master Plan" as the major constituent of the Blanken Park open space, and potentially including such neighborhood amenities as a dog run and a community garden. Though the depiction of the UPRR Land was changed to no longer show it all as open space and includes a depiction of a building diagram to illustrate potential residential development, the majority of the illustration shows most of the UPRR Land as open space. A footnote on page 23 of the Design for Development document does say: **"Building footprint is conceptual and symbolizes development potential on UPRR parcel. Final use and/or building form on parcel numbers 5087/004 and 5087/005 require further planning with property owners. The Blanken Park alternative pictured in many maps in this document does not preclude other uses allowed as-of-right or with conditional use by underlying zoning."**

While we appreciate this cautionary language, we are concerned about the repeated depiction of the UPRR property as open space. The "building footprint" referred to above in the plan on page 23 of the Design For Development is grossly undersized and does not represent any normal development potential for the UPRR Land. We were assured from discussions with Planning Staff that the building footprint and any potential open space component on the UPRR Property could be different than depicted, dependent on subsequent discussions regarding a proposed development plan. Based on these discussions, UPRR will expect that ultimate development of the UPRR Land will contain a larger building envelope than shown.

We have specific objections to the proposed UPC Tentative Map because it does not appropriately recognize the development potential of the UPRR Land. Our comments on the proposed UPC Tentative Map are as follows:

1. UPRR has no plans to either quitclaim or abandon the UPRR Access Easements. Thus, there is no factual support for the statements on the Tentative Map application that these easements will be quitclaimed or abandoned. Doing so would effectively landlock the UPRR Land. There is no road access to the UPRR Land from the north due to the large grade separation caused by the railroad tunnel and the elevation of Blanken Avenue.

2. While the UPC Site and the UPRR Land are not being proposed for concurrent development, good planning should require that the UPC Tentative Map include an appropriate roadway network that will allow access to the UPRR Land from Bayshore Boulevard, assuming that the City believes that the UPRR Access Easements will be quitclaimed or abandoned. The

proposed Tentative Map does not show any such access. Although two streets, Leland Avenue and Raymond Avenue, are shown as ending at Street A along the western border of the UPRR Land, it does not appear that either one of these is intended to furnish access to the UPRR Land. Raymond Avenue is many feet above the grade level of the UPRR Land. Leland Avenue, in the raw property configuration is closer to the grade of the UPRR Land, but apparently the Tentative Map proposes extensive fill at that area, which would create a large grade separation. The existence of the separation is further emphasized by the proposed retaining wall, which is indicated on the grading plan (Sheet C4) as being from 16 to 28 feet high. There is an existing retaining wall shown on the map covering roughly the northerly half of the western boundary of the UPRR Land, but the retaining wall for the southern half would be new. A copy of sheet C4 is attached that clearly depicts the existing and the proposed retaining wall, which drawing was only very recently provided to UPRR by UPC. It is understood from recent discussions with UPC that the existing retaining wall will be removed and a new, much more extensive and higher retaining wall will be constructed as mentioned above which borders the entire western boundary of the UPRR Land. We were surprised by this recent revelation by UPC and expect perhaps that the City of San Francisco may not have been fully aware of this situation and the extent of the proposed retaining wall.

There is an apparent access shown at the very southwest corner of the UPRR Land, but this appears to be pedestrian only access from a sidewalk. Because of the existing and proposed grades, the UPC Tentative Map property must be designed in a manner that allows for convenient vehicular access over public streets to the southern portion of the UPRR Land that also allows vehicular access into the property due to the grade separation. Without such alternative access that is acceptable to UPRR, UPRR will have no choice but to continue using its existing access easements that will impair development of the UPC Site.

3. The retaining wall that is mentioned in the preceding paragraphs will have a large potential impact on the developability of the UPRR Land. As stated above, the southerly portion of the UPRR Land is currently close to the existing grade of the UPC Site. Allowing the amount of fill and the construction of the retaining wall that is proposed for the UPC Site will effectively put the UPRR Land in a "hole," thus impairing not only access but also overall developability.

In summary, while we appreciate the fact that the UPRR Land is no longer included as an active part of the subdivision, the exclusion of our property appears to have been implemented in a manner that is not consistent with good planning and will seriously impair the ability of the UPRR Land to be developed in a manner that could be complementary and beneficial to the overall development in the area. The UPC Tentative Map should be revised so that it appropriately recognizes and augments the developability of the UPRR Land.

I would be happy to provide any further information.

Very truly yours,

Robert M. Krantz
Director-Real Estate

w/enc.

cc: Emily Lesk, City of San Francisco (via email only)
Claudia Flores, City of San Francisco (via email only)
Chris Goble, Union Pacific, Omaha (via email only)
Pat McGill, Esq., Union Pacific, Omaha (via email only)
Andrew L. Faber, Esq. (via email only)



SCALE: 1" = 200'

LEGEND

U.P.R.R. RIGHT OF WAY

SALE AREA SHOWN
AREA 1.2 ACRES+-

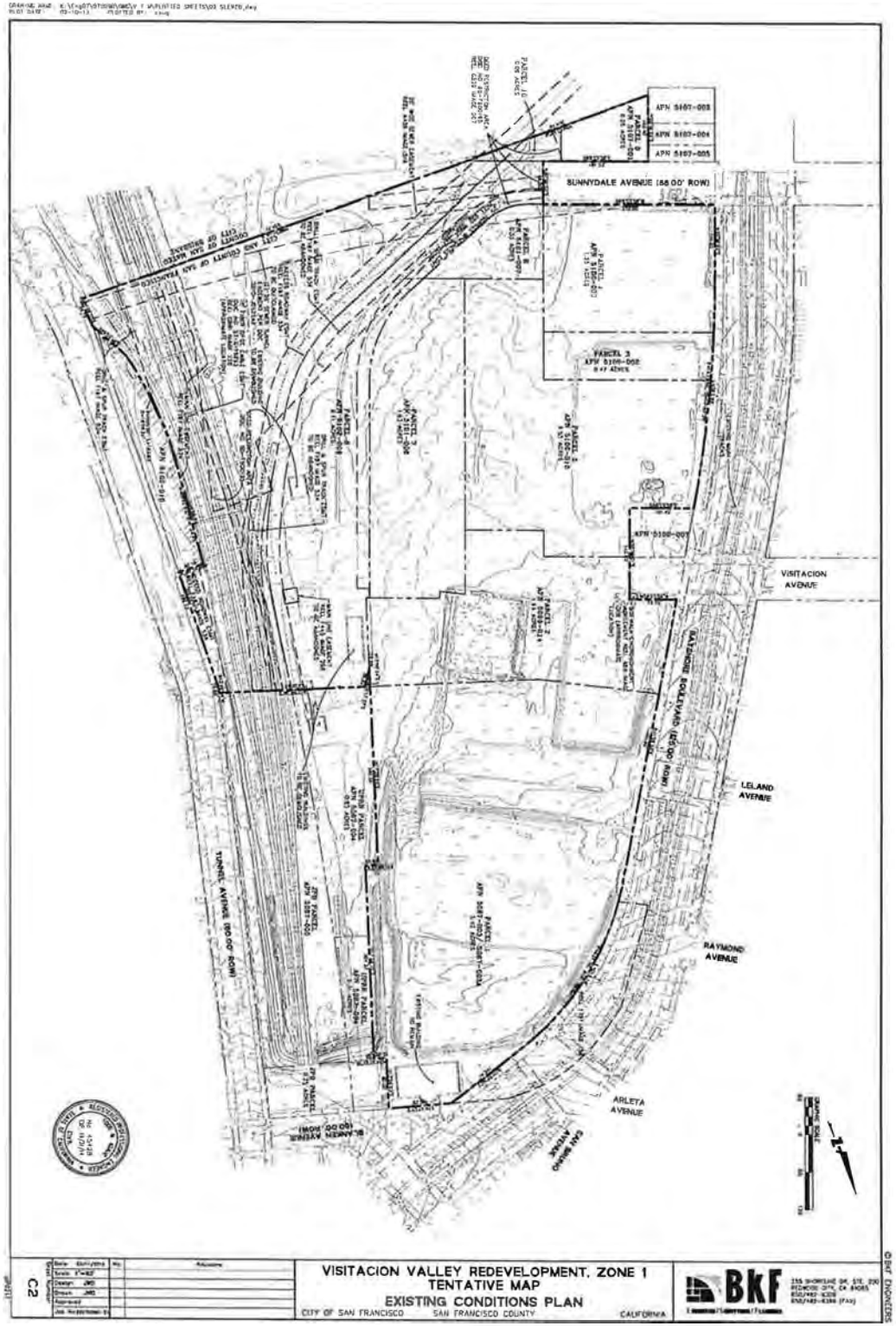
EXHIBIT "A"

UNION PACIFIC RAILROAD CO.

TO ACCOMPANY AGREEMENT WITH

SAN FRANCISCO, SAN FRANCISCO COUNTY, CA.
M.P. 5.0+- SAN FRANCISCO SUB.
SP CA V 2/6
REAL ESTATE DEPARTMENT OMAHA NE.
FILE #1567-58 DATE: 6-4-2014 T.D.A.

UP0216

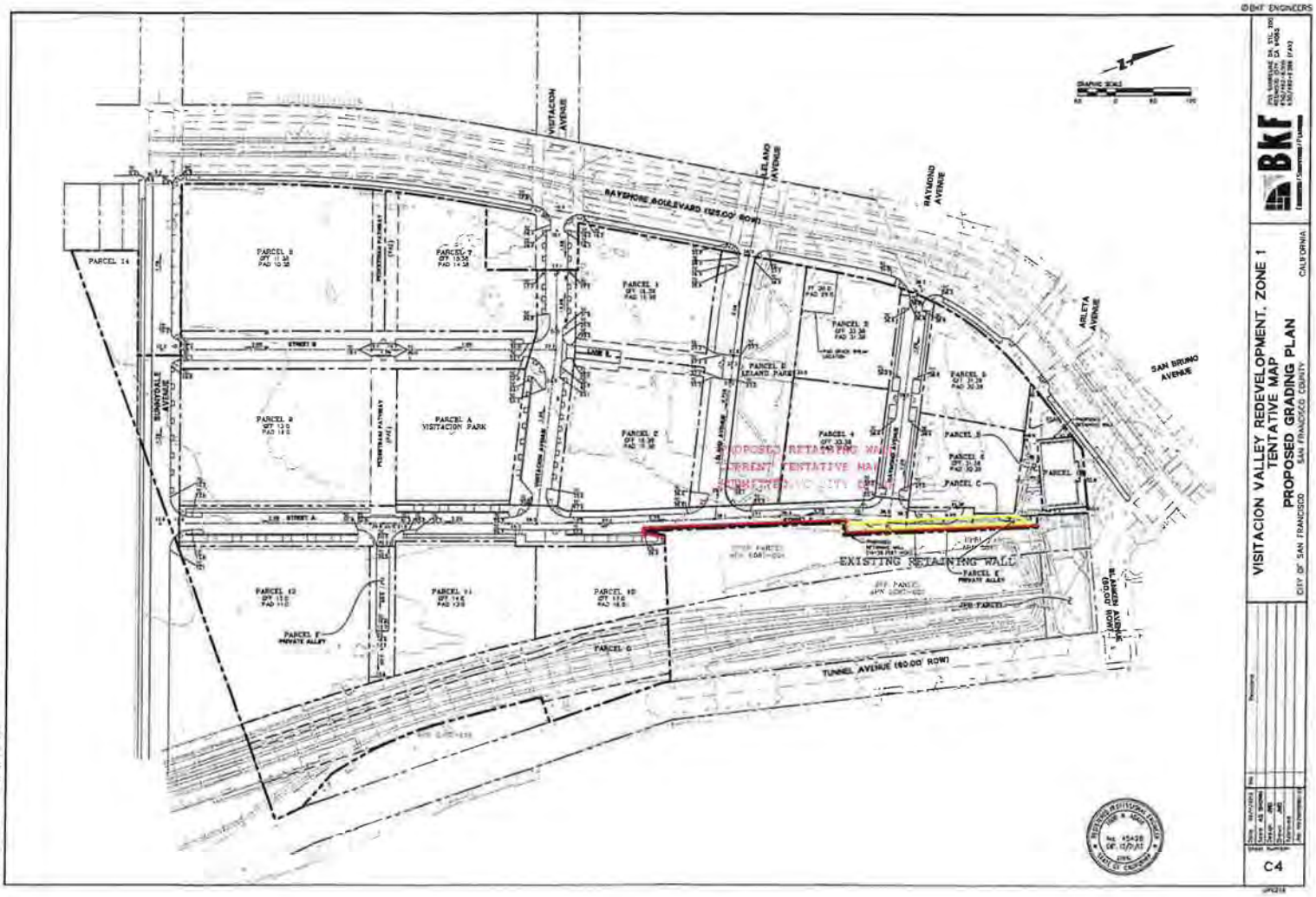


C2

VISITACION VALLEY REDEVELOPMENT, ZONE 1
TENTATIVE MAP
EXISTING CONDITIONS PLAN
CITY OF SAN FRANCISCO SAN FRANCISCO COUNTY CALIFORNIA

BKF ENGINEERS

©BKF ENGINEERS


©BKF ENGINEERS
VISITACION AVENUE
LELAND AVENUE
RAYMOND AVENUE
BAYSHORE BOULEVARD (125.00' ROW)
ARLETA AVENUE
SAN BRUNO AVENUE
BUNKERDALE AVENUE
PARCEL 14
PARCEL 8
PARCEL 7
PARCEL 1
PARCEL 2
PARCEL A
VISITACION PARK
PARCEL 3
PARCEL E
LELAND PARCEL
PARCEL 4
PARCEL 5
PARCEL 6
PARCEL B
PARCEL C
PROPOSED RETAINING WALL
CURRENT TENTATIVE MAP
EXISTING RETAINING WALL
PARCEL 12
PARCEL 11
PARCEL 10
PARCEL F
PRIVATE ALLEY
PARCEL G
PARCEL E
PRIVATE ALLEY
TUNNEL AVENUE (80.00' ROW)
BLANKEN AVENUE (80.00' ROW)
GRAPHIC SCALE
BKF
VISITACION VALLEY REDEVELOPMENT, ZONE 1
TENTATIVE MAP
PROPOSED GRADING PLAN
CITY OF SAN FRANCISCO
SAN FRANCISCO COUNTY
CALIFORNIA
C4

SAN FRANCISCO PUBLIC WORKS

Edwin M. Lee
Mayor

Mohammed Nuru
Director

Jerry Sanguinetti
Bureau of Street Use & Mapping
Manager

Bruce R. Storrs P.L.S.
City and County Surveyor

Bureau of Street Use & Mapping
1155 Market St., 3rd floor
San Francisco, CA 94103
tel (415) 554-5827
Subdivision.Mapping@sfdpw.org

sfpublicworks.org
facebook.com/sfpublicworks
twitter.com/sfpublicworks

Date: October 20, 2014

Robert M. Krantz, Director-Real Estate
Union Pacific Railroad Company
2603 Camino Ramon, Ste. 200
San Ramon, CA 94583

RE: Tentative Map Application, PID 7182
Universal Paragon Corporation (Schlage Lock Site)

Dear Sir:

We have received your letter dated October 1, 2014 and understand the concerns you raised regarding the proposed Schlage Lock development site adjacent to your property.

We believe that your concerns regarding continued access during and after development will be addressed through the following condition that the Department of Public Works will include in the approval of the tentative map application:

"Prior to the earlier of either Final Map Checkprint submission or issuance of a grading permit, Subdivider shall demonstrate to the satisfaction of the Director that any existing easements which might conflict with full build out of the project have been addressed in such a way that the entire project can be completed in accordance with the Development Agreement and this Tentative Map."

This condition will allow the development to proceed through other agency review and approvals while still preserving the requirement that access rights be separately negotiated to your satisfaction prior to site grading or conveyance of any resultant subdivision lots. Thank you for your interest in this project. If you have any additional questions or concerns, please call us at (415) 554-5827 or email at Subdivision.Mapping@sfdpw.org.

Thank you,

FOR

Bruce R. Storrs
City and County Surveyor
City and County of San Francisco

UNION PACIFIC RAILROAD COMPANY
REAL ESTATE DEPARTMENT

2603 Camino Ramon, Suite 200, San Ramon, CA 94583
(925) 242-2100 • Facsimile (402) 501-0340 • rmkrantz@up.com

R. M. Krantz
Director, Real Estate

October 27, 2014

In reply, please refer to:
San Francisco-Schlage
Folder No. 1567-58

Via Email and UPS Air

Mr. Bruce R. Storrs
City and County Surveyor
Bureau of Street Use & Mapping
City and County of San Francisco
1155 Market Street, 3rd Floor
San Francisco, CA 94103

RE: Tentative Map Application PID 7182
Visitacion Valley Redevelopment, Zone 1
Universal Paragon Corporation (Schlage Lock Site)

Dear Mr. Storrs

Thank you for your letter of October 20, 2014, addressing my letter to Robert Hanley of October 1, 2014, concerning the above-referenced subdivision. While we appreciate the language that is proposed to be added as a condition of approval, we do not feel that it satisfactorily addresses our access concerns with this subdivision.

You propose adding the following condition of approval: "*Prior to the earlier of either Final Map Checkprint submission or issuance of a grading permit, Subdivider shall demonstrate to the satisfaction of the Director that any existing easements which might conflict with full build out of the project have been addressed in such a way that the entire project can be completed in accordance with the Development Agreement and this Tentative Map.*"

While this language may be helpful, it focuses on build out of the UPC subdivision, rather than explicitly dealing with the issue of coordinated planning between the UPC subdivision and the UPRR Land and the question of providing access to the UPRR Land.

As described in more detail in my October 1, 2014, letter, access to the UPRR Land is severely constrained. On the east it is bordered by railroad tracks. To the north there is a severe grade change due to the railroad tunnel. To the west, the UPC subdivision proposes to erect a new retaining wall 16 to 28 feet high. The present UPRR access easements are only from the south, and this, considering the various grade changes, is the only logical place for public road access to the UPRR Land.

The UPC subdivision should be designed in a manner that provides for an obvious access to the UPRR Land from the south. Instead, the proposed plan only shows a pedestrian access from the new road called Street "A." Neither Leland Avenue nor Raymond Avenue, which traverse the UPC property from east to west are shown as connecting to the UPRR Land, and it would appear that they cannot be connected because of the grade differentials. Furthermore, the UPRR Land simply abuts parcel 10 of the map with no indication of public street access through Parcel 10.

So, in summary, it appears that your condition of approval may require some negotiation between UPC and UPRR over access, but the result of that negotiation would apparently require an amendment to the tentative map. We do not believe as a planning matter that it makes sense to approve a tentative map with a condition that, in effect, requires that it be amended to provide proper access to adjoining properties. Rather, proper planning would dictate that any subdivision should be designed in a manner to facilitate the orderly planning of the area in which it is located, including access to adjoining properties through the subdivision where necessary. We strongly urge that the UPC tentative map not be approved without a dedicated vehicular access over parcel 10 to the UPRR Land. Also, I would request that your proposed condition of approval more specifically state that UPC will not be issued a grading permit until such time that a satisfactory resolution is reached between UPC and UPRR (or any successor in interest) regarding the existing easements that UPRR holds on UPC's property and a satisfactory vehicular access point to the UPRR land over UPC parcel 10.

I would be pleased to discuss this further with you or to provide further information, and would welcome the opportunity to meet with you to discuss this matter.

Very truly yours.

Rob Krantz

Robert M. Krantz
Director-Real Estate

cc: Robert Hanley, City of San Francisco (via email only)
Emily Lesk, City of San Francisco (via email only)
Claudia Flores, City of San Francisco (via email only)
Chris Goble, Union Pacific, Omaha (via email only)
Pat McGill, Esq., Union Pacific, Omaha (via email only)
Andrew L. Faber, Esq. (via email only)

EXHIBIT 18

EXHIBIT
74 Krantz, R., 5/20/21
exhibitsticker.com

Fw: Blanken/ Tunnel Street Lot SF; UP Folder 2894-87
Robert M. Krantz to: pmcnerney 12/18/2014 06:31 PM
Cc: charney

Patrick, here is an email string regarding the use of the JPB and UPRR property over the tunnel. Access to UPRR's portion of the over tunnel area is over the JPB property off of Tunnel Avenue. The JPB tenant is Mr. Leonaudakis. His subtenant is M Squared Construction. Looks like the lease is being terminated and they will be gone sometime in January 2015. JPB terminated their lease with Mr. Leonaudakis due to complaints of noise and unsightly conditions and that the use was not consistent with their lease with the tenant. We had planned to initially get Mr. Leonaudakis under lease for the portion of UPRR's property he (his subtenant) was utilizing. However, as JPB is terminating the lease and will not be re-leasing the area over the tunnel, the encroachment onto UPRR property should be gone when the tenant/subtenant vacate.

Cindy Lee's contact information is below if you need it.

Robert M. Krantz, Director-Real Estate
Union Pacific Railroad
2603 Camino Ramon, Suite 200
San Ramon, CA 94583

Direct: 925-242-2100
Fax: 925-248-0301
Email: rmkrantz@up.com

Conv. w/ Patrick McNerney
He had some questions re. use of easements. Not sure last time trade easmt used. I used the access easement from Sunnydale in March 2014 when I met Scharfman & Howard Pearce. Not abandoned.
He thinks he can get 80 units. Mentioned discussions w/ Claudia Flores + willingness by City to cooperate.
R.M.K.
DEC 18 2014

—— Forwarded by Robert M. Krantz/UPC on 12/18/2014 06:24 PM ——

From:	"Lee, Cindy" <leec@samtrans.com>
To:	Austin Fearnow <afearnow@up.com>
Cc:	"rmkrantz@up.com" <rmkrantz@up.com>
Date:	11/25/2014 12:05 PM
Subject:	RE: Blanken/ Tunnel Street Lot SF; UP Folder 2894-87

Hi Austin,
The tenant has been given a notice to vacate by JPB/Caltrain.
He is scheduled to vacate by early January.
I will keep you posted on the progress.
Thanks, Cindy

From: Austin Fearnow [mailto:afearnow@up.com]
Sent: Monday, November 24, 2014 11:44 AM
To: Lee, Cindy
Cc: Robert M. Krantz
Subject: RE: Blanken/ Tunnel Street Lot SF; UP Folder 2894-87

Cindy-

Good afternoon. I wanted to follow up on our conversation from early October with regards to Mr. Leonaudakis and his lease in San Francisco. I believe you indicated the City was going to move forward with termination of his lease and request he remove all improvements/items from the property. Can you provide an update on the status of that process?

EXHIBIT 74

EXHIBIT 19

EXHIBIT
75 Krantz, R., 5/20/21
exhibitsticker.com

RE: 2201 Bayshore for Patrick McNerney

[redacted] Robert M. Krantz, David Phillips 01/09/2015 02:38 PM
Ward Taylor, "Anna C. Palmer", "WTaylor@ortc.com"

David,

Is your title department good with this? We have an exchange drop-dead date of January 21st to close this transaction. Let's plan on closing on the 20th. Please alert Old Republic exchange as well. Thanks.

[redacted]

www.martinbuilding.com

MARTIN BUILDING CO.

From: Robert M. Krantz [mailto:rmkrantz@up.com]
Sent: Thursday, January 08, 2015 2:15 PM
To: David Phillips
Cc: Julie Heinzler; 'Peter Bekey'; Patrick M. McNerney; Ward Taylor; Anna C. Palmer
Subject: RE: 2201 Bayshore for Patrick McNerney

David, UPRR will be conveying its property interests via Quitclaim Deed (vs. Grant Deed) as per the terms of the PSA. Thus, the larger sale property in fee and the easements in favor of UPRR, as shown in the attached Union Pacific aerial sale print, will be conveyed out in favor of Mr. McNerney. The sale property is benefitted by the access easement reserved in the 1990 deed from Southern Pacific to Tuntex. That particular easement was specifically reserved in that transaction, to allow continued access to the sale parcel, otherwise it would be landlocked. UPRR, as successor in interest to Southern Pacific, is able to convey its interest in the various easements reserved in the Tuntex deeds.

Robert M. Krantz, Director-Real Estate
Union Pacific Railroad
2603 Camino Ramon, Suite 200
San Ramon, CA 94583

Direct: 925-242-2100
Fax: 925-248-0301
Email: rmkrantz@up.com

EXHIBIT 75
UP0013

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST DISTRICT – DIVISION 2

Case No. A163550

VISITACION INVESTMENT, LLC, Plaintiff/Cross-Defendant & Appellant

v.

424 JESSIE HISTORIC PROPERTIES, LLC, Defendant/Cross-Complainant & Respondent

San Francisco Superior Court Case No. CGC-19-579667

JOINT APPENDIX

Volume 7 of 9, Pages 1817-1886 of 2428

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Robert R. Riggs (SBN 107684)
Stephen G. Preonas (SBN 245334)
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squan@steyerlaw.com

Attorneys for Defendant and Cross-Complainant
424 Jessie Historic Properties, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

VISITACION INVESTMENT, LLC, a California limited liability company,

Plaintiff,

v.

424 JESSIE HISTORIC PROPERTIES, LLC, a California limited liability company, all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the Complaint adverse to Plaintiff's title, or any cloud on Plaintiff's title thereto, and DOES 1 through 50, inclusive,

Defendants.

AND RELATED CROSS-ACTION.

Case No. CGC-19-579667

OBJECTIONS TO VISITACION INVESTMENT, LLC'S EVIDENCE FILED IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT OR, ALTERNATIVELY, SUMMARY ADJUDICATION

Date: June 10, 2021
Time: 9:30 a.m.
Dept: 501

Action Filed: October 1, 2019
Trial Date: July 12, 2021

Pursuant to California Rules of Court, Rules 3.1352 and 3.1354, defendant and cross-complainant 424 Jessie Historic Properties, LLC ("JHP") hereby objects to certain purported evidence of plaintiff and cross-defendant Visitacion Investment, LLC ("Plaintiff") filed in support of Plaintiff's Motion for Summary Judgment or, alternatively, Summary Adjudication.

OBJECTIONS TO DECLARATION OF STEPHEN G. PREONAS

OBJECTION NO. 1

Exhibit A – Plaintiff's Complaint

Grounds for Objection No. 1: JHP objects to this pleading because it is inadmissible. A party cannot rely on *its own* pleadings (even if verified) as evidence to support or oppose a motion for summary judgment or summary adjudication. *See College Hosp., Inc. v. Sup. Ct. (Crowell)* (1994) 8 Cal.4th 704, 720. Plaintiff is attempting to rely on its own Complaint as evidence against JHP, and the Complaint as against JHP is lacking in foundation, calling for speculation beyond the declarant's stated personal knowledge and amounting to hearsay not within any recognized exception. *See* Cal. Evid. Code §§ 401, 403(a), 702, 1200, 1271, 1561. It does not qualify as a judicial admission. In summary judgment or summary adjudication proceedings, admissions of material facts made in an *opposing party's pleadings* are binding on that party as judicial admissions; they are conclusive concessions of the truth of those matters, are effectively removed as issues from the litigation, and may not be contradicted by the party whose pleadings are used against him or her. *St. Paul Mercury Ins. Co. v. Frontier Pacific Ins. Co.* (2003) 111 Cal.App.4th 1234, 1248. Accordingly, Exhibit A is not admissible as evidence against JHP. Only admissible evidence may be used to oppose summary judgment. Cal. Civ. Proc. Code § 437c(d).

OBJECTION NO. 2

Exhibit G – Email from Jeff Lowenthal to Stephen Preonas dated January 20, 2021 and attached License Agreement

Grounds for Objection No. 2: JHP objects to this email and the attached License Agreement because it is inadmissible. The License Agreement is beyond the witness's stated personal knowledge and amounting to hearsay not within any recognized exception. *See* Cal. Evid. Code

§§ 401, 403(a), 702, 1200, 1271, 1561. It is also not authenticated. *See* Cal. Evid. Code §§ 1400, 1401. Accordingly, Exhibit G is not admissible. Only admissible evidence may be used to oppose summary judgment. Cal. Civ. Proc. Code § 437c(d).

OBJECTION NO. 3

Paragraph 13 – "Such maps are valuable for documenting changes in the built environment of American cities over many decades."

Grounds for Objection No. 3: JHP objects to this statement as it appears to be a purported expert opinion and is beyond the witness's stated personal knowledge and amounting to hearsay not within any recognized exception. *See* Cal. Evid. Code §§ 401, 403(a), 702, 1200, 1271, 1561. The declaration fails to lay the foundation for what was reviewed, where it was obtained and what specifically the witness relies on for the statement. *See Pacific Gas & Electric Co. v. Zuckerman* (1987) 189 Cal. App. 3d 1113, 1135-36 (expert opinion must be based on assumptions otherwise proven). The statement also amounts to speculation. *See* Cal. Evid. Code §§ 401, 403, 702; *see also* Cal. Evid. Code § 803 (upon objection, court shall exclude opinion testimony on matters not a proper basis for expert opinion). JHP also objects that the statement is irrelevant and inadmissible. *See* Cal. Evid. Code §§ 210, 350, 403. Only admissible evidence may be used to oppose summary judgment. Cal. Civ. Proc. Code § 437c(d).

OBJECTIONS TO DECLARATION OF GREG VILKIN

OBJECTION NO. 4

Paragraph 4 – "…Southern Pacific Railroad ('SP') which later merged with Union Pacific Railroad…"

Grounds for Objection No. 4: JHP objects to this statement as it is beyond the witness's stated personal knowledge and amounting to hearsay not within any recognized exception. *See* Cal. Evid. Code §§ 401, 403(a), 702, 1200, 1271, 1561. The declaration fails to lay the foundation for what was reviewed, where it was obtained and what specifically the witness relies on for the statement. *See Pacific Gas & Electric Co. v. Zuckerman* (1987) 189 Cal. App. 3d 1113, 1135-36 (expert opinion must be based on assumptions otherwise proven). Only admissible evidence may be used

to oppose summary judgment. Cal. Civ. Proc. Code § 437c(d).

OBJECTION NO. 5

Paragraph 8 – "…Patrick McNerney who manages JHP and purchased the JHP Property and then transferred it to JHP"

Grounds for Objection No. 5: JHP objects to this statement as it is beyond the witness's stated personal knowledge and amounting to hearsay not within any recognized exception. *See* Cal. Evid. Code §§ 401, 403(a), 702, 1200, 1271, 1561. The declaration fails to lay the foundation for what was reviewed, where it was obtained and what specifically the witness relies on for the statement. *See Pacific Gas & Electric Co. v. Zuckerman* (1987) 189 Cal. App. 3d 1113, 1135-36 (expert opinion must be based on assumptions otherwise proven). Only admissible evidence may be used to oppose summary judgment. Cal. Civ. Proc. Code § 437c(d).

OBJECTION NO. 6

Paragraph 13 – "There are no existing facilities at the termination of the Easements to connect hypothetical non-railroad communications lines and facilities in the Easements to anything. Such hypothetical connection lines would be a connection to nowhere. Furthermore, any such hypothetical communications lines would be buried below grade. There is simply no legitimate or economically feasible use of the Easements that involves stalling communications lines and facilities in the absence of a railroad."

Grounds for Objection No. 6: JHP objects to this statement as it appears to be a purported expert opinion and is beyond the witness's stated personal knowledge and amounting to hearsay not within any recognized exception. *See* Cal. Evid. Code §§ 401, 403(a), 702, 1200, 1271, 1561. The declaration fails to lay the foundation for what was reviewed, where it was obtained and what specifically the witness relies on for the statement. *See Pacific Gas & Electric Co. v. Zuckerman* (1987) 189 Cal. App. 3d 1113, 1135-36 (expert opinion must be based on assumptions otherwise proven). Only admissible evidence may be used to oppose summary judgment. Cal. Civ. Proc. Code § 437c(d).

OBJECTIONS TO DECLARATION OF HOWARD PEARCE

OBJECTION NO. 7

Paragraph 10 – "…Patrick McNerney who manages JHP."

Grounds for Objection No. 7: JHP objects to this statement as it is beyond the witness's stated personal knowledge and amounting to hearsay not within any recognized exception. *See* Cal. Evid. Code §§ 401, 403(a), 702, 1200, 1271, 1561. The declaration fails to lay the foundation for what was reviewed, where it was obtained and what specifically the witness relies on for the statement. *See Pacific Gas & Electric Co. v. Zuckerman* (1987) 189 Cal. App. 3d 1113, 1135-36 (expert opinion must be based on assumptions otherwise proven). Only admissible evidence may be used to oppose summary judgment. Cal. Civ. Proc. Code § 437c(d).

OBJECTION NO. 8

Paragraph 11 – "…Patrick McNerney who manages JHP."

Grounds for Objection No. 8: JHP objects to this statement as it is beyond the witness's stated personal knowledge and amounting to hearsay not within any recognized exception. *See* Cal. Evid. Code §§ 401, 403(a), 702, 1200, 1271, 1561. The declaration fails to lay the foundation for what was reviewed, where it was obtained and what specifically the witness relies on for the statement. *See Pacific Gas & Electric Co. v. Zuckerman* (1987) 189 Cal. App. 3d 1113, 1135-36 (expert opinion must be based on assumptions otherwise proven). Only admissible evidence may be used to oppose summary judgment. Cal. Civ. Proc. Code § 437c(d).

Dated: May 27, 2021

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SUPERIOR COURT OF CALIFORNIA - UNLIMITED CIVIL JURISDICTION

CITY AND COUNTY OF SAN FRANCISCO

VISITACION INVESTMENT, LLC Plaintiff, vs. 424 JESSIE HISTORIC PROPERTIES, LLC, et al., Defendants. AND RELATED CROSS-ACTION	Case No. CGC-19-579667 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION OF PLAINTIFF FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION OF ISSUES** Date: June 10, 2021 Time: 9:30 a.m. Dept: 501 Complaint Filed: Oct. 1, 2019 Trial Date: July 12, 2021

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INTRODUCTION

The Court should grant the cross-motion of plaintiff Visitacion Investment, LLC for summary judgment ("Plaintiff's MSJ").[1] Defendant 424 Jessie Historic Properties, LLC's ("JHP") opposition ("Opposition") does not dispute that any bona fide railroad use of its property ("the JHP Property") and the historic railroad easement ("the Railroad Easement") has long been terminated. JHP's predecessor in interest Union Pacific Railroad ("UP") discontinued such use, removed all railroad tracks, sold the JHP Property to a real estate developer and quitclaimed its interest in the Railroad Easement.

As matter of law, these undisputed facts, when repeatedly presented to courts in connection with the redevelopment of abandoned railroad easements, support the termination of such easements to allow for such redevelopment. With the approval of the City, plaintiff is developing its Visitacion Valley property ("the Visitacion Property") with one of the largest residential developments in San Francisco consisting of approximately 1,679 housing units ("the Visitacion Project"). There is no legitimate dispute of fact or law that defendant has seized on the Railroad Easement not for anything dealing with a bona fide railroad, but to interfere with plaintiff's Visitacion Project.

The Opposition completely misconstrues the law by asserting that the holder of an easement of record must consent to its abandonment. Obviously, a requirement of formal relinquishment is not, and cannot be, the law. Such an absurd rule would render meaningless established precedent of common law abandonment of deeded railroad easements without formal relinquishment. The Court should grant Plaintiff's MSJ.

[1] In reply to the Opposition, plaintiff incorporates its opposition to Defendant's MSJ and all of the supporting evidence, factual statements and argument in support thereof.

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ARGUMENT

A. The Opposition Fails to Raise Any Triable Issue of Fact That UP Abandoned the Railroad Easement Prior to Its Sale of the "Excess" JHP Property.

In its moving papers Plaintiff met its burden of production to demonstrate the absence of any trial issue of material fact as to its claims. (*Aguilar* v. *Atlantic Richfield* (2001) 25 Cal.App.4th 826, 861.) The undisputed facts demonstrate that all of the following factors that demonstrate abandonment of a railroad easement exist here: (1) removal of tracks; (2) nonuse; (3) ownership of the easement by a non-railroad; (4) physical alteration of the prior railroad use; and (5) economic infeasibility of railroad use.

Here, it is undisputed that any railroad tracks which once existed in the Railroad Easement have long since been removed, as has the freight claims office adjacent to the easement which was once used by Southern Pacific Transportation Company ("SPRR") after merging with Union Pacific Railroad (both collectively "UP") to support its rail operations. (Deposition of Robert Krantz ("Krantz Depo"), attached as Exhibit A to Declaration of Stephen Preonas in Opposition to Defendant's Motion for Summary Judgment, or Alternatively, for Summary Adjudication ("Preonas Opp. Decl."), 123:18 – 123:19, 125:11 – 125:19 & Exh. 70.) Such removal demonstrates abandonment. (*Ocean Shore Railroad Co*. v. *Doelger ("Doelger I")* (1954) 127 Cal. App. 2d 392, 403.)

UP conveyed the JHP Property and the Railroad Easement by way of a 2015 quitclaim deed to Patrick McNerney ("the 2015 Quitclaim Deed") only after it determined this property was an "excess" property no longer needed to support its railroad operations. (Plaintiff's Verified Complaint, Exh. 3; Krantz Depo, 19:6 – 19:9, 19:21 – 19:23; 50:4 – 50:6, 79:9 – 79:18, 80:11 – 80:14.) This included obtaining the approval of twelve different internal departments at UP. (*Id.*, at 117:15 – 118:9, 119:4 – 119:13.)

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In the 2015 Quitclaim Deed UP did not promise anything, other than to give up its own rights, and did not offer any warranties regarding the continued existence of the Railroad Easement. In fact, the deed specifically excluded the following components of the easement UP used to support its rail operations: (1) the mainline railroad running along the Bay Area Peninsula described in the 1990 Deed reserving the Railroad Easement as Schedule 1, Parcel No. 1 to the "Mainline Easement"; (2) Schedule 2, Parcel No. 1 containing an existing active railroad spur used by UP and (3) Schedule 3, Parcel No. 1 containing a roadway access along the east side of the mainline right-of-way. (*Id.*, 87:5 – 87:9, 87:19 – 87:25 & Exh. 2; Declaration of Howard Pearce in Opposition to Defendant's Motion for Summary Judgment, or Alternatively, for Summary Adjudication ("Pearce Opp. Decl."), ¶ 7 – 8 & Exh. A.)

The fact that defendant is a real estate developer, does not operate a railroad and performed substantial acts to develop the JHP Property for non-railroad purposes also supports abandonment. (*Ocean Shore Railroad Co. v. Doelger ("Doelger II")* (1960) 179 Cal.App.2d 222, 228.) Furthermore, the fact that use of the Railroad Easement has become physically impossible due to a barrier fence which the affirmative "Fence Covenant" in the 2015 Quitclaim Deed required JHP and its predecessor to construct, supports abandonment here. (*Doelger II* 179 Cal.App.2d at p. 229; Complaint, Exh. 3.)

Economic infeasibility of any continued use of the right of way for railroad purposes also supports abandonment as it does here. (*Doelger I*, 127 Cal.App.2d at pp. 402-03 (economic infeasibility found where the railroad operation was discontinued for more than 14 years and changed circumstances indicated that railroad service was not viable.)

In sum, the undisputed facts demonstrate that all of these factors all weigh massively

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in favor of a finding of abandonment.

The Opposition fails to contradict the undisputed abandonment of any railroad use of the Railroad Easement by grossly mischaracterizing the nature and extent of the limited use of the JHP Property by Proven Management, Inc. ("Proven"). Contrary to what is alleged without evidentiary support in the Opposition, Proven does not currently license the JHP Property to support railroad construction work and never did.

Rather, Proven's brief license involved the parking of personal vehicles on the JHP Property, and not any railroad use. (Declaration of William Gilmartin attached as Exh. B to Preonas Opp. Decl. ("Gilmartin Decl."), ¶ 5, 7 & Exh. 1.) Proven used the JHP Property for less than three months only for parking light vehicles (cars and pickup trucks) that Proven owned or that were the personal vehicles for Proven's workers and subcontractors. Proven did not perform any construction on the JHP Property. Proven workers and subcontractors accessed the JHP Property by using an unpaved road across the Visitacion Property that was ***outside*** the Railroad Easement. (*Id.*, ¶ 8 & Exh. 2.) Proven, and its workers and subcontractors, did not use the Visitacion Property to operate, maintain, repair or otherwise use any railroad equipment, spur track, or switching station. (*Id.*, ¶ 7.)

Likewise, the Opposition fails to demonstrate any railroad use of the Railroad Easement in referencing the March 2, 2016, Temporary License Agreement between plaintiff and McNerney as the then-owner of the JHP Property ("the Temporary License"). The purpose of the Temporary License was to provide Visitacion access to the JHP Property to construct of a retaining wall along the boundary line of the Properties. (Pearce Opp. Decl., ¶ 9.) In entering into the Temporary License, Visitacion did not intend to alter the rights of the parties regarding the Easements, including the right of Visitacion to seek

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to quiet title in them. (*Id*.) Section 1 of the License explicitly states that the License "does not amend or waive any rights of the parties under the RR Easements" including the right of Visitacion to seek to quiet title in them based upon their non-use and abandonment. Section 14 of the license prohibits either party from recording the document. The Court should reject the unreasonable construction of the Temporary License Agreement in the Opposition that this agreement somehow "confirmed' the perpetual existence of the Railroad Easement to be used for any conceivable commercial purpose. The agreement simply acknowledged that easement appears in the chain of title and that the parties did not desire for this agreement to alter their rights with respect to the easement.

B. The Court Should Reject the Fanciful Argument in the Opposition That the Clearly Denominated "Form of Railroad Easement" is, in Reality, a Series of Discreet Easements Granting Rights to Use the Railroad Easement for Any Conceivable Commercial Purpose.

Unable and unwilling to address the substantial authority regarding the abandonment of unused railroad easements, the Opposition improperly attempts to characterize the clearly denominated "Form of Railroad Easement" as a series of discreet easements that support any conceivable commercial use in perpetuity.

The Railroad Easement can only be understood as the grant of a railroad easement characterized as "the right to own, operate, maintain, repair, lease, license, and/or remove existing and/or future railroad, rail, and railroad related equipment and facilities." (Complaint, Exh. 1.) It is utter nonsense to recharacterize this easement as a series of separate easements supporting any conceivable commercial use separate from railroad use.

The 2015 Quitclaim Deed unmistakably indicated the railroad purpose of the Railroad Easement in denominating Schedule 1, Parcel No. 2 as a "(Signal Cabinet Area)." A signal cabinet is a unique piece of railroad equipment, and it is preposterous to interpret

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the signal cabinet area as supporting a non-railroad use. (Krantz Depo, 139:22 – 141:10.) Likewise, the Railroad Easement enumerates several ancillary aspects, including provisions deal with "Rail Crossings," which patently are directed to railroad use.

The Opposition does not support this fanciful interpretation of the Railroad Easement with any legitimate evidence. The foundation of this interpretation is the deposition testimony of UP's PMK, who admitted he was not involved in any way with the 1990 reservation of the Railroad Easement and had no personal knowledge regarding the transaction. (Supplemental Excerpts of Deposition of Robert Krantz ("Supp. Krantz Depo"), 22:1 – 22:7, 76:23 – 77:17 attached as Exhibit A to Declaration of Stephen Preonas in Reply to Opposition to Plaintiff's Motion for Summary Judgment ("Preonas Reply Decl."). Krantz is incompetent to testify as what UP intended at the time of 1990 Deed.

Furthermore, even assuming he had personal knowledge, Krantz contradicted JHP's interpretation of the Railroad Easement as creating rights outside of railroad use as follows:

> Q. And the nonexclusive easement for the access roadway is separate and apart from any railroad use, correct?
>
> A. Not necessarily. It was used to access the property sold to Patrick, but directly abutting the access road is this rail easement. So that access road would allow, at the time, Southern Pacific forces, meaning employees, to use that nonexclusive access road to maintain the railroad tracks and the abutting easement area.

(Supp. Krantz Depo., 39:11 – 39:20.)

The Court should reject the wholly unsupported assertion in the Opposition that UP is in fact also telecommunications firm that used the Railroad Easement for stand-alone telecommunications purposes. The Opposition provides no evidence to support this contention. In fact, the record is very clear that are no communications lines or facilities anywhere in the Railroad Easement, that UP has no record of the presence of any such

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equipment and that UP could not recall the last time such equipment was present in the easement. (McNerney Depo, 38:1 – 39:22; 69:22 – 69:24, 180:13 – 181:25 & Exh. 22; Declaration of Howard Pearce in Support of Plaintiff's MSJ ("Pearce Decl."), ¶ 13 – 15 & Exh. D; Krantz Depo, 98:8 – 98:18, 108:21 – 110:17.)

The Court should likewise reject the grossly misleading assertion in the Opposition that UP was ever a stand-alone telecommunications company. In fact, when UP purchased SP in 1997, SP explicitly did not convey its telecommunications arm, "SP Telecom", to UP and did not retain any rights to use the Railroad Easement for telecommunications purposes. (Supp. Krantz Depo., 71:19 – 72:3, 99:2 – 100:1; 101:15 – 101:23.) This fact further indicates that, even assuming there was at some point hypothetical stand-alone telecommunications use of the Railroad Easement, for which there is zero evidence on the record, such use was explicitly abandoned in 1997.

The Court should reject the contention in the Opposition that the Railroad Easement includes a separate roadway access supporting any commercial use because the JHP Property is otherwise landlocked. JHP's principal confirmed that use of the Railroad Easement is not the exclusive means to access the JHP Property, but only "the most economically feasible access to the JHP Property." (Decl. of McNerny in Opp. to Plaintiff's MSJ, ¶ 13.) The JHP Property abuts Tunnel Avenue and is not landlocked.

The Opposition fails to support its absurd interpretation of the Railroad Easement by referencing the mere presence of a "GTE-Sprint Conduit" adjacent to the JHP Property on a 1989 map. The Opposition provides no evidence of what this "GTE-Sprint Conduit" is and if and how it was used in connection with the JHP Property. The only evidence on the record is UP confirming that there is no record of any telecommunications use of the

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JHP Property or any such related equipment in the Railroad Easement at any time.

Furthermore, the unreasonable construction of the Railroad Easement in the Opposition is contrary to the rule that the doctrine of abandonment pertains to rights ancillary to the railroad easement itself. Railroad easements also involve ancillary property rights such as the right to maintain access and support facilities. (E.g., *Doelger I*, *supra,* 127 Cal.App.2d at p. 395; *Nevada Irrigation Dist. v. Keystone Copper Corp.* (1964) 224 Cal.App.2d 523, 524 & n.1 (mining rights).) Abandonment of the principal railroad easement abandons the ancillary easement, as well. (See, e.g., *Doelger II*, *supra,* 179 Cal.App.2d at pp. 234-35.) Abandonment of the railroad easement terminates all of the ancillary easements and servitudes, as well. (*Brandt Trust v. United States* (2014) 572 U.S. 93, 104-05, citing Restatement (Third) of Property, Servitudes § 1.2 (1998).)

The Court should reject the attempt in the Opposition to broadly misconstrue the Railroad Easement as an easement for any commercial purpose. The Opposition does so without any evidentiary support and solely to improperly dissuade this Court from applying the established line of railroad easement abandonment cases that support termination of the Railroad Easement based upon the undisputed facts. The Court should grant the motion.

C. The Court Should Reject the Absurd Contention That Abandonment of the Railroad Easement Requires the Consent of UP and JHP.

The Opposition completely misstates the law in alleging that defendant can avoid termination of the Railroad Easement because neither defendant nor UP agrees it was abandoned. The apposite authority does not require formal relinquishment. Such an absurd rule would render meaningless over 100 years of precedent establishing common law abandonment of deeded railroad easements in the absence of formal relinquishment.

The Opposition mistakenly relies on *Ocean Shore RR Co*. v. *Spring Valley* (1927)

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87 Cal.App. 188, 191-92 to support this incorrect position that UP's subjective intent to retain the Railroad Easement, because it was a potentially valuable asset, is dispositive here. This case has not been followed on this point and is refuted by *Ocean Shore Railroad Co*. v. *Doelger ("Doelger I")* (1954) 127 Cal. App. 2d 392, 401.)

Doelger I held that, in the same basic fact situation as here, where a railroad company abandoned the use of its railroad, tore up and removed its tracks, attempted to convey the land to others to be dedicated to other purposes, it abandoned its right of way. Under this apposite authority, the self-serving statements of UP and defendant that they intended to retain the Railroad Easement because it had value, even in the absence of any bona fide railroad use, does not prevent abandonment.

More generally, in the authority supporting the abandonment of railroad easements, the holder of the easement (either the railroad itself or its successor in interest) has disputed that it intended to abandon the easement, as defendant and UP do here. Yet, these decisions routinely hold that such easements have been abandoned over any above the objections of the easement holders. *Spring Valley* specifically holds that the intention to abandon can be inferred in part by "the outward and public acts of the owner." (*Id*. at 192.)

Here, the undisputed acts of UP and defendant demonstrate an unequivocal intent to abandon any railroad use of the Railroad Easement. Under that apposite authority, the belief of UP and defendant that the easement had value, even in the absence of railroad operations and which they desired to retain, does not prevent abandonment of the easement. *Doelger I* held that the railroad easement had been abandoned without any mention as to whether the railroad ever intended to give up its financial claims about the easement.

Furthermore, *Spring Valley* actually supports a finding of abandonment based upon

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the special treatment of railroad easements under the common law. This case held that "rights of way granted to common carriers and other public utilities are servitudes in gross as distinguished from easements." (*Id.* at 191.) Under the "common law a servitude in gross attached to a person and not to a dominant tenement" and "were not assignable."

Thus, the principal authority relied upon in the Opposition explicitly holds that UP, as a common carrier, retained the Railroad Easement as an easement in gross which was "not assignable" to McNerney by way of the 2015 Quitclaim Deed. This longstanding rule restated in *Spring Valley* supports the finding of abandonment here.

Also misleading and inapposite is the citation in the Opposition to *Cottonwood Duplexes, LLC* v. *Barlow* (2012) 210 Cal.App.4th 1501, holding that an easement cannot be extinguished by the ***servient*** owner's unilateral acts. Here, plaintiff asserts that acts of the owner of the ***dominant*** estate, *i.e.*, UP, resulted in an abandonment of the easement. Furthermore, *Cottonwood* involved a very general utility easement, one that is less likely to be held abandoned by non-use than the special class of railroad easement at issue here.

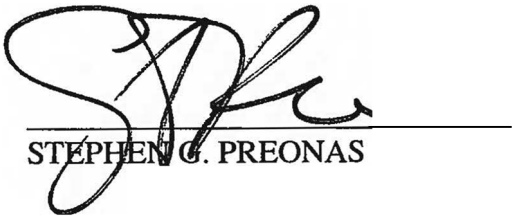
CONCLUSION

Defendant's only true "intent" with respect to the Railroad Easement is to attempt to leverage its existence in the chain of title to derail the Visitacion Project and cynically extract an unreasonable payment from Visitacion. The Court should reject defendant's fanciful contention that the Railroad Easement, is in reality, a series of discreet easements that support use for any commercial purpose and its absurd assertion that it must consent to the abandonment. There is no dispute that any railroad use has long been terminated. The Court should grant Plaintiff's MSJ.

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Dated: June 4, 2021

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SUPERIOR COURT OF CALIFORNIA – UNLIMITED CIVIL JURISDICTION

CITY AND COUNTY OF SAN FRANCISCO

VISITACION INVESTMENT, LLC Plaintiff, vs. 424 JESSIE HISTORIC PROPERTIES, LLC, et al., Defendants. AND RELATED CROSS-ACTION	Case No. CGC-19-579667 **PLAINTIFF'S OBJECTIONS TO EVIDENCE RE DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION** Date: June 10, 2021 Time: 9:30 a.m. Dept: 501 Complaint Filed: Oct. 1, 2019 Trial Date: July 12, 2021

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INTRODUCTION

Defendant 424 Jessie Historic Properties, LLC ("Defendant") is required to support its Opposition to Plaintiff's Motion for Summary Judgment, or in the Alternative, Summary Adjudication ("Plaintiff's MSJ") with admissible evidence. Code of Civil Procedure §437c(d) requires any declaration in support or opposition to a motion for

summary judgment or adjudication "set forth admissible evidence" and "show affirmatively that the affiant is competent to testify to the matters stated in the affidavits or declaration."

On such basis, plaintiff Visitacion Investment, LLC ("Plaintiff") hereby objects to certain improper and inadmissible evidence submitted in the support of Defendant's MSJ consisting of the declarations of Stacey C. Quan and Patrick McNerney (collectively "Defendant's Evidence").

ARGUMENT

A. Defendant's Evidence Improperly States General Allegations and Legal Conclusions and Fails to State Evidentiary Facts, Is Subject to Hearsay Objections and/or Is Not Relevant.

Much of the Defendant's Evidence consists of conclusions, opinions, and allegations, not evidentiary facts. In many instances, Defendant's Evidence reads like a pleading. Defendant is required to state evidentiary facts, not conclusions. Such statements that might be sufficient for pleading purposes, so-called "ultimate facts" to state a cause of action or defense, are not sufficient as evidence. (*Snider* v. *Snider* (1962) 200 Cal.App.2d 741, 751*; Tuchscher Develop. Enterprises, Inc*. v. *San Diego Unified Port Dist*. (2003) 106 Cal.App.4th 1219, 1240.)

Defendant improperly attempts to testify as to the "ultimate facts" of the potential use of Defendant's property for railroad purposes. Defendant has confused averments with admissible evidence. Such assertions are not sufficient to oppose a motion for summary adjudication as they fail to meet the requirement of CCP § 437c as to summary judgment motions. (*Reeves* v. *Safeway Stores, Inc*. (2004) 121 Cal.App.4th 95, 105-106

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("perceptions of witnesses are simply not 'material facts' as that term is used in the summary judgment statute").) Whether the subject Railroad Easement has in fact been abandoned or terminate is an "ultimate" fact at issue and legal conclusions as to such ultimate facts are not legally sufficient for summary judgment and must be disregarded. (*Hayman* v. *Block* (1986) 176 Cal.App.3d 629, 638-639.) Defendant cannot support the instant motion with such unsupported, inadmissible allegations.

Plaintiff's specific objections are as follows:

OBJECTIONS

A. Objections to Declaration of Patrick McNerney in Support of 424 Jessie Historic Properties, LLC Motion for Summary Judgment on Complaint and Cross-Complaint or, Alternatively, Summary Adjudication

Statements Objected to:	Grounds for Objection:
Objection No. 1. ¶ 2 – "Union Pacific represented to me, and I understood, that the Easements included the right to use these areas not only for historical, existing or future railroad purposes but also for commercial uses independent of railroad purposes, to access the JHP Property and for communication lines and facilities of every kind and nature."	**Objection No. 1.** (1) Evidentiary facts are required to support the Motion. Conclusions of fact or law are not sufficient. Allegations that might be sufficient for pleading purposes (so-called "ultimate facts" to state a cause of action or defense) are not sufficient as evidence. (*Snider* v. *Snider* (1962) 200 Cal.App.2d 741.) Whether the Easements include a right to use them for commercial uses independent of railroad purposes is a disputed issue of Plaintiff's MSJ. Legal conclusions or opinions as to these issues

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	do not constitute evidentiary facts. (2) Hearsay. Union Pacific's alleged representation to McNerney regarding the Easements constitutes hearsay.
Objection No. 2. ¶ 2 – "At the time that Union Pacific conveyed the JHP Property to me, Union Pacific also represented that the property abutting the easterly boundary line of the JHP Property owned by the Peninsula Corridor Joint Powers Board (commonly referred to as the "JPB Property") is dedicated and used for the "Main Line" railroad."	**Objection No. 2.** (1) Hearsay. Union Pacific's alleged representation to McNerney regarding the prior use of property abutting the easterly boundary of the JHP Property constitutes hearsay. (2) This statement lacks foundation. Testimony of a witness concerning a particular matter is inadmissible unless the witness has personal knowledge of the matter. The statement as to what Union Pacific represented provides no basis for who made this alleged representation or how it was made. (Ev.C. § 702.)
Objection No. 3. ¶ 4 – "the JHP Property has potential uses as an adjunct to the Main Line including for railroad electrification, shipping and receiving, and loading and unloading of rail cars, all requiring the use of the Easements."	**Objection No. 3.** (1) Evidentiary facts are required to support the Motion. Conclusions of fact or law are not sufficient. Allegations that might be sufficient for pleading purposes (so-called "ultimate facts" to state a cause of action or defense) are not sufficient as evidence. (*Snider* v. *Snider* (1962) 200

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	Cal.App.2d 741.) Whether the JHP Property has potential use an adjunct to existing rail lines that requires use of the Easements is a disputed issue of Plaintiff's MSJ. Legal conclusions or opinions as to these issues do not constitute evidentiary facts. The very Quitclaim Deed transferring the JHP Property from Union Pacific to contained an explicit "Fence Covenant" **that required the Grantee to maintain fencing or other barriers to prevent access to the existing rail lines. or encroachment on the railroad right-of-way.**
Objection No. 4. ¶ 4 – "I understand that Union Pacific agrees that a gate may be installed in the fence in order for the JHP Property to access the Main Line. I further understand that the railroad regularly enters into Industrial Track Agreements to permit abutting landowners to use privately owned spur tracks on their property to access and utilize the railroad."	**Objection No. 4.** (1) Hearsay. Union Pacific's alleged representation to McNerney regarding the Easements constitutes hearsay. (2) This statement lacks foundation. Testimony of a witness concerning a particular matter is inadmissible unless the witness has personal knowledge of the matter. The statement as to what Union Pacific represented provides no basis for who made this alleged representation or how it was made. (Ev.C. § 702.)

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Objection No. 5. ¶ 5 – "all of which would require use of the Easements, including the easements for access roadway and communication lines and facilities."	**Objection No. 5.** (1) Evidentiary facts are required to support the Motion. Conclusions of fact or law are not sufficient. Allegations that might be sufficient for pleading purposes (so-called "ultimate facts" to state a cause of action or defense) are not sufficient as evidence. (*Snider* v. *Snider* (1962) 200 Cal.App.2d 741.) Whether the Easements include a right to use them for commercial uses independent of railroad purposes is a disputed issue of Plaintiff's MSJ. Legal conclusions or opinions as to these issues do not constitute evidentiary facts.
Objection No. 6. ¶ 5 – "I understand that I have the right to use the Easements, including the access roadway, drill and spur tracks and signal cabinet areas for these purposes."	**Objection No. 6.** (1) Evidentiary facts are required to support the Motion. Conclusions of fact or law are not sufficient. Allegations that might be sufficient for pleading purposes (so-called "ultimate facts" to state a cause of action or defense) are not sufficient as evidence. (*Snider* v. *Snider* (1962) 200 Cal.App.2d 741.) Whether the Easements include a right to use them for commercial uses independent of railroad purposes is a disputed issue of Plaintiff's MSJ. Legal

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	conclusions or opinions as to these issues do not constitute evidentiary facts.
Objection No. 7. ¶ 8 – "Neither JHP nor I have relinquished, abandoned or terminated the Easements."	**Objection No. 7.** (1) Evidentiary facts are required to support the Motion. Conclusions of fact or law are not sufficient. Allegations that might be sufficient for pleading purposes (so-called "ultimate facts" to state a cause of action or defense) are not sufficient as evidence. (*Snider* v. *Snider* (1962) 200 Cal.App.2d 741.) Whether JHP or McNerney relinquished, abandoned or terminated the Easements is a disputed issue of Defendant's MSJ. Legal conclusions or opinions as to these issues do not constitute evidentiary facts.
Objection No. 8. ¶ 8 – "Neither JHP nor I have relinquished, abandoned or terminated the Easements."	**Objection No. 8.** (1) Evidentiary facts are required to support the Motion. Conclusions of fact or law are not sufficient. Allegations that might be sufficient for pleading purposes (so-called "ultimate facts" to state a cause of action or defense) are not sufficient as evidence. (*Snider* v. *Snider* (1962) 200 Cal.App.2d 741.) Whether JHP or McNerney relinquished, abandoned or terminated the Easements is a disputed

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	issue of Defendant's MSJ. Legal conclusions or opinions as to these issues do not constitute evidentiary facts.
Objection No. 9. ¶ 9 – "The Easements, including the easement for communication lines and facilities, will be necessary to any and all of these potential uses of the JHP Property."	**Objection No. 9.** (1) Evidentiary facts are required to support the Motion. Conclusions of fact or law are not sufficient. Allegations that might be sufficient for pleading purposes (so-called "ultimate facts" to state a cause of action or defense) are not sufficient as evidence. (*Snider* v. *Snider* (1962) 200 Cal.App.2d 741.) Whether plain language granting the Easements, including their description as a "Form of Railroad Easement" and providing for their "abandonment or termination" limits their scope to railroad purposes and does not allow for any conceivable use that also requires "communications lines and facilities" as Defendant alleges and whether use of the Easements "will be necessary" for such hypothetical non-railroad use is a disputed issue of Defendant's MSJ. Legal conclusions or opinions as to these issues do not constitute evidentiary facts.

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Objection No. 10. ¶ 11 – "wherein Plaintiff confirmed the Easements burdening Plaintiff's Property in favor of the JHP Property."	**Objection No. 10.** (1) Evidentiary facts are required to support the Motion. Conclusions of fact or law are not sufficient. Allegations that might be sufficient for pleading purposes (so-called "ultimate facts" to state a cause of action or defense) are not sufficient as evidence. (*Snider* v. *Snider* (1962) 200 Cal.App.2d 741.) The legal effect of the March 2, 2016 Temporary License Agreement and whether it "confirmed The Easements" is a disputed issue of Defendant's MSJ. Legal conclusions or opinions as to these issues do not constitute evidentiary facts. (2) Hearsay. The self-serving statements of McNerney regarding the content of the Temporary License Agreement constitute hearsay.
Objection No. 11. ¶ 12 – "noting that the Easements had been conveyed to me."	**Objection No. 11.** (1) Evidentiary facts are required to support the Motion. Conclusions of fact or law are not sufficient. Allegations that might be sufficient for pleading purposes (so-called "ultimate facts" to state a cause of action or defense) are not sufficient as evidence. (*Snider* v. *Snider* (1962) 200

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	Cal.App.2d 741.) The legal effect of the March 2, 2016 Temporary License Agreement and whether it "confirmed The Easements" is a disputed issue of Defendant's MSJ. Legal conclusions or opinions as to these issues do not constitute evidentiary facts. (2) Hearsay. The self-serving statements of McNerney regarding the content of the Temporary License Agreement constitute hearsay.

Dated: June 4, 2021

KATZOFF & RIGGS LLP

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

VISITACION INVESTMENT, LLC Plaintiff, vs. 424 JESSIE HISTORIC PROPERTIES, LLC, et al. Defendants. AND RELATED CROSS-ACTION	Case No. CGC-19-579667 **REPLY DECLARATION OF STEPHEN G. PREONAS IN SUPPORT OF MOTION OF PLAINTIFF FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION** Date: June 10, 2021 Time: 9:30 a.m. Dept.: 501 Complaint Filed: October 1, 2019 Trial Date: July 12, 2021

STEPHEN G. PREONAS declares:

1. I am one of counsel of record for plaintiff and cross-defendant Visitacion Investment, LLC ("Plaintiff" or "Visitacion"). I have personal knowledge of the matters set forth in this declaration, and can competently testify thereto. I am a custodian of records with respect to documents produced in and relating to this litigation and have received and reviewed such documents.

2. This declaration is being submitted in reply to the opposition defendant and

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cross-complainant 424 Jessie Historic Properties, LLC ("Defendant" or "JHP") to Plaintiff's motion for summary judgment and/or summary adjudication.

3. A true copy of the relevant portions of the transcript of the deposition of Robert Krantz as the Person Most Knowledgeable for Union Pacific Railroad ("Krantz Depo") taken May 20, 2021 is attached as Exhibit A.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 4, 2021 in Los Angeles, California.

STEPHEN G. PREONAS

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EXHIBIT A

TO

REPLY DECLARATION OF STEPHEN G. PREONAS IN SUPPORT OF MOTION OF PLAINTIFF VISITACTION INVESTMENT FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION

Visitacion Investment, LLC v. *424 Jessie Historic Properties, LLC., et al.*

San Francisco County Superior Court Case No. CGC-19-579667

Description of Exhibit:

Supplemental Portions of Deposition Transcript of May 20, 2021 Deposition of Robert Krantz as PMK of Union Pacific Railroad ("Supp. Krantz Depo")

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

VISITACION INVESTMENT, LLC, a California limited liability company,

Plaintiff,

vs.

Case No. CGC-19-579667

424 JESSIE HISTORIC PROPERTIES, LLC, a California limited liability company, all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the Complaint adverse to Plaintiff's title, or any cloud on Plaintiff's title thereto, and DOES 1 through 50, inclusive,

Defendants.

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

REMOTE DEPOSITION OF ROBERT KRANTZ

May 20, 2021

10:04 a.m.

Scottsdale, Arizona

Karen Aligo, CSR No. 13418
~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

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ALSO PRESENT:

PATRICK McNERNEY
(Present via videoconference)

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A. Yes.
Q. Okay. Were you involved in the 1990 sale of the property of the Schlage Lock -- I don't know why I can't pronounce it -- the Schlage Lock site to Tuntex?
A. Tuntex? Yeah, I was not involved in that transaction.
Q. Okay. And was your first involvement in this property in approximately 2014 when you stepped in to try to sell it?
A. Yes.
Q. Okay. So let's take a look at Exhibit 69, start with those.
A. Okay.
(Exhibit 69 marked for identification.)
BY MR. LOWENTHAL:
Q. Just let us know when you open it up, Mr. Krantz.
A. Okay. It's launching. Okay. It's open.
Q. Okay. So if you start with, like, with all these e-mail crazies, you start -- I think I can start you and lead you through the right order to look at the e-mails.
If you start at the second page which says "UP 63" on it, and at the bottom this looks to be

A. Yes.

Q. And that was -- that wasn't just to use in conjunction with a rail -- any railroad access to this property that was used to get to the property, right?

A. Yes, that's correct. So at the time the property that we sold to Patrick was leased by Schlage Lock, and it needed -- that was the only -- way to access it, was via the access road, otherwise it would be landlocked.

Q. And the nonexclusive easement for the access roadway is separate and apart from any railroad use, correct?

A. Not necessarily. It was used to access the property sold to Patrick, but directly abutting the access road is this rail easement. So that access road would allow, at the time, Southern Pacific forces, meaning employees, to use that nonexclusive access road to maintain the railroad tracks and the abutting easement area.

Q. The intent was also that when you sold to Patrick, for example, that he could use that access easement to access his property whether he was using it for railroad purposes or not?

A. Yes, that's correct.

the railroad right-of-way, and SP Telecom was in the business of -- fiber optic business, and basically over the ten-year period that Phil Anschutz owned Southern Pacific Railroad, he laid, in a very significant fiber optic -- commercial fiber optic, network into the railroad right-of-way, and then that eventually became Qwest Communications.

Q. And so that was a business that -- Southern Pacific was interested in the communications business through this subsidiary in 1990; is that true?

A. Yes.

Q. Okay. And when Southern Pacific became Union Pacific, did Union Pacific continue to have various sub- -- and to this day has various subsidiaries that are involved in sort of general communication and data processing type of businesses; isn't that correct?

A. I really don't know what UP has in terms of subsidiaries like that. This was all in the Southern Pacific era that there was the SP Telecom, the subsidiary. But during the course of -- so my understanding is that when Anschutz, Phil Anschutz sold Southern Pacific to Union Pacific, he retained the SP Telecom rights, did not convey that to UP,

then that SP Telecom became Qwest, which then became Mountain Bell because he bought Mountain Bell, and then that is now a company called CenturyLink.

Q. Okay. And so when SP and, prior to these transactions, when SP was reserving easements, it would also reserve the right to have these communication fiber optic lines within the easement areas; is that right?

A. Yes. And that's -- the 1990 deed did reserve that.

Q. And that was separate and apart from the rail lines, for example, correct?

A. Yes.

MR. PREONAS: Objection. Calls for a legal conclusion.

BY MR. LOWENTHAL:

Q. And the reason they -- your understanding of the reasons Southern Pacific did that is to enable it to lay these fiber optic lines and use that as a business enterprise, right?

A. Yes.

Q. And that had value to Southern Pacific separate and apart from running trains, correct?

A. That's correct.

Q. Okay.

for you now.

Now Steve's going to be able to ask you the confusing and ambiguous questions calling for legal conclusions that lack foundation. So I'll give him an opportunity to do that.

Thank very much.

MR. PREONAS: I mean, can we -- can we go off the record for one second?

MR. LOWENTHAL: Sure.

(Recess.)

EXAMINATION

BY MR. PREONAS:

Q. All right. Mr. Krantz, are you ready to go?

A. Yes.

Q. Okay.

MR. PREONAS: Ms. Johnson?

MS. JOHNSON: Yes.

MR. PREONAS: Jeff?

MR. LOWENTHAL: Yes.

MR. PREONAS: Great.

Q. Mr. Krantz, before we took our break you were -- at the beginning of your deposition we were talking a little bit about your personal history and

your work with the railroads, and I tried to follow along as best I could, but I didn't get a firm understanding as to whether or not you were involved in the initial transaction in 1990, wherein Southern Pacific conveyed that initial property with the reservation of easements to Tuntex. So were you involved with that transaction?

A. No.

Q. "No." So you have no personal knowledge of any of the railroad's motivations with regard to that transaction?

MR. LOWENTHAL: Objection. Leading. Ambiguous. Lacks foundation.

BY MR. PREONAS:

Q. You can answer.

A. Yeah, I don't know. I wasn't involved in that transaction.

Q. Okay. Thank you. But you would agree that when Union Pacific transferred the property to Mr. McNerney in 2015, whatever easements it conveyed to him at that point were derivative of what the railroad reserved itself in 1990, correct?

A. That's correct.

Q. Okay. And you would agree that subsequent to conveying the property to Mr. McNerney in 2015,

Pacific.

Q. Okay. All right. Regarding Sprint, I think your testimony before the break was that Sprint set up a separate entity to -- as a telecommunications provider; is that accurate?

A. Well, Sprint is different than SP Telecom. Sprint was a subsidiary of Southern Pacific Railroad that was spun off in -- somewhere around 1980, and became a separate fiber optics company, but subsequent to that, a new company was created called SP Telecom, so there's a difference there.

Q. Okay. So at some point Union Pacific purchases SP, correct?

A. Correct.

Q. And do you know when that was?

A. 1997.

Q. And were you involved in that purchase personally, or was it somebody else --

A. I was not involved.

Q. I believe your testimony earlier was that in connection with Union Pacific's purchase of Southern Pacific, Southern Pacific did not transfer its interest in SP Telecom to Union Pacific; is that correct?

A. That's my understanding, yes. It was

retained by Philip Anschutz.

Q. I missed what -- the last -- retained by who?

A. Philip Anschutz.

Q. Anschutz.

A. He owned Southern Pacific, and then sold Southern Pacific to Union Pacific.

Q. In connection with Philip Anschutz retaining his interest in -- retaining Southern Pacific's interest in SP Telecom, did it also retain any easement rights over the mainline easement there for telecom --

MR. LOWENTHAL: Objection. Lacks foundation.

MS. JOHNSON: Join.

THE WITNESS: Yeah. I really don't know the details of what was involved in his retention of SP Telecom and what rights were retained. I just know that he kept SP Telecom, and I don't know the details of the transaction to answer that.

BY MR. PREONAS:

Q. Does Union Pacific have a telecommunications division that is similar in function to SP Telecom?

A. Not that I'm aware of, but for all I know,

there might be. I don't know. It's not part of what I do.

Q. You've never leased property to -- you've never been involved in a lease of Union Pacific property to a telecommunications provider?

A. Personally, no.

Q. But you do do your commercial leases at Union Pacific property in connection with your duties?

A. No, I'm not involved in leasing railroad property. Just strictly selling.

Q. Have you ever been involved in a sale of Union Pacific property to a telecommunications provider?

A. No, but I do know that when we sell UP property, we ascertain whether or not there is fiber optic impacting the sale property, and if there is we reserve an easement for the fiber optic line.

Q. But you didn't do that in the case of the 2015 deed, did you?

MR. LOWENTHAL: Objection. Calls for a legal conclusion.

THE WITNESS: No, I did not. But I do know that the easement had communication rights associated with it.

REPORTER'S CERTIFICATION

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: May 21, 2021

Karen Aligo

KAREN ALIGO
CSR No. 13418

DEPOSITION ERRATA SHEET

Assignment No. J7014299

Case Caption: Visitacion vs. 424 Jessie

The Witness: ROBERT KRANTZ

Date: May 20, 2021

DECLARATION UNDER PENALTY OF PERJURY

I, the undersigned, hereby declare that I am the witness named in the within matter, that I have read the foregoing deposition and know the contents thereof, and I declare that the same is true to my own knowledge except as to those matters which are therein stated upon my information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Signed on the_____day of_____,
20___, at _____, California.

_____
ROBERT KRANTZ

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424 Jessie Historic Properties, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

VISITACION INVESTMENT, LLC, a California limited liability company,

Plaintiff,

v.

424 JESSIE HISTORIC PROPERTIES, LLC, a California limited liability company, all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the Complaint adverse to Plaintiff's title, or any cloud on Plaintiff's title thereto, and DOES 1 through 50, inclusive,

Defendants.

AND RELATED CROSS-ACTION.

Case No. CGC-19-579667

424 JESSIE HISTORIC PROPERTIES, LLC'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, ALTERNATIVELY, SUMMARY ADJUDICATION

Date: June 10, 2021
Time: 9:30 a.m.
Dept: 501

Action Filed: October 1, 2019
Trial Date: July 12, 2021

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Defendant and cross-complainant 424 Jessie Historic Properties, LLC ("JHP") submits the following **reply** in support of its motion for summary judgment on plaintiff and cross-defendant Visitacion Investment, LLC's ("Plaintiff") Complaint and on JHP's Cross-complaint or, alternatively, for summary adjudication on Plaintiff's first, second, and third causes of action in the Complaint, and JHP's first and second causes of action in the Cross-complaint.

I. INTRODUCTION

The sole issue presented by the cross-motions for summary judgment is whether JHP or its predecessors abandoned the reserved Easements. Unable to dispute the plain language of the Easements or the evidence establishing that the Easements were never abandoned but rather reserved and used, Plaintiff's opposition to JHP's motion for summary judgment (and Plaintiff's own motion for summary judgment) brazenly ignores the language and the evidence, and instead proffers nothing more than unsupported lawyerly arguments that do not present any questions of material fact to defeat summary judgment.

Plaintiff's arguments that the Easements were abandoned because railroad tracks were removed from the Easements and that the Easements have not been used for "railroad-related uses" since 2008 fail both because, even if true, California law is settled that nonuse alone is insufficient to establish abandonment of an easement but instead requires unequivocal and decisive acts by the owner evidencing an intent to abandon, and because the Easements by their plain language expressly permit removal of tracks and are not limited to use for "railroad purposes" and instead provide distinct rights for ***existing and future*** (a) drill and spur tracks, (b) railroad related facilities, (c) ***access to the otherwise landlocked JHP Property***, and (d) ***communication lines of every kind and nature for any commercial purpose***.

Plaintiff has not and cannot demonstrate any intent by the easement owner to abandon the Easements for said existing and future uses. Indeed, the uncontroverted testimony of Union Pacific, which through its predecessor by merger Southern Pacific reserved and then conveyed the Easements to Mr. McNerney who then granted the Easements to JHP, is clear that the Easements were never abandoned, but rather were reserved, used for access to the JHP Property, and intended to be available to JHP for existing and future commercial uses. Similarly, Plaintiff's conjured up

claim that because the "Mainline Railroad" easement reserved by Southern Pacific was not conveyed to Mr. McNerney supports Plaintiff's argument that the Easements that ***were conveyed*** to Mr. McNerney were "abandoned" defies common sense. In fact, it proves just the opposite. Neither Mr. McNerney nor JHP ever intended to or could operate a Mainline Railroad. Rather, as set forth in the moving papers, JHP intends to develop the JHP Property, possibly as an adjunct to the railroad and, therefore, was granted and did not abandon the Easements for future drill and spur tracks, railroad related facilities, access to the otherwise landlocked JHP Property, and communication lines of every kind and nature for any commercial purpose. Accordingly, JHP is entitled to summary judgment.

II. DISCUSSION

A. ABANDONMENT OF AN EXPRESS EASEMENT REQUIRES BOTH NONUSE AND UNEQUIVOCAL EVIDENCE OF THE EASEMENT OWNER'S INTENT TO ABANDON

Plaintiff's entire opposition is based on the false premise that the Easements are a single "Railroad Easement" abandoned in 2015 when Union Pacific decided that it no longer needed the JHP Property to support its railroad operations, and therefore derive its legal arguments from cases that concern abandonment of railroad easements. Black letter California law plainly states that an easement acquired by an express grant cannot be abandoned by mere nonuse. Cottonwood Duplexes, LLC v. Barlow (2012) 210 Cal.App.4th 1501, 1509. Equally settled, an easement does not terminate unless there is evidence of a clear, decisive, and unequivocal intent to abandon by the owner of the easement. Gerhard v. Stephens (1968) 68 Cal.2d 864, 889-90. To find extinguishment of an easement by abandonment, the critical question is "whether [the easement owner] had performed or authorized an act which permanently and materially interfered with [*the easement owner's*] continued use of the easement." Reichardt v. Hoffman (1997) 52 Cal.App.4th 754, 768. The fact that an easement has not been used for a long period of time is not conclusive of an intention to abandon it. Faus v. City of Los Angeles (1967) 67 Cal.2d 350, 363. Plaintiff agrees, in interpreting an easement, "the intent of the parties is the paramount consideration." (See Plaintiff's Opp. at 19:21-22 (citing Southern California Edison Co. v. Severns (2019) 39 Cal.App.5th 815, 822; Civ. Code §1636; and City of Manhattan Beach v. Superior Court (1996) 13 Cal.4th 232,

238).)

Of course, because the Easements are expressly not limited to railroad uses, Plaintiff's reliance on Ocean Shore Railroad Co. v. Doelger (1954) 127 Cal.App.2d 392 ("Doelger I") and Ocean Shore Railroad Co. v. Doelger (1960) 179 Cal.App.2d 222 ("Doelger II") and similar railroad easement cases is unavailing. The disputes in Doelger I and Doelger II began more than thirty years earlier in Ocean Shore Railroad Co. v. Spring Valley Water Co. (1927) 87 Cal.App.188 in which the court of appeal reversed the trial court's determination that the railroad had abandoned a grant "of a right-of-way for railroad purposes only." The court of appeal held there can be no abandonment of a railroad easement without the easement owner's intent to abandon it, stating:

> The real question to be determined is the intention of the owner of the right. The evidence in this case clearly shows that the railroad company always considered the right of way as an asset. An option was granted by it, and was outstanding some time before the suit was begun and was still outstanding at the time of the trial, for the sale of the right of way. Negotiations were had with the highway commission for granting a crossing over the said right of way on condition of the state providing a local clearance over the railroad. The liquidation of the plaintiff had been held up pending disposition of this right of way….The intention to abandon is not to be inferred from the outward and public acts of the owner only, but also from its dealings with relation to its title.

Id. at 191-92. Following Spring Valley Water and the California Supreme Court's precedent in Home Real Estate Co. v. Los Angeles Pac. Co. (1912) 163 Cal. 710, 714, and People v. Southern Pacific Co. (1916) 172 Cal. 692, 700, both Doelger I and Doelger II confirmed that abandonment of a railroad easement requires (1) nonuse ***and*** (2) "unequivocal and decisive acts on the part of the [railroad], clearly showing an intention to abandon." See Doelger II, supra, 179 Cal.App.2d at 236. Importantly, however, in each of the cases in which abandonment of a railroad easement was upheld based on evidence of nonuse, removal of railroad lines, the liquidation and lack of railroad business operations, and the economic infeasibility of continued railroad uses, the purpose of the easement was expressly limited to railroad purposes ***only***. See Doelger I, supra, 127 Cal.App.2d at 394, 400.

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B. THE PLAIN LANGUAGE OF THE RESERVED EASEMENTS PROVIDED DISTINCT RIGHTS TO THE OWNER OF THE JHP PROPERTY FOR EXISTING AND FUTURE COMMERCIAL USES

Quite different from an easement for railroad purposes only, in addition to use for "railroad, rail and railroad related equipment and facilities", the Easements reserved by Southern Pacific expressly include rights to use for an "access roadway" and "communication lines and facilities of every kind and nature including but not limited to all existing facilities, telephone, telegraph, television and fiber optic lines and related equipment". Quan Decl., ¶2, Ex. 7 at ¶¶ 14-15, Exs. 1-2.[1] Plaintiff's lawyerly argument that separating "communication lines and facilities" from railroad use would be "utter nonsense" is flatly contradicted by the fact that is exactly what Southern Pacific intended. Quan Decl., ¶6, Ex. 12 at 70:17-71:12; 74:4-24. As confirmed by Robert Krantz, Union Pacific's Director of Real Estate involved in Union Pacific's sale of the JHP Property to Mr. McNerney in 2015, and an employee of Southern Pacific (and Union Pacific post-merger) for approximately twenty-five years intermittently since September 1979 with responsibilities including selling its surplus real estate[2], the rights to use the Easements for communication lines and facilities "aren't associated with a railroad use. ***It's for any commercial use***." Quan Decl., ¶6, Ex. 12 at 102:15-18. Southern Pacific's own records from the 1990 reservation identify these separate uses of the Easements, and the parcel map for the subject properties referenced in the 1990 Deed further notes JHP's easement for ingress and egress. Quan Decl., ¶¶6-8, Exs. 13, 14; Quan Decl., ¶6, Ex. 12 at 70:17-71:12, 72:4-24, 101:23-102:18; McNerney Decl., ¶2, Ex. 20. Mr. Krantz was very clear concerning Union Pacific's practice and procedures with respect to abandonment: "We do not abandon any easements until we determine -- in our sole and absolute discretion

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[1] To avoid duplication and confusion by the overlapping issues in JHP's and Plaintiff's cross-motions for summary judgment, references in this reply to the declaration of Stacey Quan ("Quan Decl.") and to the declaration of Patrick McNerney ("McNerney Decl.") are made to the declarations attached to JHP's request for judicial notice filed concurrently herewith, which declarations were filed on May 27, 2021 in opposition to Plaintiff's motion for summary judgment in this case.

[2] Mr. Krantz testified at deposition in this matter as Union Pacific's person most qualified pursuant to Code of Civil Procedure section 2025.230 concerning Southern Pacific's reservation of the Easements and Union Pacific's sale of the JHP Property based upon his personal knowledge of the subject transaction, and the books and records, and standard practices and procedures of Southern Pacific and Union Pacific. Quan Decl., ¶6, Ex. 12 at 143:5-19, 146:11-22.

whether or not we are willing to terminate the easements. They are not abandoned until we take specific action, meaning a quitclaim. Quan Decl., ¶6, Ex. 12 at 116:19-118:3.

Plaintiff's sophistic argument that the Easements are limited to a single railroad easement because the first title is "Form of Railroad Easement" would have the Court simply ignore the legal description of the Easements, and further ignores that the Easements are subsequently titled "Main Line Easement"; "Drill & Spur Track Easement"; the "Access Roadway Easement". However, reading the actual legal description of the Easements as we must, in addition to access and the then ***existing and future*** railroad related uses, the Easements give the holder the rights to "communications lines and facilities ***of every kind and nature***" that are unaffiliated with railroad, rail and railroad related equipment. Not only does the JHP Property, which is otherwise landlocked, require access over the Easements, but unlike Ocean Shore Railroad in Doleger I and Doelger II, at the time of Southern Pacific's reservation of the Easements in 1990, Southern Pacific, and later its successor by merger Union Pacific, was not solely a railroad company, but a long-distance telephone and data communications carrier, attesting to the reserved easement for communication lines and facilities of every kind and nature distinct from railroad-related uses. Quan Decl., ¶6, Ex. 12 at 70:17-71:12, 72:4-24, 101:23-102:18. In fact, in 1990, GTE Sprint conduit was located immediately adjacent to the JHP Property. Quan Decl., ¶6, Ex. 12 at 144:5-15; Quan Decl., ¶7, Ex. 13 at p.2; Quan Decl., ¶8, Ex. 14 at UP0226. Furthermore, the Easements expressly granted the owner the right to ***remove*** existing or future railroad lines and related equipment and facilities. Quan Decl., ¶2, Ex. 7 at ¶¶ 14-15, Exs. 1-2.

C. NEITHER SOUTHERN PACIFIC NOR ANY OF ITS SUCCESSORS EVIDENCED ANY INTENT TO ABANDON OR RELINQUISH THE EASEMENTS

Contrary to Plaintiff's lawyerly argument that Union Pacific's nonuse of the Easements, removal of railroad tracks and sale of the JHP Property and the Easements to Mr. McNerney demonstrate they have been abandoned, which ignores the plain language of the Easements, the evidence is undisputed that:

- Southern Pacific expressly reserved the Easements in its sale to Plaintiff in the 1990 Deed and affirmed in the 1991 Deed (Quan Decl., ¶2, Ex. 7 at ¶¶14-15, Exs. 1-2);

- Union Pacific expressly deeded the Easements to McNerney (Quan Decl., ¶2, Ex. 7 at ¶18, Ex. 3);
- Union Pacific did not relinquish the Easements as Union Pacific would have been required to do had the Easements been abandoned or terminated (Quan Decl., ¶2, Ex. 7 at ¶¶14-15, 18, Exs. 1-3; McNerney Decl. ¶¶2, 12, Exs. 1, 5);
- Southern Pacific and Union Pacific had no intent to relinquish or abandon the Easements (Quan Decl., ¶6, Ex. 12 at 46:3-48:18, 49:8-15, 54:12-25; Quan Decl., ¶10, Ex. 16 at UP0026-27; Quan Decl., ¶11, Ex. 17 at UP0211-13);
- The Easements are necessary for access to the JHP Property (Quan Decl., ¶6, Ex. 12 at 46:3-48:18, 49:8-15, 54:12-25; Quan Decl., ¶10, Ex. 16 at UP0026-27; Quan Decl., ¶11, Ex. 17 at UP0211-13);
- The reservation of the Easements indicates that Southern Pacific in fact utilized the Easements for access, railroad purposes and communication purposes, and the Easements were used by Union Pacific (and likely its long term tenant Schlage Lock Company) for access to the JHP Property in the years leading up to Union Pacific's sale of the JHP Property to Mr. McNerney, including in 2014 (Quan Decl., ¶6, Ex. 12 at 38:23-39:20, 61:17-23, 91:11-14, 96:20-25, 97:23-98:15, 98:19-99:1, 121:10-122:6, 136:20-137:8); and
- The JHP Property remains abutting a railroad and the Easements may be utilized in the future for drill and spur tracks as an adjunct to the existing railroad, for access, or for communication lines and facilities in conjunction with JHP's development of the JHP Property (McNerney Decl., ¶¶ 4, 5, 9, 13; Quan Decl., ¶6, Ex. 12 at 46:3-48:18, 49:8-15, 54:12-25; Quan Decl., ¶10, Ex. 16 at UP0026-27; Quan Decl., ¶11, Ex. 17 at UP0211-13).

Mr. Krantz confirmed that Union Pacific reserved the Easements, required the Easements for access to the JHP Property, treated the Easements as assets and had no intent to abandon them, repeatedly rejecting Plaintiff's efforts to persuade Union Pacific to relinquish them, but rather sold them to Mr. McNerney for his commercial use. Quan Decl., ¶6, Ex. 12 at 10:6-22, 13:17-14:7, 19:12-20:1, 66:11:67-10, 68:8-23; McNerney Decl., ¶12, Ex. 5. Mr. Krantz made clear to Plaintiff (and to the City) in 2014 and 2015 that the Easements "had to be retained" because they provided

access and without them the JHP Property would be effectively landlocked due to the grade differential between the JHP Property and adjacent land, that Union Pacific had no intention to "either quitclaim or abandon" the Easements, and that the Easements were in fact not abandoned or terminated. Quan Decl., ¶6, Ex. 12 at 46:3-48:18, 49:8-13, 54:12-25; Quan Decl., ¶10, Ex. 16 at UP0026-27; Quan Decl., ¶11, Ex. 17 at UP0211-13; McNerney Decl., ¶13.

Indeed, any "abandonment" of the Easements by Union Pacific would have required extensive internal review, resolution of and grant of satisfactory alternative access to the JHP Property, monetary consideration paid to Union Pacific, and affirmative action by Union Pacific to relinquish them, none of which occurred. Quan Decl., ¶6, Ex. 12 at 47:14-48:11, 59:24-60:16, 116:13-118:3. Notwithstanding that Union Pacific may not have needed the Easements for railroad purposes in 2014, Mr. Krantz further confirmed that did not equate to Union Pacific's abandonment of the Easements as the Easements themselves were granted for both existing and ***future*** uses. Quan Decl., ¶6, Ex. 12 at 150:3-14, 151:7-20. Union Pacific stated on multiple occasions to Plaintiff before its conveyance of the JHP Property and the Easements to Mr. McNerney that the Easements had not been abandoned, terminated, or relinquished, and that if Plaintiff desired that the Easements be relinquished in order to effectuate Plaintiff's development, that Plaintiff would need to negotiate such relinquishment with Mr. McNerney. Quan Decl., ¶6, Ex. 12 at 61:17-20; Quan Decl., ¶12, Ex. 18; Quan Decl., ¶13, Ex. 19.

None of the grounds relied upon by Plaintiff to claim that the Easements were abandoned are supported by *any*, let alone clear, decisive, and unequivocal evidence that JHP or its predecessors intended to abandon the Easements.

First, the removal of tracks was expressly permitted by the Easements and therefore was simply the exercise of the dominant owner's rights.

Second, any alleged nonuse of the Easements for railroad purposes by 2008 is defeated by Union Pacific's affirmative statements to Plaintiff in 2010 that the Easements provide access to the JHP Property and were in use by JPB in conjunction with the mainline railroad and thus could not be released (Quan Decl., ¶9, Ex. 15 at UP0065-66) and in 2014 that Union Pacific could not release the Easements without confirmation that the Easements were not needed and alternative access

provided (Quan Decl., ¶9, Ex. 15 at UP0062-63), clearly evidencing that Union Pacific had not and did not intend to abandon the Easements. Plaintiff does not argue, because it cannot, that the Easements were not being used for access after 2008. Moreover, the JHP Property was recently licensed to a railroad maintenance and construction contractor to support its work on the Peninsula Corridor Electrification Project for Caltrain. McNerney Decl., ¶7, Ex. 3. The Declaration of William Gilmartin III of the licensee Proven Management Inc. submitted by Plaintiff in opposition to JHP's motion for summary judgment does not create a dispute as to JHP's use of the JHP Property to support adjacent railroad uses. Setting aside that much of Mr. Gilmartin's statements concerning Proven's daily use of the JHP Property and the Easements lack foundation or personal knowledge, Mr. Gilmartin confirms that Proven is a general engineering contractor that performed certain work for JPB's Peninsula Corridor Electrification Project to electrify the Cal Train rails across the Peninsula ("Project") (¶¶2, 4), Proven licensed the JHP Property from JHP in 2019 (¶5), and Proven in fact used the license in connection with its work on the Project (¶¶5, 6). Plaintiff's characterization of Proven's use of the JHP Property as not "railroad related" enough because Proven chose to use the licensed area for its employees working on the Project to park vehicles, as opposed to staging construction materials and equipment for the Project, is a play on words without any effective difference. Of course, the fact that the JHP Property and other adjacent land was necessary to support the Project proves unequivocally that the JHP Property was and can in the future be used to support railroad activities on adjacent property.

Third, that the JHP Property was sold to Mr. McNerney and JHP, which does not intend to operate a railroad on the JHP Property, is not evidence that the Easements were abandoned. At the time of the sale to Mr. McNerney, Union Pacific represented, and Mr. McNerney understood, that the property abutting the easterly boundary line of the JHP Property is owned by JPB and is dedicated and used for existing Caltrain passenger rail lines and freight train rail lines. McNerney Decl., ¶¶2, 4. Accordingly, the JHP Property can be used as an adjunct to these existing rail lines, including railroad electrification, shipping and receiving, and loading and unloading of rail cars, which requires use of the Easements. McNerney Decl., ¶¶4, 7; Quan Decl., ¶6, Ex. 12 at 26:6-23, 151:23-153:13. The JHP Property is zoned M-1 and currently undeveloped. McNerney Decl., ¶¶5,

6. The JHP Property's current zoning allows for redevelopment as either residential or commercial use, as well as heavy manufacturing, storage yards, truck terminals, internet service exchange (e.g., a data center) and/or wireless telecommunication facilities, among other uses, all of which would require use of the Easements, including the easement for communication lines and facilities. McNerney Decl., ¶5; Quan Decl., ¶5, Ex. 11. As explained by JHP, acknowledged by Plaintiff and confirmed by Union Pacific, use of the JHP Property is uncertain and may include future railroad related facilities such as railroad electrification, shipping and receiving, and loading and unloading of rail cars. McNerney Decl., ¶¶4, 9, 10; Quan Decl., ¶4, Ex. 10 at 82:4-17, 83:14-85:12; Quan Decl., ¶6, Ex. 12 at 152:11-153:13 ("private tracks may be constructed on the JHP Property and access the Main Line through an Industrial Track Agreement"). Although JHP has not committed to any particular or singular use of the JHP Property, it has evaluated the JHP Property for future development for residential use, including, without limitation, apartment, condominiums, single family homes, and live work spaces, for commercial use, independently and as an adjunct to the existing rail lines, and for industrial use, including, without limitation, shipping and receiving, heavy manufacturing, storage yards, truck terminals, loading and unloading of rail cars, train electrification, and internet service exchange (*e.g.*, a data center). McNerney Decl., ¶9. The Easements, including the easement for communication lines and facilities will be necessary to any and all of these potential uses of the JHP Property. McNerney Decl., ¶¶9, 10; Quan Decl., ¶6, Ex. 12 at 32:12-23; 49:8-15. Nothing about Mr. McNerney's potential uses of the JHP Property evidence an intent to abandon the Easements for access, communication lines and facilities, or railroad related equipment and facilities, nor was his evaluation and investigation into the physical condition and possible development of the JHP Property ***permanent*** and ***material*** acts ***interfering*** with the use of the Easements.

Fourth, Plaintiff's attempt to analogize the physical impediments across the railroad lines and the selling of portions of the connected right of way in Doelger II to the covenant in the 2015 Deed conveying the JHP Property to McNerney to build a fence along the property line between the JHP Property and the property owned by Union Pacific that abuts the easterly boundary line of the JHP Property is without merit. While the court of appeal in Doelger II considered the crops that

grew within the easement and conveyances of other parts of the right of way as evidence of abandonment of the subject easement, the fence here is simply a boundary fence between the JHP Property and the property owned by Union Pacific for safety and security purposes and is not a physical impediment within the Easements themselves preventing current and future access and use of the Easements for railroad, rail and railroad related equipment and facilities. McNerney Decl., ¶4; Quan Decl., ¶6, Ex. 12 at 64:21-65:8, 89:14-21. As Mr. Krantz testified, the fence would not prevent connection via a gate to the existing railroad lines or impede the use of the Easements for railroad related equipment and facilities such as in conjunction with spur tracks. Quan Decl., ¶6, Ex. 12 at 149:10-25. Nor does the fence prevent the use of the Easements for access or non-railroad related uses, such as either residential or commercial use, as well as heavy manufacturing, storage yards, truck terminals, internet service exchange (e.g., a data center) and/or wireless telecommunication facilities, among other uses, all of which would require use of the Easements, including the easement for communication lines and facilities. McNerney Decl., ¶5; Quan Decl., ¶5, Ex. 11. Plaintiff's nonsensical argument that the fence covenant is somehow evidence of abandonment of the Easements is further belied by the fact that the covenant was made in conjunction with the conveyance of the Easements themselves.

Fifth, Plaintiff's argument that there is now no economically feasible use of the Easements has no merit. The nonuse of the JHP Property for railroad purposes does not preclude JHP from using the Easements in the ***future*** within the scope of the Easements, whether it be for railroad related purposes, for access, or for communication lines and facilities. In fact, given the current differential grade between Plaintiff's Property, the JHP Property and Blanken Avenue, the Access Roadway area is currently the most economically feasible access to the JHP Property and, given that Plaintiff's Property remains undeveloped, Plaintiff's proposed alternative access would not be available to JHP for several years. McNerney Decl., ¶13.

Lastly, Plaintiff's argument that it intends and has negotiated to provide the JHP Property with alternative access through Plaintiff's Property certainly does not prove abandonment but just the opposite – Plaintiff's recognition of the Easements' access rights and Union Pacific's and JHP's refusal to give them up. California law does not permit Plaintiff to change or relocate the Easements

without the consent of both the dominant and servient tenements. See Tarr v. Watkins (1960) 180 Cal.App.2d 362, 365-66.

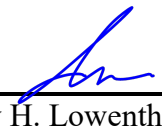
Ignoring Plaintiff's unsupported arguments and looking to the plain language of the Easements, the uncontroverted express intent of the grantor and grantee of the Easements, and the continued use and necessity of the Easements, the undisputed evidence shows that neither JHP nor its predecessor owners relinquished, abandoned, or terminated the Easements, JHP is entitled to summary judgment in its favor.

III. CONCLUSION

For each of the foregoing reasons and those set forth in its moving papers, the Court should affirm the existence and JHP's title to the Easements and grant JHP summary judgment on the entirety of Plaintiff's Complaint and JHP's Cross-complaint, or, alternatively, summary adjudication on Plaintiff's first, second, and third causes of action in the Complaint, and JHP's first and second causes of action in the Cross-complaint.

Dated: June 4, 2021

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CERTIFICATE OF SERVICE

I, Fred M. Terry, certify that on April 19, 2023, I served a true and correct copy of Volumes 5 through 7 (pages 1181 through 1886) of the Joint Appendix submitted as the record in Visitacion Investment, LLC's appeal pending in Case No. A163550 in California's First District, Division Two, via electronic mail upon all parties in this proceeding as follows:

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