

**STAFF REPORT FOR CALENDAR ITEM NO.: 10.5
FOR THE MEETING OF: June 14, 2018**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Consideration of a Resolution authorizing the Executive Director to execute an amendment to the Block 5 Easement Agreement with Park Tower Owner LLC, a Delaware limited liability company and assignee of MA West LLC, a joint venture between affiliates of Golub Real Estate Corp., an Illinois corporation, and the John Buck Company, a Delaware limited liability company (Park Tower Owner) for (1) a payment of \$42,000 for an appurtenant, exclusive and perpetual subsurface easement for the Park Tower Owner's parking and basement structure under the south sidewalk of the future Natoma Street between Main and Beale streets and (2) the TJPA's attorneys' fees for negotiating and implementing the amendment.

SUMMARY:

The Block 5 Easement Agreement and Declaration of Covenants (the Easement Agreement) between the TJPA and Park Tower Owner was recorded on September 23, 2015. The Easement Agreement provides the Park Tower Owner with certain rights in portions of Block 5 and other property in the same block retained by the TJPA. Among these are construction and access rights in a portion of the future segment of Natoma Street that will be constructed between Beale and Main streets, including a permanent easement for the building's parking and basement structure under the future 6-foot-wide south Natoma sidewalk to a depth of approximately 100 feet below the surface ("Basement Easement").

Construction of Park Tower began in late 2015 and will be complete in late 2018. The building's completed parking and basement structure encroaches 6 5/8 inches beyond the Basement Easement area set forth in the Block 5 Easement Agreement. The TJPA and Park Tower Owner wish to amend the Block 5 Easement Agreement to include the 6 5/8-inch encroachment in the Basement Easement area.

The Park Tower Owner will pay the TJPA \$42,000 for the additional encroachment area and will reimburse the TJPA for its reasonable attorneys' fees and costs incurred in connection with the negotiation and implementation of the amendment.

RECOMMENDATION:

Staff recommends that the Board of Directors authorize the Executive Director to execute an amendment to the Block 5 Easement Agreement in substantially the form attached.

ENCLOSURES:

1. Resolution
2. Amendment to Block 5 Easement Agreement

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Joint Powers Authority (TJPA) is a joint powers agency organized and existing under the laws of the State of California; and

WHEREAS, Pursuant to the Joint Powers Agreement creating the TJPA, dated April 4, 2001, the TJPA has the authority to, among other things, make and enter into contracts and exercise all powers necessary and proper to carry out the provisions of the Joint Powers Agreement; and

WHEREAS, On September 10, 2015, the TJPA Board of Directors authorized the Executive Director to execute the Block 5 Easement Agreement and Declaration of Covenants (Block 5 Easement Agreement) with Park Tower Owner LLC, a Delaware limited liability company and assignee of MA West LLC, a joint venture between affiliates of Golub Real Estate Corp., an Illinois corporation, and the John Buck Company, a Delaware limited liability company (Park Tower Owner); and

WHEREAS, The Block 5 Easement Agreement, among other provisions, gives the Park Tower Owner construction and access rights in a portion of the future segment of Natoma Street that will be constructed between Beale and Main streets, including a permanent easement under the 6-foot-wide south Natoma sidewalk to a depth of approximately 100 feet below the surface ("Basement Easement"); and

WHEREAS, Park Tower's completed parking and basement structure encroaches 6 5/8 inches beyond the Basement Easement area set forth in the Block 5 Easement Agreement and the TJPA and Park Tower Owner wish to amend the Block 5 Easement Agreement to include the 6 5/8-inch encroachment in the Basement Easement area, upon payment to the TJPA of the purchase price of \$42,000; and

WHEREAS, The Park Tower Owner will reimburse the TJPA for its reasonable attorneys' fees and costs incurred in connection with the negotiation and implementation of the amendment; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute an amendment to the Block 5 Easement Agreement with the Park Tower Owner, in substantially the form attached, to be recorded upon payment to the TJPA of \$42,000 by Park Tower and all other amounts due at closing, as provided in the amendment, and to take such other steps as may be necessary and appropriate to effectuate the amendment.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of June 14, 2018.

Secretary, Transbay Joint Powers Authority

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Reuben, Junius & Rose, LLP
One Bush Street, Suite 600
San Francisco, California 94104
Attn: Kevin H. Rose, Esq.

Assessors Block 3718, Lots 12, 27, 37, 38 and 39
Situs: 195 Beale Street and 250 Howard Street

Space above this line for Recorder's use only

FIRST AMENDMENT OF THE BLOCK 5 EASEMENT AGREEMENT AND DECLARATION OF COVENANTS

This First Amendment of the Block 5 Easement Agreement and Declaration of Covenants (the “**Amendment**”) is made as of this _____ day of _____, 2018, by and between Park Tower Owner LLC, a Delaware limited liability company and assignee of MA West LLC a joint venture between affiliates of Golub Real Estate Corp., an Illinois corporation, and the John Buck Company, a Delaware limited liability company (“**Tower Owner**”) and Transbay Joint Powers Authority, a joint powers authority crated under California Government Code Sections 6500 et seq (“**TJPA**”) (Tower Owner and TJPA are each a “**Party**” and, together, the “**Parties**”), is made with specific reference to the following recitals of fact:

A. The Block 5 Easement Agreement and Declaration of Covenants (the “**Easement Agreement**”) between TJPA and Tower Owner was recorded on September 23, 2015, as Agreement No. 2015-K135881, in the Official Records of the City and County of San Francisco, State of California. All capitalized terms not defined herein shall have the meanings ascribed to them in the Easement Agreement.

B. The Easement Agreement provides, among other things, that the subsurface parking and basement structure of the project being constructed by Tower Owner at the Tower Parcel is permitted to encroach under the six (6) foot-wide sidewalk along the south side of the Natoma Street Parcel (“**South Sidewalk**”). Specifically, Section 3(d)(i) of the Easement Agreement provides for an appurtenant, exclusive and perpetual subsurface easement (“**Basement Easement**”) under the South Sidewalk, to a depth of approximately 100 feet below the surface, which area is more particularly described in Exhibit K of the Easement Agreement (“**Basement Easement Area**”).

C. Based upon construction and the final location of the piles, the encroachment of the basement under the South Sidewalk extends 6 5/8 inches beyond the six (6) foot wide Basement Easement Area set forth in the Easement Agreement.

D. It is the intention of Tower Owner and TJPA to amend the Easement Agreement to expand the Basement Easement Area to include the additional 6 5/8 inch encroachment, upon payment of the Purchase Price and satisfaction of the other terms and conditions set forth herein.

NOW, THEREFORE, the Parties agree as follows:

1. Revised Basement Easement Area and Exhibit K. Upon recordation of this Amendment, the width of the Basement Easement Area shall be increased from six (6) feet to six (6) feet and Six (6) and five-eighths (5/8) inches, and Exhibit K shall be replaced in its entirety with First Revised Exhibit K, attached as Attachment 1 hereto.

2. Purchase Price. The Purchase Price for the expansion of the Basement Easement Area shall be \$42,000.00 (“**Purchase Price**”).

3. Escrow and Closing.

A. Opening of Escrow. No later than five (5) business days after TJPA Board of Directors approves this Amendment, the Parties shall open an escrow by depositing a duly executed and acknowledged counterpart of this Amendment with Chicago Title Insurance Company, 455 Market Street, Suite 2100, San Francisco, California 94105-2420 (“**Title Company**” and “**Escrow Agent**”). This Amendment, as supplemented by each party’s escrow instructions to Escrow Agent, shall serve as instructions to Escrow Agent for closing escrow.

B. Tower Owner Closing Conditions. The following are conditions precedent to Tower Owner’s obligation to close:

- i. TJPA Board shall have authorized TJPA Executive Director to execute this Amendment;
- ii. Escrow Agent shall be prepared to record this Amendment at Closing; and
- iii. Title Company shall be prepared to issue a title policy to Tower Owner for the Basement Easement as amended by this Amendment.

C. TJPA Closing Conditions. The following are conditions precedent to TJPA’s obligation to close:

- i. Tower Owner shall have delivered to the Escrow Agent the Purchase Price, any outstanding Attorneys’ Fees, the Closing Costs (as defined herein), and any other funds as are necessary to close escrow consistent with the terms of this Amendment; and
- ii. Escrow Agent shall be prepared to record this Amendment at Closing.

D. Closing. Not later than the business day immediately preceding the closing date agreed upon by the Parties, each Party shall deposit into escrow all documents and items such party is obligated to deposit into Escrow in accordance with this Amendment. At closing, Tower Owner shall pay the Purchase Price and any outstanding Attorneys’ Fees to, or as directed by, TJPA, in cash or an amount credited by wire transfer of immediately available funds to a national bank in San Francisco, California specified by TJPA for credit to the escrow account of

Title Company. Upon receipt of all documents, items and funds required to close escrow, and notification by each Party that the Party's conditions of closing have been satisfied or waived, Escrow Agent shall close escrow. Immediately following close of escrow, Escrow Agent shall record this Amendment.

E. Outside Closing Date. TJPA and Tower Owner are obligated to close on or before the thirtieth (30th) day after TJPA Board approves this Amendment ("**Outside Closing Date**"), unless the Parties, each in its sole and absolute discretion, have agreed in writing to an extension of the Outside Closing Date.

F. Closing Costs. Tower Owner shall bear all cost and responsibility for all title, escrow, and closing fees and costs, including, but not limited to, the cost of any transfer or other taxes, surveys, appraisals, environmental review, title policy premiums and endorsements, and escrow, document, and recording fees required due to the recordation of this Amendment (collectively "**Closing Costs**").

G. Attorneys' Fees. Tower Owner shall reimburse the TJPA for its reasonable attorneys' fees and costs incurred in connection with the negotiation and implementation of this Amendment ("**Attorneys' Fees**"). Tower Owner shall remit payment to the TJPA within 15 days of receipt of an invoice documenting such fees, and shall pay the balance of any unreimbursed fees at closing.

4. Failure to Close. The amendment of the Easement Agreement described in Section 1 shall not become effective until this Amendment is recorded. In the event of a failure to close by the Outside Closing Date (as may be extended by the Parties), this Amendment shall not be recorded and shall terminate. In the event of termination, the TJPA shall retain all rights and remedies with respect to the encroachment of Tower Owner's basement that it had prior to its entry into the Easement Agreement. This Section 4 shall survive termination of the Amendment.

5. Miscellaneous. Except as amended in this Amendment, the Easement Agreement is unchanged and, as so amended, the Easement Agreement continues in full force and effect. If there is any conflict between the Easement Agreement and the Amendment, this Amendment shall control. This Amendment may be amended, modified or supplemented only by a writing signed by all Parties. The Easement Agreement, as amended by this Amendment, constitutes the entire and integrated agreement between TJPA and Tower Owner relating to the subject matter thereof and supersedes all prior agreements, understandings, offers and negotiations, oral and written, with respect to the subject matter thereof. This Amendment may be executed in counterparts, each of which shall be an original, and all of which shall constitute one and the same agreement. The interpretation of this Amendment shall be without regard to which Party is the "drafting party" and the Parties waive the benefit of any law or judicial decision providing otherwise.

IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the date written above and declares that the Easement Agreement is hereby amended effective upon recordation of this Amendment in the Office of the Recorder of the City and County of San Francisco.

TRANSBAY JOINT POWERS AUTHORITY

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:
Shute, Mihaly & Weinberger LLP

By: _____
William J. White
Counsel for TJPA

TOWER OWNER

PARK TOWER OWNER LLC,
a Delaware limited liability company

By: Park Tower Holdings LLC,
a Delaware limited liability company
Its: Sole Member

By: MA West LLC
a Delaware limited liability company
Its: Managing Member

By: _____
Authorized Signatory

ATTACHMENT 1
FIRST REVISED EXHIBIT K
BASEMENT EASEMENT AREA

EXHIBIT K

BASEMENT EASEMENT AREA LEGAL DESCRIPTION

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING A PORTION OF THOSE CERTAIN LANDS DESCRIBED IN THOSE CERTAIN DIRECTOR'S DEEDS RECORDED AUGUST 9, 2010, IN DOCUMENT NO. 2010-J017196 AND DOCUMENT NO. 2010-J017207, OFFICIAL RECORDS, ALSO BEING A PORTION OF PARCEL B, AS SAID PARCEL IS SHOWN ON PARCEL MAP 8677, FILED FOR RECORD SEPTEMBER 3, 2015, IN BOOK 49 OF PARCEL MAPS, PAGES 41 - 42, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1

ALL THAT REAL PROPERTY BETWEEN TWO HORIZONTAL PLANES, THE UPPER PLANE BEING AT ELEVATION PLUS 12.40 FEET AND THE LOWER PLANE BEING AT ELEVATION MINUS 88.64 FEET, CCSF 2013 NAVD88 VERTICAL DATUM, BOUNDED BY VERTICAL PLANES WHICH EXTEND BETWEEN THE AFORESAID HORIZONTAL PLANES, THE LIMITS OF SAID VERTICAL PLANES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF BEALE STREET (82.50 FEET WIDE), DISTANT THEREON N43°41'50"W 174.00 FEET FROM THE NORTHWESTERLY LINE OF HOWARD STREET (82.50 FEET WIDE); THENCE ALONG SAID LINE OF BEALE STREET, N43°41'50"W 6.55 FEET; THENCE N46°18'10"E 101.00 FEET; THENCE S43°41'50"E 6.55 FEET; THENCE S46°18'10"W 101.00 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF ASSESSOR'S BLOCK NO. 3718

EXHIBIT K
BASEMENT EASEMENT AREA LEGAL DESCRIPTION

PARCEL 2

ALL THAT REAL PROPERTY BETWEEN TWO HORIZONTAL PLANES, THE UPPER PLANE BEING AT ELEVATION PLUS 11.36 FEET AND THE LOWER PLANE BEING AT ELEVATION MINUS 88.64 FEET, CCSF 2013 NAVD88 VERTICAL DATUM, BOUNDED BY VERTICAL PLANES WHICH EXTEND BETWEEN THE AFORESAID HORIZONTAL PLANES, THE LIMITS OF SAID VERTICAL PLANES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF THE ABOVE DESCRIBED PARCEL 1; THENCE N46°18'10"E 35.05 FEET TO THE SOUTHWESTERLY LINE OF THE LANDS DESCRIBED IN THAT CERTAIN DIRECTOR'S DEED RECORDED APRIL 10, 1956, IN BOOK 6822, PAGE 120, OFFICIAL RECORDS; THENCE ALONG SAID SOUTHWESTERLY LINE S65°41'41"E 7.06 FEET TO A POINT THAT IS PERPENDICULARLY DISTANT 174.00 FEET NORTHWESTERLY FROM THE NORTHWESTERLY LINE OF HOWARD STREET (82.50 FEET WIDE); THENCE S46°18'10"W 37.70 FEET TO A POINT THAT IS PERPENDICULARLY DISTANT 101.00 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF BEALE STREET (82.50 FEET WIDE); THENCE N43°41'50"W 6.55 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF ASSESSOR'S BLOCK NO. 3718

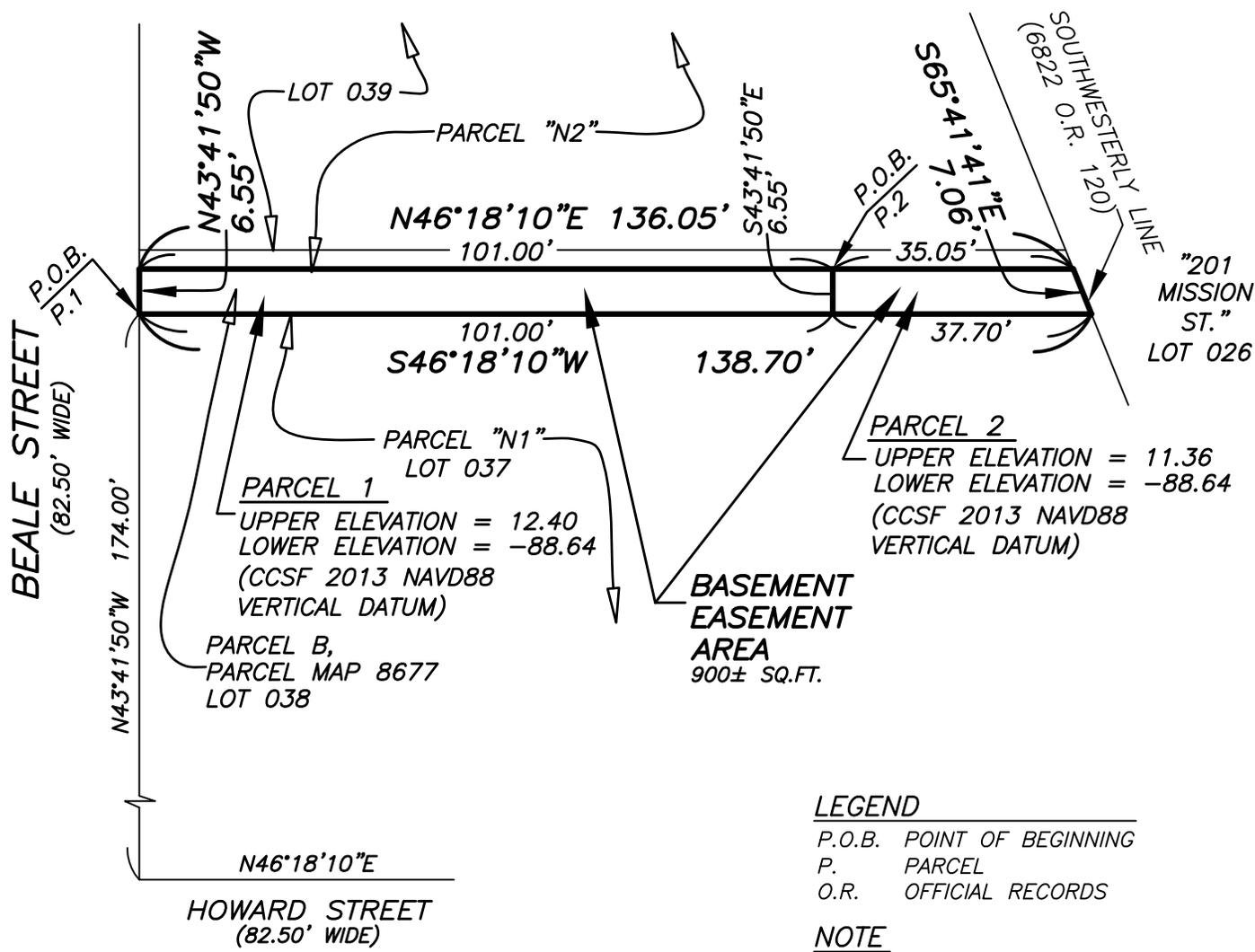
BASIS OF BEARINGS: THE SAN FRANCISCO CITY MONUMENT LINE LOCATED IN BEALE STREET BETWEEN MONUMENT LINES IN MISSION STREET AND HOWARD STREET, IS TAKEN AS SOUTH 43°41'50" EAST AS SHOWN ON RECORD OF SURVEY NO. 6428, FILED ON MAY 31, 2012, IN BOOK EE OF SURVEY MAPS, AT PAGES 19-27, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO.


Benjamin B. Ron, PLS 5015

Date: 5-4-18



EXHIBIT K



LEGEND
P.O.B. POINT OF BEGINNING
P. PARCEL
O.R. OFFICIAL RECORDS

NOTE
ALL DISTANCES SHOWN ARE IN FEET AND DECIMALS THEREOF.

BASEMENT EASEMENT AREA

ASSESSOR'S BLOCK 3718
SAN FRANCISCO, CALIFORNIA

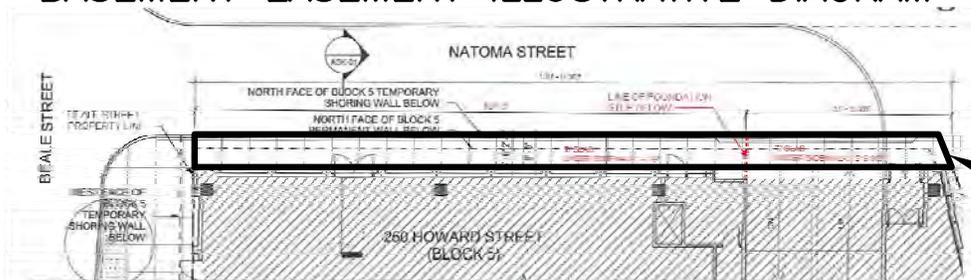
BY JP CHKD. BR DATE 5-4-18 SCALE NONE SHEET 1 OF 2 JOB NO. S-8837

MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

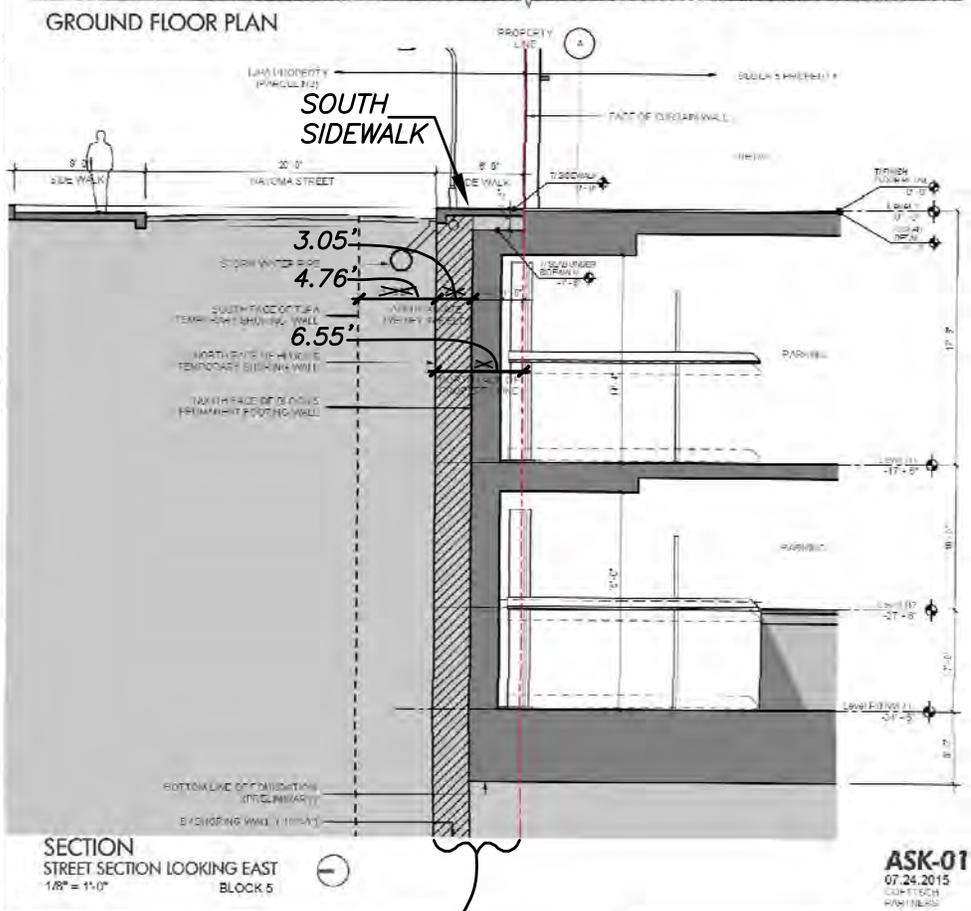
859 HARRISON STREET
SAN FRANCISCO, CA. 94107
(415) 543-4500
S-8837_ESMT-BSMT.DWG

EXHIBIT K

BASEMENT EASEMENT ILLUSTRATIVE DIAGRAM



SOUTH SIDEWALK



NOTE:
NORTH FACE OF BLOCK 5 TEMPORARY SHORING WALL IS 6.55' NORTH OF PROPERTY LINE.

BASEMENT EASEMENT AREA
NOTE:
UPON COMPLETION OF CONSTRUCTION, EASEMENT TO BE TERMINATED AS TO AREAS NOT OCCUPIED BY OR NECESSARY FOR ACCESS TO BASEMENT IMPROVEMENTS.

BASEMENT EASEMENT AREA

**ASSESSOR'S BLOCK 3718
SAN FRANCISCO, CALIFORNIA**

BY JP CHKD. BR DATE 5-4-18 SCALE NONE SHEET 2 OF 2 JOB NO. S-8837

MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

859 HARRISON STREET
SAN FRANCISCO, CA. 94107
(415) 543-4500
S-8837_ESMT-BSMT.DWG