

(Exempt from Recording Fees
Pursuant to Government Code
Section 27383)

Recording requested by
and when recorded mail to:

San Francisco Public Works
Bureau of Street-Use and Mapping
Office of the City and County Surveyor
49 South Van Ness Avenue
Suite 300
San Francisco, CA 94103

APN: 7334-007; 7333B-001; 7333A-001; 7334-008; 7334-009; 7333-004;
7333-008; 7337-003; 7334-010

SPACE ABOVE THIS LINE RESERVED FOR
RECORDER'S USE

**PARKMERCED BLOCKS 3W & 4 ("SUBPHASE 1C")
PUBLIC IMPROVEMENT AGREEMENT**

Affecting Assessor Parcel Numbers: A re-subdivision of portions of current Assessor's Blocks
7334 and 7337, together with Parcel Three

Situs: NO SITUS ADDRESS

FINAL MAP NO. 10699: The area situated west of Arballo Drive, southerly of Higuera Avenue,
east of Lake Merced Boulevard, and north of Vidal Drive , San Francisco, California

Subdivider: Maximus PM Phase 1C Owner LLC

PUBLIC IMPROVEMENT AGREEMENT
(PARKMERCED BLOCKS 3W & 4 (“SUBPHASE 1C”))

This PUBLIC IMPROVEMENT AGREEMENT (this “Agreement”) dated for reference purposes only as of _____, 2023, is entered into as of _____, 2023 (the “Effective Date”), by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation of the State of California (“City”), and MAXIMUS PM PHASE 1C OWNER LLC, a Delaware limited liability company, its successors and assigns, (“Subdivider”). The City and Subdivider are also sometimes referred to individually as a “Party” and together as the “Parties”.

RECITALS

A. Except as specifically defined herein, capitalized terms shall have the meaning given in the Subdivision Code of the City and County of San Francisco (the “Code”) and in the Development Agreement for the Parkmerced Project (approved by Ordinance No. 89-11) (as amended from time to time, the “Development Agreement”), including the Parkmerced Subdivision Requirements (Exhibit M of the Development Agreement) and the Parkmerced Plan Documents (the “Plan Documents”).

B. Pursuant to the Development Agreement, Subdivider is engaged in subdividing the property that is subject to “Final Map No. 10699” (“Final Map”) consisting of approximately 7.1 acres, as shown therein (“Property”). A tentative subdivision map, entitled “Tentative Final Map 10699”, being a 9 Lot Subdivision, and authorizing up to 278 Residential Condominium Units, up to 166 new rental residential dwelling units, and retaining 42 existing rental residential units on the Property (“Tentative Map”) was approved by the Director of the Department of Public Works (“Director”, with references to Director also including the Director’s designee where authorized by law) by Order 206742, acting as the advisory agency for purposes of the Subdivision Map Act (“Advisory Agency”), subject to certain requirements and conditions contained in the Director’s Conditions of Approval dated June 23, 2022 (the “Conditions of Approval”).

C. Pursuant to the Code and the San Francisco Subdivision Regulations (the “Subdivision Regulations”), the Tentative Map, and the Conditions of Approval, the Final Map irrevocably offers for dedication (i) interests of real property for public street and utilities use, and (ii) public improvements from Subdivider, as described herein.

D. The Property is a component of the project site of the Parkmerced Mixed-Use Development Project, approved on June 7, 2011 at a duly noticed public hearing by the San Francisco Board of Supervisors pursuant to amendment to the City's General Plan (approved by Ordinance No. 92-11), Zoning Map (approved by Ordinance No. 91-11 and Planning Code (approved by Ordinance No. 90-11), as well as approval of a Development Agreement.

E. The Parkmerced Mixed-Use Development Project is comprised of multiple Development Phases (as more particularly described in the Development Agreement). The Planning Director approved Development Phase 1 of the Project on June 3, 2015, and, on August 27, 2019 and March 29, 2023, approved amendments to Development Phase 1. Development Phase 1 is comprised of four Subphases (1A, 1B, 1C, and 1D). This Agreement pertains to the public improvements proposed by Subphase 1C.

F. Pursuant to Section 6.1.1 of the Development Agreement, the City is to transfer certain real property to Developer and Developer is to transfer certain real property to City to reconfigure the public rights of way in the Project Site. City's transfer of that real property is to be by quitclaim deed following the vacation and abandonment of any public rights and relocation of any utilities in that real property. By Ordinance No. 207-22, the City authorized the vacation of certain rights of way to be transferred to the Developer for Subphase 1C provided that City reserve a public right of way easement for street and utility use until the Developer replaces them in new public rights of way. Ordinance No. 207-22 authorizes the Director of Property to execute these quitclaim deeds subject to those conditions.

G. In Public Works Order No. _____, the Director granted certain exceptions and modifications to the Code and Subdivision Regulations pertaining to design and construction of Required Infrastructure..

H. Pursuant to the Development Agreement, Subdivider is obligated to construct horizontal infrastructure and public improvements within the Property. Such infrastructure and public improvements contemplated are described in the Infrastructure Plan (described below), Tentative Map, and Final Map, and are more particularly described in those certain improvement plans identified in Exhibit A-1 (as such plans are revised from time to time, the "Plans and Specifications"). The Plans and Specifications provide for the construction, installation and

completion of the horizontal infrastructure and public improvements identified therein (the “Required Infrastructure”). The Required Infrastructure includes improvements that the Development Agreement and Infrastructure Plan anticipate would be (i) offered for dedication to the City, and subsequently dedicated for public use, and accepted for maintenance and liability by the Board of Supervisors upon completion pursuant to Section 6 (“Publicly Owned Infrastructure”), (ii) private improvements in the public right-of-way to be owned, operated, and maintained by entities other than the City, including Subdivider, fronting property owner, Management Association, or private utility providers such as service conduits and vaults for PG&E, AT&T, Comcast, Clear Channel or other telecommunications or internet providers identified in Exhibit A-2 (“Privately Owned Infrastructure”), and (iii) interim facilities (“Interim Facilities”), described more fully below and identified in Exhibit A-3. Interim Facilities (alternatively referred to as “Future-Dedicated Infrastructure” in the Public Improvement Agreements for the Subphases 1A and 1B of the Project and described in further detail in Recital J below) may or may not be Accepted (as that term is defined in Section 6(b)) by the City and are anticipated to be replaced with or converted into Publicly Owned Infrastructure in a later Development Phase. The forms of infrastructure mentioned above collectively comprise the Required Infrastructure. The estimated costs of completing the Required Infrastructure are described in Exhibit B (the “Estimated Costs”). Copies of the Plans and Specifications are on file with the San Francisco Department of Public Works (“Public Works”).

I. The access, operation, and maintenance requirements for Privately Owned Infrastructure in the public right-of-way that will be owned by Subdivider or its assignee shall be set forth in a Major Master Encroachment Permit (“MMEP”), issued pursuant to San Francisco Public Works Code Section 786. In addition, Subdivider intends to enter into an agreement, pursuant to San Francisco Charter section 16.129(c) for the private maintenance of any City-owned street trees.

J. The Interim Facilities are (i) a low-pressure water system (“Low-Pressure Water System”) and (ii) a recycled water system (“Recycled Water System”) to be constructed, owned, operated, and maintained by Subdivider, unless and until Subdivider offers the Low-Pressure Water System and Recycled Water System to the City for acceptance and dedication and the City accepts such offer, all in accordance with that certain Restatement and Amendment of Water System Easement dated December 18, 2017 and recorded in the Official Records of the City and

County of San Francisco (the “Official Records”) on December 20, 2017 as Document No. 2017K553669, as amended by that certain First Amendment to Restatement and Amendment of Water System Easement dated _____, 2023 and recorded in the Official Records on _____, 2023 as Document No. _____ (the “Water System Easement”). Pursuant to the Water System Easement, the Subdivider intends to dedicate the Recycled Water System to the City at the completion of Development Phase 1 and intends to dedicate the Low Pressure Water System to the City at the completion of all Development Phases of the Project and City acceptance of each system would take place as set forth in the Water System Easement.

K. The Parkmerced Infrastructure Plan (a component of the Development Agreement and sometimes alternatively referred to as the “Parkmerced Infrastructure Report”)) provides that the Subdivider would design and construct a dedicated underground piping system and fire hydrants within Parkmerced as an auxiliary water supply system (“AWSS”) during each phase of construction of the Project. Figure 4.4 of the Infrastructure Plan shows the layout of the AWSS (the “Original AWSS Layout”) approved as part of the Development Agreement. Although reviewed in detail and agreed-upon by the San Francisco Public Utilities Commission (“SFPUC”) and the San Francisco Fire Department (“SFFD”) as part of the Development Agreement, the Original AWSS Layout would not have allowed the AWSS to function until completion of multiple phases of the Project and a source of water had not been identified to pressurize the system. To improve fire protection and create the potential for a functional AWSS during Development Phase 1 of the Project, the SFFD, and SFPUC requested in 2015 that Parkmerced modify the Original AWSS Layout. Pursuant to Section 2.2.4 of the Development Agreement, amendment of the Original AWSS Layout requires approval of an amendment of the Infrastructure Plan by Parkmerced, SFFD, SFPUC, and the Director of the San Francisco Planning Department. Pursuant to a letter agreement dated April 7, 2017, Parkmerced, SFPUC, SFFD, and the Planning Director approved modifications to the Parkmerced AWSS layout, which are reflected in the Plans and Specifications.

L. Certain Publicly Owned Infrastructure and open space improvements are to be installed on a parcel of land outside the Final Map area and owned by SFPUC (Assessor’s Block 7333, Lot 002; the “SFPUC Parcel”). SFPUC will grant Subdivider the right to construct such

Publicly Owned Infrastructure in the form of license attached hereto as Exhibit J (the “SFPUC Parcel License”). The SFPUC Parcel License provides for the Subdivider’s construction and maintenance of certain Publicly Owned Infrastructure and open space improvements on the SFPUC Parcel prior to Acceptance by the City.

M. The Code provides that before a final subdivision map or parcel map is approved by the City, Subdivider shall have either (i) installed and completed all of the public improvements required by the City and detailed in the Plans and Specifications approved by the Director, or (ii) entered into an agreement with the City to install and complete, free of liens, all of such public improvements within a definite period of time and provided appropriate security to ensure satisfactory completion of the work.

N. The City and Subdivider, desire to enter into this Agreement in order to permit the approval and recordation of the Final Map by the City (including the dedications contained therein), to implement the Conditions of Approval, and to simultaneously satisfy the security provisions of the Subdivision Map Act, the Code, and the Development Agreement.

NOW, THEREFORE, in order to ensure satisfactory performance of Subdivider under the Code, Subdivider and the City agree as follows:

1. Recitals. The above recitals are true and correct, and are incorporated into this Agreement.

2. Subdivider’s Obligations.

(a) Required Infrastructure. Subdivider shall, in good and workmanlike manner, furnish all necessary materials and complete the Required Infrastructure in conformity with the Plans and Specifications as described in Exhibit A-1.

(b) Completion. Subdivider shall complete the Required Infrastructure in accordance with Section 6(a) on or within two (2) years following the issuance of the Street Improvement Permit. The period of time provided in this condition may be extended upon application by Subdivider and approval by the Director pursuant to Section 4(b) or may be extended by operation of Section 10(c).

(c) Other Required Documentation.

(i) Prior to the Director's submittal of this Agreement to the City's Board of Supervisors ("Board of Supervisors"), Subdivider has provided executed copies of all the documents in recordable form and other agreements and notices required pursuant to Exhibit C, unless deferred by the Director, in writing, until the time Subdivider delivers a Letter of Intent to Request Notice of Completion, pursuant to Section 6(a). Further, certain Conditions of Approval have not been satisfied at the time of Final Map approval. The Director has determined that it is acceptable to defer compliance for the satisfaction of these Conditions of Approval for purposes of the Subdivision Map Act, and the subject Conditions of Approval and deferred compliance event for each Condition of Approval is shown in Exhibit D.

(ii) At the time of request for a Notice of Completion, pursuant to Section 6(a), for any Required Infrastructure, Subdivider shall provide all documents required pursuant to Exhibit E, plus any other material previously deferred by the Director in item (i) above, unless deferred by the Director in writing until the time of a request for Acceptance pursuant to Section 6(b). In addition, to facilitate the GIS referencing and coding of Publicly Owned Infrastructure, prior to the submittal of as-built, the Subdivider shall coordinate with the Public Work, to confirm the current standards for the formatting and submittal of the electronic As-builts. Subdivider shall furnish to Public Works and, if requested, the City Department of Building Inspection, as-built plans of the completed Required Infrastructure or portion thereof, in both electronic (in a reasonably current version of AutoCAD and/or another digital format acceptable to Public Works) and Mylar formats, and any reports required by any related Plans and Specifications.

(iii) At the time of a request for Acceptance of any Required Infrastructure pursuant to Section 6(b), Subdivider shall provide all the documents required pursuant to Exhibit F, plus any other materials previously deferred by the Director pursuant to subsections (i) and (ii) above. In addition, as part of compliance with this Section 2, Subdivider shall coordinate with the City and assist in the City's process for the subsequent dedication and Acceptance of the Required Infrastructure by (i) providing necessary maps, legal descriptions and plats for street openings, proposed easements and/or dedications for right of way or utility purposes

and for relinquishment of existing rights of access and utilities associated with on-site and off-site development, and (ii) executing easement agreements or grant deeds, or modifying existing easements or grant deeds consistent with the Conditions of Approval.

3. Improvement Security.

(a) Bonds. Subdivider will furnish and deliver to the Director bonds (“Bonds”) in favor of the City, which shall be in a form approved by the City Attorney, from an issuer approved by the Director, and secure the installation and completion of the Required Infrastructure as follows:

(i) Performance bonds in the amount of Ten Million Nine Hundred Thirty-Two Thousand Eight Hundred Fifty-Three and No/100 DOLLARS (\$10,932,853.00 -- 100% of estimated cost of completion of the construction and installation of the Required Infrastructure as determined by the Director) to secure the satisfactory performance of Subdivider’s obligations; and

(ii) A payment bond or other acceptable security in the amount of Five Million Four Hundred Sixty-Six Thousand Four Hundred Twenty-Six and 50/100 DOLLARS (\$5,466,426.50 -- 50% of the estimated cost of completion of the Required Infrastructure as determined by the Director) as guarantee of payment for the labor, materials, equipment, and services required for the Required Infrastructure; and

(iii) A monument bond in the total amount of Fifty-One Thousand Five Hundred Sixty-Four and No/100 DOLLARS (\$51,564.00), representing 100% of the cost of installation of twelve (12) monuments in as guarantee of payment for the labor, materials, equipment, and services required for furnishing and installing required survey monuments and to pay the Subdivider’s engineer or surveyor for said work.

(b) Other Acceptable Security. In lieu of providing the Bonds on the full execution of this Agreement, Subdivider has proposed providing a deed of trust, assignment of rents, security agreement and fixture filing as security under Section 66499(a) of the Government Code (“Deed of Trust”). The Deed of Trust is in the form attached as Exhibit G and would secure Subdivider’s obligation to build the Required Infrastructure pursuant to this Agreement. The

Director has determined that the Deed of Trust constitutes adequate security until a Street Improvement Permit is issued for the Required Infrastructure. Notwithstanding anything to the contrary in this Agreement, prior to the issuance of the Street Improvement Permit for the Required Infrastructure, Subdivider must replace the Deed of Trust with Bonds or another form of security as described in Section 66499 of the Government Code and acceptable to City, in an amount and form that is subject to approval of the Director (“Replacement Security”). The City shall execute a full reconveyance of the Deed of Trust within thirty (30) days of Subdivider’s delivery of the Bonds or the Replacement Security to the City, as further set forth in the Deed of Trust.

(c) Use of Security. If the Required Infrastructure is not completed within the time periods specified in Section 2(b) and such period is not extended by the City or as otherwise provided under this Agreement, or Subdivider has not satisfactorily corrected all deficiencies during the Warranty Period, as specified in Section 9(a), the security (“Security”) provided by Subdivider under Section (a) or Section (b) may, by resolution of the Board of Supervisors, be used by the City for completion of the Required Infrastructure in accordance with the Plans and Specifications and for the correction of any such deficiencies.

(d) Development Agreement Security. The security requirements of this Agreement shall be read and constructed in accordance with the requirements of the Code and the Development Agreement, including but not limited to Section 12.5.2 thereof. Nothing in this Agreement shall alter the City or Subdivider’s rights and remedies under the Development Agreement or the security to be provided by Subdivider under the Development Agreement, except as provided in the Development Agreement.

4. Construction of the Required Infrastructure.

(a) Permits and Fees. Due to overlapping scopes of work between the Required Infrastructure to be constructed pursuant to this Agreement and the Subphase 1A Required Infrastructure being constructed pursuant to that certain Parkmerced Blocks 1 and 6 (“Subphase 1A”) Public Improvement Agreement recorded in the Official Records on December 14, 2017 as Document No. 2017K551921 (the “Phase 1A PIA”), the City shall not issue a Street Improvement Permit for the Required Infrastructure until: (1) a Determination of Completeness for the Subphase

1A Required Infrastructure has been issued by the Director in accordance with Section 5(a) of the Phase 1A PIA; or (2) the Director makes a determination in writing that sufficient progress has been made on the pertinent Subphase 1A Required Infrastructure such that the Required Infrastructure may be installed in an integrated and orderly manner. Subdivider shall not thereafter perform any of the Required Infrastructure until all required permits have been obtained for the portion of work involved, and all applicable fees, including inspection and testing fees, have been paid. In addition, no work shall commence until Subdivider has submitted to the City and the City has approved all required items described in Section 2(c) and any additional requirements of and authorizations specified in the Code, Subdivision Regulations, Conditions of Approval, and this Agreement, unless the Director, in his or her discretion, has granted a written deferral for one or more of these materials.

(b) Extensions. The Subdivider may request an extension of the time period specified in Section 2(b) for completion of the Required Infrastructure by written request to the Director. A request shall state adequate evidence to justify the extension and shall be made upon Subdivider's determination that it cannot reasonably meet the deadline in the time remaining for completion. The Director may request additional information and shall work expeditiously and with due diligence, and in good faith attempt to determine within thirty (30) days of the request whether to grant an extension of time. The Director's failure to respond within the time specified shall, however, not constitute either a grant or denial of the requested extension. The time for completion additionally shall be automatically extended for the number of days past thirty (30) during which a request for an extension is pending a determination by the Director, as well as during any Excusable Delay, as provided in Section 10(c). The Director shall not unreasonably withhold or delay a request for an extension. The Director may reasonably condition an extension subject to the terms of this Agreement and the conditions provided in the Code, including execution of an extension agreement and the extension of any Security. No extension approved hereunder shall limit or relieve a surety's liability, or provide an extension on any future obligation under this Agreement or the Development Agreement, if applicable (except as expressly stated in the approved extension). Should an extension be approved by the Director that extends beyond the Term of the SFPUC Parcel License (as "Term" is defined in the SFPUC Parcel License), City and Subdivider shall cooperate on seeking and securing an extension of the SFPUC Parcel License,

subject to the approvals of the SFPUC Commission and Board of Supervisors if required, commensurate with the approved extension of the time period specified in Section 2(b).

(c) Revisions to Plans and Specifications. Requests by Subdivider for revisions, modifications, or amendments to the approved Plans and Specifications (each a “Plan Revision”) shall be submitted in writing to the Director. Subdivider shall not commence construction of any proposed Plan Revision without approval by Public Works and until revised plans have been received and approved by the Director. If the Director approves an instructional bulletin, such approval shall be considered the Director’s approval for purposes of this Subsection. The Director shall obtain the written consent of any affected City departments for all instructional bulletins. Pursuant to Section 3.9.3(a) of the Development Agreement, the affected City departments will use good faith efforts to review and comment on, or approve, any submitted instructional bulletin, from the time such bulletin is submitted by the Director, within 30 days. At the discretion of the Director, the Subdivider shall be responsible to produce a comprehensive set of plans, which includes all approved Plan Revisions to that point (a “Conform Plan”).

(i) Any Infrastructure Plan amendments or other related documentation related to the Required Infrastructure and required for a Plan Revision shall be processed by the City in accordance with the Development Agreement and Infrastructure Plan, and with reasonable promptness, and approval of the Plan Revision shall not be deemed final until such amendment has been completed.

(ii) Any Plan Revision request by Subdivider shall be accompanied by (A) a statement explaining the need for or purpose of the proposed revision, and (B) drawings and specifications and other related documents showing the proposed Plan Revision in reasonable detail, consistent with the original Plans and Specifications.

(d) Temporary Construction Easement. Subdivider grants to the City for its own benefit and its respective Agents and Permittees a non-exclusive easement in gross to enter on, over, and across Final Map Lot A (“Easement Area”) and such adjacent areas to construct the Required Infrastructure under Section 3(c) as reasonably necessary for staging of construction equipment and materials for the purpose of constructing the Required Infrastructure, including conducting all activities necessary for the completion thereof, together with the right of ingress to

and egress from any available adjacent areas (“Temporary Construction Easement”). In connection with the Temporary Construction Easement, the City shall have the right to fence off or otherwise secure portions of the Easement Area to prevent third parties from accessing the Easement Area in order to ensure the safety and security thereof, consistent with the City’s standard construction security practices for similar infrastructure components. In undertaking work within the Easement Area, the City shall use reasonable efforts to (i) complete all construction activities in an expeditious and diligent manner; and (ii) minimize disruption to Subdivider’s use of Subdivider’s of the Easement Area and adjacent land. The term of the Temporary Construction Easement shall commence upon occurrence of both (i) a Default (as defined in Section 10(d) of this Agreement) by Subdivider resulting from a failure to perform its obligations of Section 2, and (ii) the Director’s delivery of notice to Subdivider of the commencement of the Temporary Construction Easement. The Temporary Construction Easement shall terminate automatically (without required approval by the Board of Supervisors) on the earliest of (1) Subdivider obtaining a Certificate of Conformity, or Notice of Completion for the applicable Required Infrastructure, (2) the City’s completion of the applicable Required Infrastructure, (3) expiration or sooner termination of this Agreement, or (4) the Director’s delivery of written notice to Subdivider of such termination. Consistent with the Infrastructure Plan, Subdivider shall own and be responsible for the maintenance and liability of any Required Infrastructure in the Easement Area, regardless of whether Subdivider or the City completes the Required Infrastructure, until such time as any such Required Infrastructure is Accepted by the Board of Supervisors, as applicable.

5. Release of Security. The Security, or any portions thereof, not required to secure completion of Subdivider’s obligation for construction or installation of the Required Infrastructure, to satisfy claims by contractors, subcontractors, and/or persons furnishing materials or equipment, or for setting monuments set forth on the Final Map, shall be released to Subdivider, or its successors in interest, or reduced, pursuant to the procedures below as appropriate:

(a) One Year Warranty for Completed Required Infrastructure. Upon (i) the Director’s issuance of a Notice of Completion or Certificate of Conformity, as applicable, for a portion of the Required Infrastructure in accordance with Section 6(a) or 6(e), as applicable, and (ii) a certification from the Clerk of the Board of Supervisors (or the Clerk’s designee) that no

claims by any contractor, subcontractor or person furnishing labor, materials or equipment for the Required Infrastructure have been filed against the City (any such claim a “Contractor Claim”) prior to or within a 100-day period following the Notice of Completion or Certificate of Conformity, as applicable, for such Required Infrastructure, the Security shall be reduced to no less than ten percent (10%) of the original amount of the Security for such portion of the Required Infrastructure for the purpose of warranting repair of any defect for said Required Infrastructure that occurs within one (1) year of the date of such Notice of Completion or Certificate of Conformity; provided, however, that if any Contractor Claim has been filed against the City, then the Security shall be reduced only to an amount equal to the amount of any and all such Contractor Claims filed or to ten percent (10%) of the original amount, whichever is greater.

(b) Partial Release of Security. Notwithstanding the release provisions in Section 5(a) and except as provided in Section 5(c), the Security may be reduced in conjunction with the Director’s issuance of a Notice of Completion or Certificate of Conformity, as applicable, for any portion of the Required Infrastructure in compliance with Section 6(a) or 6(e), as applicable, to an amount determined by the Director that equals the actual cost of the completed portion of the Required Infrastructure for which the Notice of Completion or Certificate of Conformity, as applicable, is granted. Prior to the date that the conditions set forth in Section 5(c) below are satisfied, in no event, however, shall the amount of the Security be reduced below the greater of (i) the amount required to guarantee the completion of the remaining portion of the Required Infrastructure and any other obligation imposed by the Subdivision Map Act, the Code or this Agreement; or (ii) ten percent (10%) of the original amount of the Security. The Security remaining following any reductions provided for by Section 5(a) and this Section 5(b) is referred to herein as “Remaining Security”.

(c) Release of Remaining Security. Remaining Security shall be released when all of the following have occurred:

(i) One (1) year following the date of (A) Acceptance (as defined in Section 6(b)) of the relevant portion of Publicly Owned Infrastructure or Interim Facilities (or for Privately Owned Infrastructure, Acceptance of the portion of Publicly Owned Infrastructure or Interim Facilities that functionally rely upon or are encumbered by such Privately Owned

Infrastructure), or one year has passed since the date any claim of defect or deficiency of the relevant portion of Required Infrastructure has been corrected or waived in writing by the Director; and

(ii) The Clerk of the Board of Supervisors (or the Clerk's designee) certifies that no claims by any contractor, subcontractor or person furnishing labor, materials or equipment for the Required Infrastructure have been filed against the City, all such claims have been satisfied, withdrawn, or otherwise secured by bond or other security approved by the Director.

6. Completion and Acceptance of Publicly Owned Infrastructure and Interim Facilities.

(a) Director's Inspection. No sooner than ninety (90) days prior to the date that Subdivider intends to request the Director issue a "Notice of Completion" (which, for avoidance of confusion, is a term used by Public Works as of the Effective Date) for any portion of the Publicly Owned Infrastructure or Interim Facilities, Subdivider shall make a written request to the Director of Subdivider's intent to initiate the Notice of Completion process ("Letter of Intent to Request Notice of Completion"). Upon delivery of a Letter of Intent to Request Notice of Completion, accompanied with any and all materials that are required under Section 2(c)(ii) related to the requested Notice of Completion and any other materials that the Director deferred in writing at the time of approval of this Agreement, the Director shall initiate the inspection within 90 days. If the Subdivider fails to submit a Letter of Intent to Request Notice of Completion, the Director need not consider Subdivider's request for the Director's issuance of a Notice of Completion until such a Letter of Intent to Request Notice of Completion is submitted to the Director and ninety (90) days have passed from the submission of the Letter of Intent to Request Notice of Completion; provided, however, that the Director, in his or her discretion, may agree in writing to a period of less than ninety (90) days from receipt of the Letter of Intent to Request Notice of Completion to consider issuance of a Notice of Completion. If the Director determines that the Publicly Owned Infrastructure or Interim Facilities subject to the requested Notice of Completion have not been completed or does not satisfy the above requirements, Director shall notify Subdivider as soon as reasonably practicable of such determination together with a statement setting forth with particularity the basis for that determination. If the Director determines that the Publicly Owned

Infrastructure or Interim Facilities have been completed in accordance with the Plans and Specifications to the satisfaction of the Director, and that such improvements are ready for their intended use, the Director shall issue the Notice of Completion.

(b) Acceptance. “Acceptance” by the City of any Publicly Owned Infrastructure or Interim Facilities, or portion thereof, for public use and maintenance shall be deemed to have occurred when:

(i) The Director has issued a Notice of Completion for such Publicly Owned Infrastructure or Interim Facilities, or portion thereof, in accordance with Section 6(a);

(ii) Subdivider submits a written request to the Director to initiate acceptance legislation or other appropriate action, before the Board of Supervisors as appropriate. Such submission shall include any and all materials for which the Director authorized deferral under Section 2(c); and

(iii) The Board of Supervisors by ordinance or other appropriate action, accepts such Publicly Owned Infrastructure or Interim Facilities, or portion thereof, for public use, and maintenance in accordance with the provisions of San Francisco Administrative Code Section 1.52 and Subdivider’s maintenance and warranty obligations under and Section 9(a).

(c) Offers of Dedication. The owners’ statements on the Final Map include or shall include certain irrevocable offers of dedication of improvements, easements shown on the map, easements by agreement, and real property in fee simple. In addition: the offers of dedication of improvements shall be made by separate instrument(s); the offers of dedication of real property in fee simple shall be made by separate instrument(s) and separate quitclaim deed(s); and the offers of dedication of easements shall be made by separate instrument(s). The Board of Supervisors shall accept, conditionally accept, or reject such offers. The City, at its discretion, may accept these easements at its convenience through formal action of the Board of Supervisors or as otherwise provided in local law. The Board of Supervisors shall also by ordinance accept, conditionally accept, or reject for public right-of-way and utility purposes Publicly Owned Infrastructure, and Interim Facilities (or a portion thereof) in accordance with Section 6(b). The Final Map includes certain offers of dedication as more particularly set forth therein. Upon the Director’s issuance of

a Notice of Completion for the Publicly Owned Infrastructure, or Interim Facilities, or portion thereof, in accordance with Section 6(a), the Board of Supervisors shall by ordinance or other appropriate action accept, conditionally accept, or reject such offers.

(d) Dedication. In addition to accepting improvements, the City shall, except as set forth in Section 6(e), dedicate the Publicly Owned Infrastructure, or Interim Facilities to public use and shall designate them for their appropriate public uses.

(e) Privately Owned Infrastructure Shall Not Be Publicly Dedicated. Subdivider shall not offer for dedication Privately Owned Infrastructure. The Privately Owned Infrastructure shall be owned, operated, and maintained by Subdivider subject to the requirements of the MMEP. The Privately Owned Infrastructure are integral components of the Required Infrastructure and are necessary components of a fully functional utility system. Promptly upon Subdivider's request, the City shall inspect Privately Owned Infrastructure, and the City shall issue a "Certificate of Conformity" for Privately Owned Infrastructure (or portions thereof) that meet the standard for "Notice of Completion" of Publicly Owned Infrastructure, set forth in Section 5. The Subdivider shall obtain a Certificate of Conformity for Privately Owned Infrastructure prior to City's Acceptance of Publicly Owned Infrastructure or Interim Facilities that functionally rely upon or are encumbered by such Privately Owned Infrastructure; provided, however, that the Director, in consultation with any affected City department, may grant an exception to this requirement on a case-by-case basis.

7. Subdivider's Maintenance Responsibility.

(a) General Maintenance and Liability Prior to Acceptance. Prior to Acceptance, Subdivider shall be responsible for the maintenance and repair of the Required Infrastructure and shall bear the liability regarding the same consistent with the Code. Subdivider shall be responsible for the maintenance and repair of Privately Owned Infrastructure pursuant to the MMEP.

(b) Maintenance and Liability Following Acceptance. Following Acceptance, and subject to Section 7(c) and Section 9(a), the City shall assume the responsibility of operating and maintaining and shall be liable for such Accepted Publicly Owned Infrastructure and Interim

Facilities. City shall indemnify Subdivider and the officers, agents and employees of each of them from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims by third parties (“Losses”) to the extent first arising from and after City’s Acceptance of any applicable portion of the Accepted Publicly Owned Infrastructure or Interim Facilities, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except to the extent such Loss is the result of the active negligence or willful misconduct of Subdivider. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs, and the City’s cost of investigating any claims against the City. Without limiting the generality of the foregoing, nothing in this Agreement shall be construed to mean that Subdivider is responsible (or that City shall have right to call or foreclose on the Security) for the repair, replacement, restoration, or maintenance of the Accepted Publicly Owned Infrastructure or Interim Facilities damaged by the actions of third parties following Acceptance by the City or by ordinary wear and tear or harm or damage from improper maintenance or operation of the Accepted Publicly Owned Infrastructure or Interim Facilities by the City, or any agent or agency of the City.

(c) Privately Owned Infrastructure. The Required Infrastructure includes Privately Owned Infrastructure, facilities for which Subdivider shall bear the liability and responsibility for maintenance. The Parties understand and agree that Subdivider, its successor in interest as to one or more of the development parcels depicted on the Tentative Map, fronting property owner, Management Association (as such term is defined in the Development Agreement), or other private entity approved by the City, shall be responsible for the ongoing maintenance and liability of Privately Owned Infrastructure, as applicable. The responsibilities for the Privately Owned Infrastructure in the public right of way and the maintenance and liability obligations for such infrastructure shall be defined in a MMEP approved by the Board of Supervisors. The MMEP shall provide for the designation of any successor to Subdivider’s responsibilities thereunder. Subdivider agrees that no portion of Privately Owned Infrastructure may be offered to the City for Acceptance. The Development Agreement anticipates that the maintenance obligations described herein for Privately Owned Infrastructure will be assigned to and assumed by a Master HOA. Subdivider’s assignment of such maintenance obligations to the Master HOA is governed by the MMEP and Section 3.5.3 of the Development Agreement.

(d) Protection of Required Infrastructure. Subdivider may, but shall not be obligated to, allow access by the public to portions of the Required Infrastructure that have been constructed but not Accepted. In order to protect such Required Infrastructure from damage and to minimize Subdivider's exposure to liability until such time as the applicable Required Infrastructure, or portion thereof, is Accepted, Subdivider may erect a construction fence or other physical barrier around areas under construction, to be constructed in the future, or constructed but not Accepted, provided that Subdivider has procured all necessary permits and complied with all applicable laws. However, no construction fence or other physical barrier may be built or maintained if the Director determines that a construction fence or other physical barrier adversely affects public health or safety by unreasonably restricting the ingress and egress of the public to and from a public right of way. For purposes of the preceding sentence, if there exists an alternative means of ingress and egress other than the Required Infrastructure, then the Director may not determine that the construction fence or other physical barrier constitutes an unreasonable restriction of ingress and egress of the public to and from a public right of way.

8. Intentionally Deleted.

9. Warranty and Indemnity.

(a) Warranty. Subdivider covenants that all Required Infrastructure constructed or installed by Subdivider shall be free from defects in material or workmanship and shall perform satisfactorily for a period of two (2) years following a Notice of Completion of the Required Infrastructure (or portion thereof) unless a longer warranty period applies based on applicable law ("Warranty Period"), except that the Warranty Period for plant materials and trees planted as part of the Required Infrastructure shall not commence until the Director receives a certification from the City's Construction Manager that the trees have passed a plant establishment period set in accordance with the Plans and Specifications. Such Warranty shall begin upon the issuance of a Certificate of Conformity for Privately Owned Infrastructure. During the Warranty Period, Subdivider shall, as necessary, and upon receipt of a request in writing from the Director, inspect, correct, repair or replace any defects in the Required Infrastructure at its own expense. Should Subdivider fail to act with reasonable promptness to make such inspection, correction, repair or replacement, or should an emergency require that inspection, correction, repair or

replacement be made before Subdivider can be notified (or prior to Subdivider's ability to respond after notice), the City may, at its option, upon notice to Subdivider, make the necessary inspection, correction, repair or replacement or otherwise perform the necessary work and Subdivider shall reimburse the City for the reasonable, actual cost thereof. During the Warranty Period, the City shall hold Subdivider's Remaining Security (as described in Section 5), to secure performance of Subdivider's foregoing warranty obligations. Subdivider's responsibility during the Warranty Period shall include repairing defects and defective material or workmanship, but not ordinary wear and tear or harm or damage from improper maintenance or operation of the Required Infrastructure by the City, or any agent or agency of the City. Acceptance of Publicly Owned Infrastructure or Interim Facilities by the City shall not constitute a waiver of any defects.

(b) Indemnity. Section 6.10 of the Development Agreement shall apply to all work performed under this Agreement.

(c) Limitation on City Liability. The City shall not be an insurer or surety for the design or construction of the Required Infrastructure pursuant to the approved Plans and Specifications, nor shall any officer or employee thereof be liable or responsible for any accident, loss, or damage happening or occurring during the construction of the Required Infrastructure as specified in this Agreement, except as provided in Section 6.10 of the Development Agreement.

10. Miscellaneous.

(a) Final Map Recordation. The City, in accordance with the Code, shall record the Final Map with the County Clerk in the Official Records promptly upon Board of Supervisors' approval of the Final Map. The City shall notify Subdivider of the time of recordation. In the event the Final Map is not recorded prior to the expiration of the Tentative Map, this Agreement shall be null and void.

(b) Independent Contractor. In performing its obligations under this Agreement, Subdivider is an independent contractor and not an agent or employee of the City.

(c) Excusable Delay. All time periods in this Agreement shall be extended for Excusable Delay (as defined in the Development Agreement) in accordance with this Section. A party who is subject to Excusable Delay in the performance of an obligation thereunder, or in the

satisfaction of a condition to the other party's performance hereunder, shall be entitled to a postponement of the time for performance of such obligation or satisfaction of such condition during the period of enforced delay attributable to an event of Excusable Delay. If repair, replacement, or reconstruction of any Subphase 1C Required Infrastructure (or any portion thereof) or any other public improvements is necessitated by Excusable Delay, then the time period for completion of the applicable work as provided in this Agreement shall be extended as provided in this Section 8(c), including any periods required for redesign, mobilization and other construction related requirements and such repair, replacement or reconstruction shall, as necessary, be reflected in a Plan Revision or change order in accordance with this Agreement. This Excusable Delay provision shall not apply, however, unless (i) the party seeking to rely upon such provisions shall have given notice to the other party, within thirty (30) days after obtaining knowledge of the beginning of an enforced delay, of such delay and the cause or causes thereof, to the extent known, and (ii) a party claiming the Excusable Delay must at all times be acting diligently and in good faith to avoid foreseeable delays in performance, to remove the cause of the delay or to develop a reasonable alternative means of performance.

(d) Attorneys' Fees. Should either party hereto institute any action or proceeding in court or other dispute resolution mechanism ("DRM") to enforce any provision hereof or for damages by reason of an alleged breach of any provision of this Agreement, the prevailing Party in such action shall be entitled to receive from the losing party, court or DRM costs or expenses incurred by the prevailing party including, without limitation, expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and such amount as the court or DRM may adjudge to be reasonable attorneys' fees for the services rendered the prevailing party in such action or proceeding. Attorneys' fees under this Section 10(d) include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action. For the purposes of this Section 10(d), the reasonable fees of attorneys of the City Attorney's Office shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's Office's services were rendered who practice in the City in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

(e) Notices.

(i) Any notice or communication required or authorized by this Agreement (as, for example, where a Party is permitted or required to “notify” the other, but not including communications made in any meet and confer or similar oral communication contemplated hereunder) shall be in writing and may be delivered personally, by registered mail, return receipt requested, or by reputable air or ground courier service. Notice, whether given by personal delivery, registered mail or courier service, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Such notices or communications shall, subject to the foregoing, be given to the Parties at their addresses set forth below:

In the case of a notice or communication to the Director of Public Works:

Director of Public Works
City and County of San Francisco
49 South Van Ness Avenue, 16th Floor
San Francisco, CA 94103
Attn: Infrastructure Task Force

With a copy to:

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Public Works General Counsel
Reference: Parkmerced Project

San Francisco Public Utilities Commission
525 Golden Gate Avenue
San Francisco, CA 94102
Attn: Molly Petrick and John Roddy
Reference: Parkmerced Project

And in the case of a notice or communication to Subdivider:

Robert Rosania
Maximus PM Phase 1C Owner LLC
One Maritime Plaza, Suite 1900
San Francisco, California, 94111

with a copy to:

J. Abrams Law, P.C.
538 Hayes Street
San Francisco, California 94102
Attn: Jim Abrams, Esq.

Every notice given to a party hereto, pursuant to the terms of this Agreement, must state (or must be accompanied by a cover letter that states) substantially the following:

(A) the Section of this Agreement pursuant to which the notice is given and the action or response required, if any;

(B) if applicable, the period of time within which the recipient of the notice must respond thereto;

(C) if approval is being requested, shall be clearly marked “Request for Approval under the Parkmerced Phase 1C Public Improvement Agreement”; and

(D) if a notice of disapproval or an objection which requires reasonableness, shall specify with particularity the reasons therefor.

(ii) Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

(iii) Any notice or request for review, consent, or other determination or action by the Director shall display prominently on the envelope enclosing such request (if any) and the first page of such request, substantially the following words: “PARKMERCED INFRASTRUCTURE: IMMEDIATE ATTENTION REQUIRED.”

(f) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties, and upon transfer by Subdivider, Subdivider shall be released from its obligations hereunder. Any assignment of Subdivider’s rights and obligations under this Agreement shall be in writing, shall clearly identify the scope of the

rights and/or obligations assigned and shall be subject to the reasonable approval of the Director; provided, however, that if Subdivider assigns its rights under the Development Agreement with respect to the Property or any portion thereof, this Agreement shall be deemed automatically assigned to the same assignee without the Director's approval so long as: (1) Subdivider provides notice of the intended assignment to the Director (which Subdivider shall endeavor to do within five days after providing any required notice to the City under the Development Agreement); (2) Subdivider provides to the Director a copy of the executed Development Agreement assignment and assumption (from which confidential information may be redacted but shall include the transfer of rights and obligations under this Agreement); (3) unless the Security is the Deed of Trust at that time, the assignee provides replacement Security in the amount required to secure any remaining obligations under this Agreement applicable to the transferred property; (4) the assignee provides proof of adequate insurance in the amount previously provided by Subdivider and by an insurer with an equal or better credit rating; (5) the assignee has obtained all real estate rights required under the Development Agreement for an assignment of the Development Agreement; and (6) the assignment requires assignee to perform any remaining obligations of this Agreement applicable to the Property subject to the assignment.

(g) Development Agreement. This Agreement is an Implementing Approval as defined in the Development Agreement. The City shall cooperate with Subdivider consistent with the terms of the Development Agreement, including, without limitation, in obtaining applicable approvals required for the construction of the Required Infrastructure. Nothing in this Agreement shall waive or other affect the City's, Subdivider's, and any Mortgagee's rights or obligations under the Development Agreement, including with regard to Subdivider's or Mortgagee's construction of and City's acceptance of the Required Infrastructure. In the event of any conflict between this Agreement and the Development Agreement, the terms of the Development Agreement shall prevail.

(h) Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by another party, or the failure by a party to exercise its rights upon the default of another party, shall not constitute a waiver of such party's right to insist upon and demand strict compliance by the other party with the terms of this Agreement thereafter.

(i) Parties in Interest. Nothing in this Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the City and Subdivider, any rights, remedies or claims under or by reason of this Agreement or any covenants, conditions or stipulations hereof; and all covenants, conditions, promises, and agreements in this Agreement contained by or on behalf of the City, or Subdivider shall be for the sole and exclusive benefit of the Parties; except that, notwithstanding the foregoing, any Mortgagee (as such term is defined in the Development Agreement) may perform the obligations of this Agreement pursuant to Section 11.9 of the Development Agreement.

(j) Amendment. This Agreement may be amended, from time to time, by written supplement or amendment hereto and executed by the City and Subdivider. The Director of Public Works is authorized to execute on behalf of the City any amendment that the Director determines is in the City's best interests and does not materially increase the City's obligations or materially diminish the City's rights under this Agreement.

(k) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original. This Agreement may be electronically signed, and any electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

(l) Interpretation of Agreement. Unless otherwise provided in this Agreement or by applicable law, whenever approval, consent or satisfaction is required of Subdivider or the City under this Agreement, it shall not be unreasonably withheld or delayed. Captions used in this Agreement are for convenience or reference only and shall not affect the interpretation or meaning of this Agreement. This Agreement shall in no way be construed to limit or replace any other obligations or liabilities which the Parties may have in the Development Agreement.

11. Insurance. Subdivider shall, at all times prior to Acceptance of the Required Infrastructure, comply with the insurance requirements set forth in any Permit to Enter or License issued by the City in accordance with the Development Agreement, or otherwise in accordance with any other applicable City Regulations. Subdivider shall furnish to the City, from time to time upon request by the City's Risk Manager, a certificate of insurance (and/or, upon request by the City's Risk Manager a complete copy of any policy) regarding each insurance policy required to

be maintained by Subdivider under any Permit to Enter issued by the City in accordance with the Development Agreement, or otherwise in accordance with any other applicable City Regulations.

12. Recording.

(a) Recording Agreement. The Parties to this Agreement acknowledge that this Agreement shall be recorded against the title of the Property.

(b) Purpose and Effect of Recording. This Agreement shall be recorded for the purpose of providing constructive notice to any future owner of the Property of Subdivider's obligations and responsibilities under Sections 2 and 7, respectively. This Agreement shall not be interpreted as creating a lien or security interest against any parcel against which it is recorded, or to effect any secured interest now or in the future, as the obligations hereunder are personal to Subdivider and its successors and assigns as may be authorized pursuant to Section 10(f).

(c) Notice of Termination. At the time all the obligations and requirements specified in this Agreement are fully satisfied as determined by the Director in consultation with affected City departments, the Parties shall record a Notice of Termination, a draft of which is contained in Exhibit H. Alternatively, Subdivider may request the Director's authorization to record a Notice of Termination with respect to an individual parcel. In evaluating such a request, approval of which shall be in the Director's reasonable discretion, the Director shall consider with respect to the Required Infrastructure necessary to serve the parcel, whether: (i) all of the Required Infrastructure has been completed and accepted by the City, as applicable; (ii) all corresponding amounts of the Bonds or other Security have been released; (iii) all defects and punch list items have been addressed; and (iv) all warranty and guarantee periods have terminated.

IN WITNESS WHEREOF, the City and Subdivider have executed this Agreement in one or more copies as of the Effective Date.

[SIGNATURES ON FOLLOWING PAGE]

SUBDIVIDER

MAXIMUS PM PHASE 1C OWNER LLC,
a Delaware limited liability company

By:



Name: Robert A. Rosania
Title: President

[Signature Pages Continue]

ACKNOWLEDGMENT

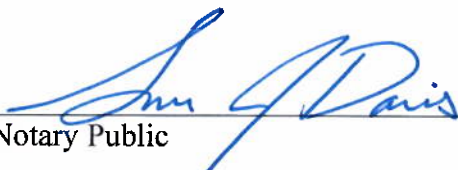
STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

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

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


Notary Public

[SEAL]

My commission expires:

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

Carla Short
Director of Public Works

APPROVED AS TO FORM:

DAVID CHIU
CITY ATTORNEY

John Malamut
Deputy City Attorney

NOTARY ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____)SS
COUNTY OF _____)

On _____

before me, _____, a Notary Public, personally
appeared

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and 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 of Notary Public

LIST OF EXHIBITS

Exhibit A-1 – Plans and Specifications for Required Infrastructure

Exhibit A-2 – Privately Owned Infrastructure

Exhibit A-3 – Interim Facilities

Exhibit B – Estimated Costs

Exhibit C – Documents required with Public Improvement Agreement

Exhibit D – Subdivider Letter Request for Deferral and Conditions for Deferred Compliance

Exhibit E – List of documents required by City in order to issue a Notice of Completion

Exhibit F – List of documents required by the City in order to make a Request for Acceptance

Exhibit G – Deed of Trust

Exhibit H – Notice of Termination

Exhibit J – SFPUC Parcel License

EXHIBIT A-1

Plans and Specifications for Required Infrastructure

The Parkmerced Phase 1C Street Improvement Permit Plans prepared by BKF Engineers, dated October 25, 2023.

EXHIBIT A-2

Privately Owned Infrastructure

In Public ROW

1. Non-City Utility Systems, including conduits and vaults for PG&E, AT&T, Comcast, Clear Channel or other telecommunications or internet providers
2. Permeable pavement systems including flush curbs.

EXHIBIT A-3

Interim Facilities

1. Low Pressure Water Facilities – Dedicated to City in Future Phase in accordance with the Restatement and Amendment of Water System Easement Instrument No. 2017-K553669.
2. Recycled Water Facilities - Dedicated to City in Future Phase in accordance with the Restatement and Amendment of Water System Easement Instrument No. 2017-K553669.

EXHIBIT B

Estimated Costs

See attached schedule of values



BKF Engineers

Opinion of Probable Construction Cost

Parkmerced Phase 1C

October 13, 2023

By: BKF Engineers
255 Shoreline Drive, Suite 200
Redwood City, CA 94065

For: Maximus Real Estate Partners
One Maritime Plaza, #1900
San Francisco, CA 94111





Introduction

This opinion of probable construction costs has been prepared to assess the cost of the proposed street improvements for Parkmerced – Phase 1C.

The following documents were used in preparation of this opinion:

1. Plan Set titled PARKMERCED PHASE 1C 100% STREET IMPROVEMENT PLANS, CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA by BKF Engineers, October 25, 2023.

Assumptions

1. The opinion of probable construction cost does not include a Design Contingency.
2. The opinion of probable construction cost includes a Construction Contingency of 10%. The value of the construction contingency is based on the following items:
 - Parkmerced is essentially a single generation of constructed infrastructure unlike many other locations in the City. This reduces the quantity of existing utilities (or other buried, man-made objects) in the ground compared to other locations in the City. This greatly reduces the risk of change orders due to needing to remove unknown utilities or other buried, man-made objects.
 - The Subdivider has performed an extensive amount of potholing to accurately locate and plan for the actual locations of the existing utilities at Parkmerced. This potholing will further reduce the risk of new and existing utility conflicts where proposed systems may need to be realigned to allow for dual operational systems remaining in place until service cut overs are completed.
 - The groundwater levels at Parkmerced are substantially lower than the proposed infrastructure thus greatly reducing the risk of change orders due to fluctuating groundwater levels and therefore the effect on assumed quantities of dewatered water.
 - The type and consistency of the native material at Parkmerced is generally considered suitable for reuse. The suitability of the existing material and its well-draining quality coupled with the low groundwater level, greatly reduces the risk of change orders due to sub-excavation of unsuitable material and replacement with suitable fill, drying of over-saturated material or impacts of storm damage to subgrade (demucking).
3. The cost of mobilization is incidental to the items of work.
4. The cost for new underground utility work assumes no dewatering.

**Exclusions**

The following items are excluded:

1. Fees for owners testing construction materials
2. Plan check, inspection, testing and utility connection fees
3. Surveying
4. Legal and financing costs

PARKMERCED - PHASE 1C STREET IMPROVEMENT PLANS ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COSTS						
ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	AMOUNT	ASSUMPTIONS
MOBILIZATION						
1	Mobilization	EA	1	\$ 494,862.00	\$ 494,862	
SUBTOTAL MOBILIZATION					\$ 494,862	
DEMOLITION						
1	Remove Existing Pavement Section, Walls, Curbs, Gutters and Sidewalks (Concrete, Asphalt, Base, Subbase)	SF	131,089	\$ 1.14	\$ 149,441	
2	Remove Existing Landscaping	SF	50,637	\$ 0.57	\$ 28,863	
3	Remove Existing Utility Pipe	LF	11,229	\$ 39.90	\$ 448,037	Includes backfilling trench excavations
SUBTOTAL DEMOLITION					\$ 626,342	
EARTHWORK						
1	Cut to Fill	CY	2,100	\$ 17.10	\$ 35,910	
2	Offhaul	CY	16,800	\$ 34.20	\$ 574,560	
3	Fine Grading	SF	131,089	\$ 1.14	\$ 149,441	
SUBTOTAL EARTHWORK					\$ 759,911	
LOW PRESSURE WATER						
1	12" LPW (DIP)	LF	2,206	\$ 228.00	\$ 502,968	
2	6" Fire Service (DIP)	EA	2	\$ 17,100.00	\$ 34,200	Includes valve and service line
3	Fire Hydrant Assembly	EA	5	\$ 9,120.00	\$ 45,600	Includes valve, hydrant run, bury and hydrant
4	Connect to Existing Water System	EA	4	\$ 5,700.00	\$ 22,800	
5	Blow-off/Air-Release Valves	EA	9	\$ 1,710.00	\$ 15,390	
6	Gate Valves	EA	16	\$ 2,850.00	\$ 45,600	
7	Cap	EA	1	\$ 2,280.00	\$ 2,280	
8	Water Line Testing and Sterilization	LS	1	\$ 57,000.00	\$ 57,000	
SUBTOTAL LOW PRESSURE WATER					\$ 725,838	
RECYCLED WATER						
1	6" Recycled Water (DIP)	LF	531	\$ 142.50	\$ 75,668	
2	4" Recycled Water Service (DIP)	EA	2	\$ 11,400.00	\$ 22,800	Includes valve, service line and meter
3	Connect to Low Pressure Water System	EA	1	\$ 5,700.00	\$ 5,700	
4	Blow-off/Air-Release Valves	EA	4	\$ 2,850.00	\$ 11,400	
5	Valves	EA	4	\$ 2,850.00	\$ 11,400	
6	Cap	EA	1	\$ 2,280.00	\$ 2,280	
7	Water Line Testing and Sterilization	LS	1	\$ 57,000.00	\$ 57,000	
SUBTOTAL RECLAIMED WATER					\$ 186,248	
AWSS WATER						
1	20" ERDIP AWSS Kubota	LF	1,295	\$ 475.00	\$ 615,125	
2	Tee Fitting	EA	1	\$ 22,800.00	\$ 22,800	
3	20" Elbows (11.25 Deg)	EA	2	\$ 17,100.00	\$ 34,200	
4	20" Elbows (22.5 Deg)	EA	2	\$ 17,100.00	\$ 34,200	
5	20" Elbows (45 Deg)	EA	4	\$ 17,100.00	\$ 68,400	
6	20" Elbows (90 Deg)	EA	1	\$ 17,100.00	\$ 17,100	
7	Horizontal Thrust Block	EA	10	\$ 5,700.00	\$ 57,000	
8	Air Release Valves	EA	1	\$ 8,550.00	\$ 8,550	
9	HP Hydrant Assembly	EA	1	\$ 57,000.00	\$ 57,000	Includes valve, hydrant run and hydrant
SUBTOTAL AWSS WATER					\$ 914,375	
COMBINED SEWER						
1	60" CS (HDPE)	LF	341	\$ 760.00	\$ 259,160	
2	48" CS (HDPE)	LF	579	\$ 593.75	\$ 343,781	
3	36" CS (HDPE)	LF	542	\$ 475.00	\$ 257,450	
4	30" CS (HDPE)	LF	320	\$ 399.00	\$ 127,680	
5	12" CS (HDPE)	LF	310	\$ 171.00	\$ 53,010	
6	6" CS (HDPE)	LF	208	\$ 118.75	\$ 24,700	
7	Clean-Out/Air Vent	EA	6	\$ 1,710.00	\$ 10,260	
8	Catch Basin	EA	6	\$ 5,700.00	\$ 34,200	
9	Area Drain	EA	4	\$ 475.00	\$ 1,900	
10	Manhole (City Std Plan 87181)	EA	3	\$ 11,400.00	\$ 34,200	
11	Manhole (City Std Plan 87182)	EA	12	\$ 28,500.00	\$ 342,000	
12	Manhole (City Std Plan 87183)	EA	3	\$ 47,500.00	\$ 142,500	
SUBTOTAL COMBINED SEWER					\$ 1,630,841	
JOINT TRENCH						
1	JT - Gas, Electric, Telephone, CATV	LF	1,671	\$ 513.00	\$ 857,223	Includes vaults, pullboxes
2	Streetlights and Pull Box Assembly	EA	29	\$ 6,840.00	\$ 198,360	
SUBTOTAL JOINT TRENCH					\$ 1,055,583	
ROADWAY						
1	Sidewalk	SF	36,369	\$ 11.40	\$ 414,607	
2	Bioretention Planter (soil and drainrock)	SF	9,938	\$ 34.20	\$ 339,880	
3	Bioretention Planter Wall	LF	86	\$ 39.90	\$ 3,431	
4	Curb Ramp	EA	31	\$ 3,800.00	\$ 117,800	
5	Trapezoidal Delineator	LF	119	\$ 28.50	\$ 3,392	
6	Driveway Apron	SF	266	\$ 11.40	\$ 3,032	
7	Concrete Median	SF	2,124	\$ 11.40	\$ 24,214	
8	Vertical Curb	LF	6,435	\$ 42.75	\$ 275,096	
9	Curb & Gutter	LF	939	\$ 52.25	\$ 49,063	
10	Flush Curb	LF	1,043	\$ 35.15	\$ 36,661	
11	Subgrade Preparation	SF	150,910	\$ 0.57	\$ 86,019	
12	2" AC/8" Concrete paving	SF	58,735	\$ 13.68	\$ 803,495	
13	Grind and AC Overlay	SF	5,897	\$ 2.38	\$ 14,005	
14	Permeable Concrete Parking Bay	SF	7,512	\$ 17.10	\$ 128,455	
15	Signing and Striping (cost per LF of street)	LF	3,030	\$ 28.50	\$ 86,355	To be performed by MTA
16	Traffic Signal	EA	1	\$ 380,000.00	\$ 380,000	
17	Construction Traffic Control	LS	1	\$ 332,500.00	\$ 332,500	
SUBTOTAL ROADWAY					\$ 3,098,005	

PARKMERCED - PHASE 1C STREET IMPROVEMENT PLANS ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COSTS						
ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	AMOUNT	ASSUMPTIONS
FURNISHINGS						
1	Tree Grate	EA	22	\$ 2,272.40	\$ 49,993	
SUBTOTAL					\$ 49,993	
MULCH						
1	Wood Chip Mulch	CY	122	\$ 99.75	\$ 12,170	
SUBTOTAL					\$ 12,170	
TREES						
1	Monterey Cypress	24" Box	24	\$ 712.50	\$ 17,100	
2	Autumn Purple Ash	24" Box	8	\$ 712.50	\$ 5,700	
3	Brisbane Box	24" Box	14	\$ 712.50	\$ 9,975	
4	Catalina Ironwood	24" Box	21	\$ 712.50	\$ 14,963	
5	Coast Live Oak	24" Box	18	\$ 712.50	\$ 12,825	
6	Canary Island Pine	24" Box	15	\$ 712.50	\$ 10,688	
SUBTOTAL					\$ 71,250	
SHRUBS						
1	Feather Reed Grass	5 gal.	82	\$ 15.20	\$ 1,246	
2	Fortnight Lily	5 gal.	341	\$ 15.20	\$ 5,183	
3	Blue Sage	5 gal.	385	\$ 15.20	\$ 5,852	
4	California Gray Rush	1 gal.	2,657	\$ 5.70	\$ 15,145	
5	Canyon Prince Wild Rye	1 gal.	1,906	\$ 5.70	\$ 10,864	
SUBTOTAL					\$ 38,291	
SOIL						
1	Planting Soil - Perennial Beds	CY	493	\$ 83.60	\$ 41,215	
2	Planting Soil - Tree Wells	CY	182	\$ 83.60	\$ 15,215	
3	Bioretention Soil - Perennial Beds	CY	485	\$ 82.65	\$ 40,085	
4	Bioretention Soil - Tree Wells	CY	72	\$ 82.65	\$ 5,951	
5	Structural Soil	CY	270	\$ 97.85	\$ 26,420	
SUBTOTAL					\$ 128,886	
IRRIGATION						
1	Irrigation Mainline - 1" Sch. 40 Galvanized	LF	50	\$ 16.15	\$ 808	
2	Irrigation Mainline - 1.5" Sch. 40 Galvanized	LF	950	\$ 26.60	\$ 25,270	
3	Irrigation Mainline - 2" Sch. 40 Galvanized	LF	570	\$ 36.10	\$ 20,577	
4	Sleeving	LF	620	\$ 23.75	\$ 14,725	
5	Tree Root Watering System (per tree)	EA	100	\$ 475.00	\$ 47,500	
6	Landscape Irrigation	SF	19,729	\$ 1.90	\$ 37,485	
SUBTOTAL					\$ 146,365	
TOTAL					\$ 9,938,958	
CONSTRUCTION CONTINGENCY (10%)					\$ 993,896	
GRAND TOTAL					\$ 10,932,853	

EXHIBIT C

Documents Required for Public Improvement Agreement

1. Approved Street Improvement Permit Plans
2. Offer of improvements
3. Offer of public street dedications (Parcels 1, 2, 3, 4, 5, 6, 8, 9, and 10), including grant deeds
4. Public easement agreements
 - a. Emergency Vehicle Access Easement (Lot A)
 - b. Public Right of Way Easements (4' Lake Merced Boulevard Easements)
5. Deed of Trust (attached as Exhibit G)
6. SFPUC Parcel License, signed by Subdivider.
7. Maintenance matrix

EXHIBIT D

Subdivider Letter Request for Deferral and Conditions for Deferred Compliance



November 6, 2023

Attn: Carla Short
Interim Director
San Francisco Public Works
Bureau of Street Use and Mapping
49 South Van Ness Avenue, Suite 1600
San Francisco, CA 94103

RE: Parkmerced Mixed-Use Development Project – Developer Request for Exceptions to Subdivision Code, Subdivision Regulations and Tentative Map Conditions of Approval

Dear Ms. Short,

Parkmerced Owner LLC, Maximus PM Phase 1C Owner LLC, and Maximus PM Phase 1D Owner LLC (collectively, the “Project Sponsor” or “Subdivider”), is the sponsor of the Parkmerced Mixed-Use Development Project and party to that certain Development Agreement between Project Sponsor and the City, approved by the Board of Supervisors Ordinance 98-11 (the “Development Agreement”). On July 7, 2011, the Development Agreement was recorded in the Official Records. The Development Agreement was re-recorded in the Official Records on August 19, 2011.

Project Sponsor is the applicant of that certain Subphase 1C Tentative Map 10699, being a 9 Lot Vertical Subdivision, and authorizing up to 278 Residential Condominium Units, up to 166 new rental residential dwelling units, and retaining 42 existing rental residential units (the “1C Tentative Map”) and that certain Subphase 1D Tentative Map 10700, being an 11 Lot Vertical Subdivision, and authorizing up to 545 Residential Condominium Units and retaining 201 existing rental residential units (collectively the “Tentative Maps”) which were approved by the Director of the Department of Public Works (“Director”, with references to Director also including the Director’s designee where authorized by law) by Order 206742, acting as the advisory agency for purposes of the Subdivision Map Act (“Advisory Agency”), subject to certain requirements and conditions contained in the Director’s Conditions of Approval dated June 23, 2022 (the “Conditions of Approval”).

Project Sponsor has since submitted that certain Subphase 1C Final Map 10699, being a 7 Lot Vertical Subdivision, and authorizing up to 278 Residential Condominium Units, up to 166 new rental residential dwelling units, and retaining 82 existing rental residential units (the “1C Final Map”) and that certain Subphase 1D Final Map 10700, being a 7 Lot Subdivision, and authorizing up to 545 Residential Condominium Units and retaining 201 existing rental residential units (collectively the “Final Maps”).

Subdivider now hereby requests the following waivers and deferrals of certain Condition of Approvals and Subdivision Regulation requirements, and exceptions to City design standards as noted below:

1. Subdivision Regulation Section IV.I.1 Waiver of Form of Dedication

Subdivider is requesting a waiver Section IV.I.1 of the Subdivision Regulations, which provides that “if the Subdivider constructs public right-of-way on private property, the Subdivider shall dedicate such property to the City in fee simple through a grant deed”; however, the Director may waive that requirement and instead accept a public easement in lieu of fee ownership for good cause and after consultation with the City Attorney’s Office and any affected City department.

The Development Agreement did not contemplate dedication of land for public right-of-way at this location and the approved 1C Tentative Map shows an easement for sidewalk purposes at this location. Additionally, Subdivider’s loan agreements only allow for land transfers to occur as contemplated in the Development Agreement. Upon a future refinancing, Subdivider can work with the City and lenders to transfer the land to the City. In the meantime, Subdivider is requesting a waiver and for the City to accept a public easement instead as shown on the 1C Final Map and to allow for public access to and use of the easement area to commence concurrent with completion of the infrastructure required to allow safe public access.

2. Conditions of Approval – Design Exception pursuant to San Francisco Public Utilities Commission (SFPUC): SFPUC General Condition No. 2

This condition requires that:

“(1C) To request approval of an alternative sewer system design from that shown on Sheets 13 of 14 and 14 of 14 of Tentative Map 10699, prior to submitting any draft Street Improvement Permit Plans, Subdivider shall apply for an exception to the applicable Conditions of Approval herein pursuant to the Subdivision Code and Subdivision Regulation and submit a Supplemental Alternative Sewer Submittal (SASS) for City review. If the Director of Public Works grants the exception, the Director of Public Works, in consultation with the SFPUC, may designate reasonable conditions on the granted exception. These conditions may refine, adjust, supplement, modify, or delete the Conditions of Approval of this Tentative Map...”

Subdivider has submitted a SASS which included an alternate sewer design from that shown on Sheets 13 of 14 and 14 of 14 of Tentative Map 10699 and is requesting a design exception to allow the sewer system as shown in the Subphase 1C Street Improvement Plans.

3. Conditions of Approval – Deferral of San Francisco Bureau of Street Use and Mapping (BSM) Permit Division Condition No. 2

This condition requires that:

“Subdivider shall provide, in a form acceptable to the City, recorded notice needed for pedestrian access and/or easement agreements for any public infrastructure or emergency vehicle access located on private property.”

Building designs for Development Blocks 3W are not complete and therefore the final location and dimension of the B3W Pedestrian Paseos cannot be determined at this time. Subdivider is requesting to defer complying with this condition with issuance of the B3W Site Permit.

4. Conditions of Approval – Deferral of San Francisco Bureau of Street Use and Mapping (BSM) Permit Division Condition No. 12

This condition requires that:

“It is the City’s policy that single use electrical transformers (UCDs) not be placed in the public right-of-way. Subdivider shall acknowledge that all single use electrical transformers will be placed on private property, unless an exception is granted by the Public Works Director.”

Building electrical designs for Development Blocks 3W, 4 and 21S are not complete and therefore it is not currently feasible to determine if an exception to this condition is warranted. Subdivider is requesting to defer complying with this condition until Subphase 1C and D Street Improvement Permit issuance.

5. City Design Standards – Exception to SFPUC Required Minimum Pipe Size for Recycled Water Mains

SFPUC has notified the Project Sponsor that the minimum pipe size for recycle water mains is 8 inches (Standards and Procedures for Implementation of the City and County of San Francisco’s Recycled Water Use Regulations dated February 14, 2020).

Project Sponsor had previously received approval of a Recycled Water Plan dated August 17, 2016 which shows 6 inch recycle water mains. Subsequently, Project Sponsor included 6 inch recycled water mains included in the approved Subphase 1A Street Improvement Plans dated August 27, 2018. Subdivider is requesting a design exception to allow 6” recycled water mains as shown in the Subphase 1C Street Improvement Plans.

6. City Design Standards – Exception to SFPW Standard Curb Designs

SFPW has notified the Project Sponsor that reinforced concrete curbs do not meet SFPW curb design standards (Standard Plans 87,169).

Subdivider is requesting a design exception to allow the use of reinforced curbs as shown in the Subphase 1C and 1D Street Improvement Plans.

7. City Design Standards – Exception to City Standards for Roadway Parking Strips

SFPW has notified the Subdivider that permeable pavement (including flush curbs and structural section) does not meet City design requirements (Standard Specifications, Section 200, Standard Plans 87,169, 87,170).

Project Sponsor had previously received approval of Permeable Pavement for use in parking areas in the approved Subphase 1A Street Improvement Plans dated August 27, 2018 and the approved Subphase 1A Final Storm Water Control Plans dated August 28, 2018. Subdivider is requesting a design exception to allow permeable pavement as shown in the Subphase 1C Street Improvement Plans.

8. Deferral of Construction of Class I Bike Path on Vidal Drive from Lake Merced Blvd to Arballo Drive.

The approved Parkmerced Development Phase 1 Approval includes a Class I bike path on the South side of Vidal Drive from Lake Merced Blvd to Arballo Drive. However, the existing residential buildings to remain on Vidal Drive between Garces and Arballo Drives prevent construction of the Class 1 bike path. The Class 1 bike path will be constructed in a future phase and when the buildings are demolished for construction of the adjacent new park space.

We are available to meet to help answer questions and facilitate the City's review process. Please do not hesitate to contact me if you have any questions regarding this letter.

Sincerely,



William T. McGivern III,
Managing Director for
Maximus Real Estate Partners, Ltd acting as agent for:
Parkmerced Owner LLC
Maximus PM Phase 1C Owner LLC
Maximus PM Phase 1D Owner LLC

CC: Jim Abrams, Jim Abrams Law P.C.

Nick Roosevelt, Jim Abrams Law P.C.

EXHIBIT E

List of documents required by City in order to issue a Notice of Completion

1. Subdivider Request Letter for Notice of Completion (“NOC”)
2. Contractor Substantial Completion Letter
3. Civil Engineer Completion Notice
4. Geotechnical Engineer Completion Letter
5. Landscape Architect Completion Notice
6. Construction Manager Completion Notice
7. City Final Punch-list Approval
8. Utility Conformance Letter
9. As-Built Plan Approval
10. Survey Monuments
11. Test Reports - (Full list of reports to be coordinated with SFPW Construction Management)
12. Joint Trench Conduits mandrel test
13. Confirmation of Removal of all Non-Compliance Reports (“NCR”)
14. Confirmation of all Change Orders/Instructional Bulletins
15. Confirmation from City that Spare Parts have been provided (as applicable)
16. Operation and Maintenance Manuals
17. Deferred Work Letter Approval (as applicable)
18. Lien Notification of General Contract and Subs Bill of Sale (if necessary)
19. 3rd Party Reimbursement Payment Confirmation (if necessary)
20. Assignments of Warranties and Guaranties
21. Executed License Agreement. (if applicable)

EXHIBIT F

List of documents required by the City in order to make a Request for Acceptance

1. Subdivider Request for Acceptance Letter
2. Lien Notification to General Contractor and Subs
3. Utility Bill of Sale
4. 3rd Party Reimbursement Checks-Copies
5. Assignment of Warranties and Guaranties
6. License Agreements (as applicable)
7. Mechanic's Lien Guarantee
8. Modified Offers of Improvements (as applicable)
9. Updated Grant Deeds (as applicable)
10. NOC Letter of Recommendation from Public Works
11. Recorded Notice of Completion
12. A17 and Q- Grade and boundary maps
13. Recorded Notice of Completion

EXHIBIT G

Deed of Trust

(Exempt from Recording Fees Pursuant to Government
Code Section 27383)

**WHEN RECORDED, PLEASE RETURN
THIS INSTRUMENT TO:**

City and County of San Francisco
San Francisco Public Works
49 South Van Ness Avenue, Suite 1600
San Francisco, California 94103
Attention: Infrastructure Task Force- Parkmerced
Project Manager

SPACE ABOVE FOR RECORDER'S USE ONLY

**DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust") is made and entered into as of _____, 2023 (the "Effective Date"), by MAXIMUS PM PHASE 1C OWNER LLC, a Delaware limited liability company, whose business address is c/o Maximus Real Estate Partners, One Maritime Plaza, Suite 1900, San Francisco, CA 94111 ("Trustor"), to [_____] TITLE COMPANY, a _____, whose business address is _____, as trustee ("Trustee"), for the benefit of the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), as beneficiary, whose address is at 49 South Van Ness Avenue, Suite 1600, San Francisco, California 94103. Except as specifically defined herein, capitalized terms shall have the meaning given in the Parkmerced Blocks 3W & 4 ("Subphase 1C") Public Improvement Agreement dated as of the date hereof by and between the City and Trustor ("Public Improvement Agreement").

RECITALS

THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Trustor agrees as follows:

1. TRUSTOR HEREBY IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to Trustee in trust, with power of sale and right of entry and possession, all of Trustor's rights, title and interest now held or hereafter acquired in and to the following (collectively the "Property"): (a) all interest in that certain real property ("Land") located in the City and County of San Francisco, State of California, described in Attachment A, which is hereby incorporated by reference; (b) all buildings and improvements now or hereafter erected thereon, and all appurtenances, easements or rights of way relating to the Property ("Improvements"); (c) all tangible and intangible personal property (including goods, materials, supplies, chattels, and furniture), fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Land and Improvements, other than any of the foregoing that are owned by tenants of the Property ("Personalty"); (d) all existing and future leases, subleases, tenancies, subtenancies, licenses, occupancy agreements and concessions, and any guarantees thereof ("Leases"); (e) all proceeds, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Land, Improvements, Personalty or Leases or any part of them, or breach of warranty in connection with the Personalty or construction

of the Improvements; (f) all rents, revenues, issues, royalties, proceeds, profits, income, reimbursements, royalties, receipts and similar items, including prepaid rent and security deposits, in whatever form (including, but not limited to, cash, checks, money orders, credit card receipts or other instruments for the payment of money) paid or payable in connection with the Land, the Improvements, or Personalty ("Rents"); and (g) all proceeds of, interest accrued on, additions and accretions to, substitutions and replacements for, and changes in any of the property described in the foregoing subsections (a) – (f). All of the Property is hereby pledged and assigned, transferred, and set over unto Trustee, and for purposes of this Deed of Trust.

2. TRUSTOR HEREBY ABSOLUTELY, UNCONDITIONALLY AND IRREVOCABLY ASSIGNS to the City all Rents and all of Trustor's interest under all Leases and other contracts, if any, relating to the use and possession of the Property, for the purposes and upon the terms and conditions hereinafter set forth. This assignment is absolute, primary and direct and is not intended to be a separate or secondary pledge, or other form of additional security, and no further act or step is or shall be required of City to perfect this assignment. Notwithstanding the foregoing, the City confers upon the Trustor a license to collect and retain the rents, issues and profits of the Property as they become due and payable unless an Event of Default is declared by the City, upon the declaration of which said license shall be automatically revoked; provided that in the event such Event of Default has been cured, such license shall be automatically reinstated. Neither this assignment nor any City election to collect Rents pursuant to this Deed of Trust shall impose upon City any duty to cause the Property to produce rents nor shall the City be deemed to be (i) a mortgagee in possession by reason thereof for any purpose, (ii) responsible for performing any of the obligations of the lessor under any lease; or (iii) responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair, or control of the Property; or (iv) liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

On the occurrence and during the continuance of an Event of Default, City, at its option, may exercise its rights under this Section, Section 8.8 below or otherwise provided in this Deed of Trust or under applicable law (including, but not limited to, under Section 2938 of the California Civil Code).

3. THE ABOVE GRANT, TRANSFER, AND ASSIGNMENT IS FOR THE SOLE PURPOSE OF SECURING the payment by Trustor of each agreement, covenant, obligation and undertaking of Trustor to construct, complete and warranty the Required Infrastructure as set forth in the Public Improvement Agreement, as and when such Required Infrastructure is required to be constructed, completed and warranted under the Public Improvement Agreement, and to secure payment of the costs of such Required Infrastructure Work in an amount of not to exceed \$16,450,843.50 (the "Required Infrastructure Secured Amount"; it being agreed that the maximum amount due and payable by Trustor, and the amount secured by this Deed of Trust, shall not exceed the Required Infrastructure Secured Amount) as and when due (the foregoing obligations of Trustor, collectively, the "Secured Infrastructure Obligations").

As used herein, the term "Indebtedness" shall mean the Secured Infrastructure Obligations and all other amounts due at any time under this Deed of Trust, including the costs and expenses to perform the obligations of Trustor or to protect the Property and all other monetary obligations of Trustor under this Deed of Trust, including amounts due as a result of any indemnification obligations.

4. TO INDUCE CITY TO ACCEPT THIS DEED OF TRUST, TRUSTOR AGREES:

- 4.1. Maintenance of the Property. (a) To maintain and keep the Property in a decent, safe, and sanitary condition; and (b) to comply in all material respects with all applicable laws or governmental regulations affecting the Property (including, without limitation, Environmental Laws (as hereinafter defined)), and not to suffer or permit any material violations of any such laws, ordinances or governmental regulations, nor of any covenant, condition or restriction affecting the Property.

- 4.2. Payment of Taxes. Trustor shall pay all real property taxes and assessments, both general and special, fines, penalties, levies and charges of every type or nature levied upon or assessed against any part of the Property or upon Trustee's or the City's interest in the Property (collectively, "Impositions"), but in all cases subject to any right to challenge any such Impositions in good faith.
- 4.3. Payment and Discharge of Liens. Trustor will at all times maintain and keep the Property free and clear of any and all liens and encumbrances except for (i) the lien in favor of Trustor created by this Deed of Trust, (ii) those liens and encumbrances described in Attachment B, which is hereby incorporated by reference, and (iii) any liens and encumbrances which have been consented to by City in writing (but without any obligation to do so) or subordinate to the lien of this Deed of Trust by an appropriate instrument recorded in the Official Records, with the foregoing liens and encumbrances in (i), (ii) and/or (iii) above being collectively referred to as "Permitted Liens"; provided that, Trustor shall have the right to contest any lien or encumbrance against the Property in good faith and by appropriate legal proceedings.
- 4.4. Insurance. Trustor will at all times maintain property and liability insurance in amounts and coverages reasonably determined by Trustor to be appropriate with respect to the Property, in its good faith judgment as a prudent owner and operator of the Property (including such insurance as is required by any Subordinated Lender).
- 4.5. Rights of City to Remedy Defaults. If Trustor defaults in payment of any Imposition, lien, claim or any other proper charge against the Property (other than any of the foregoing that has been subordinated to the lien of this Deed of Trust) in whole or in part (and Trustor has elected not to contest, and is not then contesting, such Imposition, lien, claim or other charge), then (a) City, subject to the notice and cure period set forth in Article 6 below, may make such payments or perform any such acts required of Trustor, to such extent and in any form or manner deemed expedient by City and pay any other sums, expenses and charges, including reasonable attorneys' fees, necessary to protect the Property and the lien of this Deed of Trust, without incurring any obligation to do so or releasing Trustor from any obligations and without waiving or curing any default, (b) City shall be the sole judge of the validity, priority, and amount of any such tax, assessment, lien, premium, claim or charge so paid by it and the necessity for the performance by City of any such obligation which Trustor was required but failed to perform subject to the notice and cure period set forth in Article 6 below and (c) City, at its option, shall be subrogated to any tax, assessment, lien, premium, claim or charge which it has paid under these provisions and any such subrogation rights shall be additional and cumulative security to those set forth in this Deed of Trust.
- 4.6. Repayment to City. Upon City's payment of any tax, assessment, lien, claim or other charge which Trustor fails to pay or upon City's performance of any obligation which Trustor fails to perform, all as set forth in this Deed of Trust subject to the notice and cure period set forth in Article 6 below, the amount so paid or the cost of performing any such obligation, together with other sums paid or incurred by City, including charges, expenses and attorneys' fees thereon from date of payment at the rate of [five percent (5%)] per annum from the date of expenditure to the date of payment, shall be paid by Trustor to City within thirty (30) days following written demand therefor.
- 4.7. Defense of Actions and Payment of Costs. Trustor will appear in and defend all legal actions and proceedings which adversely affect the Property or any right or power of City or Trustee hereunder and pay all related reasonable costs and expenses actually incurred, including the related out-of-pocket costs and expenses of City and Trustee, if City and Trustee, or either of them, are named in such actions or proceedings or elect, on at least thirty (30) business days' prior written notice to Trustor, to appear and defend any such action and proceeding because City or Trustee reasonably determines it necessary to preserve or protect the Property, this Deed of Trust, City's security for performance of the Secured

Infrastructure Obligations. At any time an Event of Default has occurred and is continuing with respect to this Section or Section 4.3, City shall be, upon thirty (30) business days prior written notice to Trustor, authorized to, in good faith, pay, purchase or compromise on behalf of Trustor any lien or claim which in its judgment appears to or purports to affect the security of or to be superior to this Deed of Trust; and in such event, Trustor will pay within thirty (30) business days following written demand therefor, all sums so expended and all charges, expenses and reasonable attorneys' fees actually incurred. In the event Trustor fails to timely pay any amounts owed to City or Trustee under this Section, such amounts shall accrue interest at the rate of [five percent (5%)] per annum from the date of expenditure to the date of payment until fully paid. Trustor shall give City prompt written notice of (a) the filing of any uninsured legal action or proceeding with respect to the Property, (b) the occurrence of material damage to the Property to the extent such damage is reasonably likely to have a material adverse effect on the Property or (c) the commencement of any condemnation proceedings or any written threat of condemnation by any Governmental Authority (defined below) other than City. At Trustor's own expense, Trustor shall, within ten (10) business days following written demand therefor, provide all relevant documents related to such claim, action or proceeding, or damage that are in Trustor's possession. "Governmental Authority" shall mean any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, City in its regulatory capacity, or otherwise) whether now or later in existence.

5. INTENTIONALLY OMITTED.

6. EVENTS OF DEFAULT:

- 6.1 Events of Default. The following events will constitute an event of default under this Deed of Trust (an "Event of Default"): (i) Any breach of the Secured Infrastructure Obligations which continues for thirty (30) days following written notice from the City to Trustor notifying Trustor of such breach; provided that if the cure of any such breach cannot reasonably be made within such thirty (30) day period and Trustor promptly and diligently commences to cure such breach within such thirty (30) day period, then the period to cure shall be deemed extended for such additional period of time as Trustor is diligently and continuously proceeding to cure such breach to City's reasonable satisfaction and (ii) Trustor's failure to pay annual secured real property taxes imposed on the Property for three (3) consecutive years. The City waives any and all right to, and agrees not to, file or record a lien, lis pendens or any other encumbrance against the Property with respect to any other alleged or actual breach or default by Trustor under this Deed of Trust or any enforcement of any award of judgment as a result thereof.

7. SECURITY AGREEMENT AND FIXTURE FILING:

- 7.1 Grant of Security Interest. Without limiting any of the other provisions of this Deed of Trust, to secure the payment, performance and observance of the Secured Infrastructure Obligations, Trustor, as debtor (referred to in this Article 7 as "Debtor"), expressly grants to City, as secured party (referred to in this Article 7 as "Secured Party"), a continuing security interest in all the Property (including now and hereafter existing) to the full extent that any portion of the Property may be subject to the Uniform Commercial Code. For purposes of this Article 7, "Collateral" means the personal property (tangible or intangible) and fixtures included in the Property.

7.2 Debtor's Covenants, Representations, and Warranties.

- a) Debtor covenants and agrees with Secured Party that:

- (1) In addition to any other remedies granted in this Deed of Trust to Secured Party or Trustee (including specifically, but not limited to, the right to proceed against the Property in accordance with the rights and remedies in respect of the Property that is real property under the Uniform Commercial Code), Secured Party may, if an Event of Defaults occurs and is continuing, proceed under the Uniform Commercial Code as to all or any part of the Collateral, and shall have and may exercise with respect to the Collateral all the rights, remedies, and powers of a secured party under the Uniform Commercial Code.
 - (2) Without limiting the foregoing, if an Event of Default has occurred and is continuing, Secured Party shall have the right upon any public sale or sales, and, to the extent permitted by law, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in Debtor. Debtor further agrees to allow Secured Party to use or occupy the Property, without charge, for the purpose of effecting any of Secured Party's remedies in respect of the Collateral if an Event of Default has occurred and is continuing.
 - (3) To the extent permitted by applicable law, Debtor waives all claims, damages, and demands against Secured Party arising out of the repossession, retention, or sale of the Collateral upon the existence and continuance of an Event of Default, except for claims, damages, and demands due to the gross negligence or willful misconduct of Secured Party in dealing with such Collateral. Trustor agrees that Secured Party need not give, after the occurrence and during the continuance of an Event of Default, more than thirty (30) days' prior written notice of the time and place of any public sale or of the time at which a private sale will take place and that such notice is reasonable notification of such matters. Secured Party may disclaim any warranties that might arise in connection with the sale, lease, license, or other disposition of the Collateral and have no obligation to provide any warranties at such time. Secured Party may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, upon thirty (30) days' prior written notice, be made at the time and place to which it was so adjourned.
 - (4) To the extent permitted by law, Debtor hereby specifically waives all rights of redemption, stay, or appraisal which it has or may have under any law now existing or hereafter enacted.
- (b) Debtor hereby authorizes Secured Party to file financing and continuation statements with respect to the Collateral as Secured Party may reasonably require.
 - (c) Debtor hereby represents and warrants that no financing statement is on file in any public office except as authorized by Secured Party and financing statements in favor of any Subordinated Lender (as hereinafter defined). Debtor will at its own cost and expense, upon thirty (30) days' written demand therefor, furnish to Secured Party such further information and will execute and deliver to Secured Party financing statements and other documents in form reasonably satisfactory to Secured Party and will do all such acts that Secured Party may at any time or from time to time reasonably require to establish and maintain a perfected security interest in the Collateral as security for the Secured Infrastructure Obligations, subject only to the Permitted Liens and any other liens or encumbrances approved by or benefiting Secured Party. Debtor will pay the actual expense of filing or recording such financing statements or other documents, and this instrument, as and where reasonably required by Secured Party.
 - (d) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all rents, royalties, issues and profits, and all inventory accounts, accounts receivable and other revenues of the Property.

7.3 Fixture Filing. Certain of the Collateral is or will become "fixtures" (as that term is defined in the Uniform Commercial Code). This Deed of Trust, upon being filed for record in the real estate records of San Francisco County, shall operate also as a financing statement and fixture filing upon such of the Collateral that is or may become fixtures under the Uniform Commercial Code. Debtor's name and type and jurisdiction of entity are set forth in the introductory paragraph hereof. Debtor's address is set forth above. Debtor's EIN Number is 83-2368705. Secured Party's name and mailing address are set forth on the first page of this Deed of Trust.

8. IT IS MUTUALLY AGREED UPON THAT:

8.1. Intentionally Omitted.

8.2. Forbearance. Any delay or forbearance from enforcing any of City's rights and remedies under this Deed of Trust or the granting of any extension of the time for payment of any of the Secured Infrastructure Obligations shall not operate to release, discharge, waive, modify, change or affect the liability of Trustor either in whole or in part.

8.3. Late Payment. City's acceptance of late payment of any sum shall not constitute a waiver of its rights to require prompt payment when due of the Secured Infrastructure Obligations, or subject to any and all applicable notice and cure periods, to declare a default for any failure so to pay, or to proceed with foreclosure or sale for any Event of Default then existing. City's acceptance of partial payment of any sum at any time a default hereunder has occurred and is continuing shall not cure such default or affect any notice of default unless such notice of default is expressly revoked in writing by City (or such default has been fully cured).

8.4. City's Right to Release. To the fullest extent permitted by applicable law, without affecting the liability of any person for payment of any Indebtedness (other than any person released pursuant hereto), and without affecting the lien hereof upon any of the Property not released pursuant hereto, at any time and from time to time without notice:

- a) City may, at its sole discretion, (i) release any person now or hereafter liable for payment of any or all such Indebtedness, (ii) extend the time for or agree to alter the terms of payment of any or all of such Indebtedness, and (iii) release or accept additional security for such Indebtedness, or subordinate the lien or charge hereof; and
- b) Trustee, acting pursuant to the written request of City, may reconvey all or any part of the Property, consent to the making of any map or plat thereof, join in granting any easement thereon, or join in any such agreement of extension or subordination.

8.5. Full Reconveyance. Notwithstanding anything to the contrary contained herein, upon the earliest to occur of (such earliest event, the "DOT Termination Event") (i) Trustor's performance or payment in full of the Secured Infrastructure Obligations or (ii) City's receipt of the Bonds (or Replacement Security if approved by the City, which could include a cash escrow or a reasonably acceptable letter of credit in the amount of the Required Infrastructure Secured Amount) described in Section 3 of the Public Improvement Agreement, this Deed of Trust and all obligations and liabilities of Trustor shall be extinguished and City shall, simultaneously therewith, instruct Trustee and, upon payment to the Trustee of its reasonable out-of-pocket fees and expenses in connection with providing such documentation, Trustee shall fully reconvey, without warranty, the Property or that part thereof then held hereunder. The recitals to any full reconveyance shall be conclusive proof of their truthfulness and the grantee in any such reconveyance may

be described “as the person or persons legally entitled thereto”. When the Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all of the rents, royalties, issues, accounts and profits of the Property to the person or persons legally entitled thereto unless such reconveyance expressly provides to the contrary. City agrees that upon the DOT Termination Event, it shall execute a document in recordable form confirming that this Deed of Trust has terminated and shall reasonably cooperate with Trustor to execute and record such reconveyance; provided that in any case, this Deed of Trust shall terminate and such reconveyance shall be deemed effective without the need for any further documentation necessary to be executed by the City or any other party.

8.6. Acceleration; Remedies.

- a) If any Event of Default has occurred and is continuing, then City, at its option, may declare the Required Infrastructure Secured Amount to be immediately due and payable, without further demand, and may either, with or without entry or taking possession as provided in this Deed of Trust or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (1) to enforce payment of the Secured Infrastructure Obligations; (2) to foreclose this Deed of Trust judicially or non-judicially by the power of sale granted in this Deed of Trust; (3) to enforce or exercise any right under this Deed of Trust; and (4) to pursue any one or more other remedies provided in this Deed of Trust or otherwise afforded by applicable law. Each right and remedy provided in this Deed of Trust is distinct from all other rights or remedies under this Deed of Trust or otherwise afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.
- b) If an Event of Default has occurred and is continuing, Trustor acknowledges that, the power of sale granted in this Deed of Trust may be exercised or directed by City, without prior judicial hearing, all in accordance with applicable law. In the event City invokes the power of sale:
 - (1) City shall send to Trustor written notice of City’s election to cause the Property to be sold. In connection therewith, Trustor authorizes and empowers Trustee to take possession and collect and retain rents of the Property, or any part thereof, and grants to Trustee a power of sale and authorizes and empowers Trustee to sell (or, in the case of the default of any purchaser, to resell) the Property or any part thereof, in compliance with applicable law, including compliance with any and all notice and timing requirements for such sale;
 - (2) Trustee shall have the authority to determine the terms of the sale, subject to applicable law. In connection with any such sale, the whole of the Property may be sold in one (1) parcel as an entirety or in separate lots or parcels at the same or different times, all in accordance with applicable law. City shall have the right, in accordance with applicable law, to become the purchaser at any such sale. Trustee shall be entitled to receive fees and expenses from such sale in accordance with, and not to exceed the amount permitted by, applicable law;
 - (3) Trustee shall deliver to the purchaser of the Property a deed or such other appropriate conveyance document conveying the Property so sold, without any express or implied covenant or warranty. The recitals in such deed or document shall be prima facie evidence of the truth of the statements made in those recitals; and
 - (4) The outstanding principal amount of the Required Infrastructure Secured Amount, if not previously due, shall be and become immediately due and payable, without demand or notice of any kind. To the fullest extent permitted by applicable law, if the Property is sold for an amount less than the amount outstanding under the Required Infrastructure Secured Amount,

the deficiency shall be determined by the purchase price at the sale or sales conducted in accordance herewith.

- c) Trustor acknowledges and agrees that the proceeds of any sale shall be applied as determined by City, unless otherwise required by applicable law; provided that the proceeds of such sale, if any, remaining after the application of such proceeds toward (i) the remaining unpaid costs of constructing, completing and warranting the Required Infrastructure as set forth in the Public Improvement Agreement (which shall not exceed the Required Infrastructure Secured Amount, as such amount may be reduced pursuant to the Public Improvement Agreement), (ii) other amounts due and payable under this Deed of Trust, and (iii) any other payment required under applicable law, will be paid to Trustor or to the person legally entitled hereto.
- d) In connection with the exercise of City's rights and remedies under this Deed of Trust at any time an Event of Default has occurred and is continuing subject to the notice and cure period set forth in Section 6 above, there shall be allowed and included as part of the Indebtedness: (1) all expenditures and expenses authorized by applicable law and all expenditures and expenses that are actually paid or incurred by or on behalf of City for reasonable legal fees, third party appraisal fees, outlays for documentary and expert evidence, stenographic charges and publication costs; (2) all actual and reasonable expenses of any environmental site assessments, environmental audits, environmental remediation costs, appraisals, surveys, engineering studies, wetlands delineations, flood plain studies, and any other similar testing or investigation deemed reasonably necessary or advisable by City incurred at any time an Event of Default has occurred and is continuing, whether in preparation for, contemplation of or in connection with the exercise of City's rights and remedies under this Deed of Trust during such Event of Default; and (3) costs (which may be reasonably estimated as to items to be expended in connection with the exercise of City's rights and remedies under this Deed of Trust) of procuring all abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as City may deem reasonably necessary either to prosecute any suit or to evidence the true conditions of the title to or the value of the Property to bidders at any sale that may be held in connection with the exercise of City's rights and remedies under this Deed of Trust. At any time an Event of Default has occurred and is then continuing, all expenditures and expenses of the nature mentioned in this Section, and such other expenses and fees as may be incurred in the protection of the Property and income therefrom and the maintenance of the lien of this Deed of Trust, including the fees of any attorney employed by City in any litigation or proceedings affecting this Deed of Trust or the Property, including bankruptcy proceedings, any foreclosure, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Indebtedness and shall be paid by Trustor within ten (10) days of written demand therefor by City to Trustor, with interest thereon until paid.
- e) Any action taken by Trustee pursuant to the provisions of this Section shall comply with the laws of the State of California. Such applicable laws shall take precedence over the provisions of this Section or otherwise as set forth in this Deed of Trust but shall not invalidate or render unenforceable any other provision of any Deed of Trust that can be construed in a manner consistent with any applicable law. If any provision of this Deed of Trust shall grant to, Trustee or a receiver appointed pursuant to the provisions of this Deed of Trust, any powers, rights or remedies prior to, upon, during the continuance of or following an Event of Default that are more limited than the powers, rights, or remedies that would otherwise be vested in such party under any applicable law in the absence of said provision, such party shall be vested with the powers, rights, and remedies granted in such applicable law, to the full extent permitted by law (but subject to any applicable notice and cure periods provided herein).

- 8.7. Waiver of Statute of Limitations and Marshaling. To the extent permitted by law, Trustor waives: (a) the benefit of all present or future laws providing for any appraisal before sale of any portion of the Property; (b) all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the Required Infrastructure Secured Amount and marshaling in the event of foreclosure of the lien created by this Deed of Trust; (c) all rights and remedies that Trustor may have or be able to assert by reason of the laws of the State of California pertaining to the rights and remedies of sureties; (d) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Deed of Trust; and (e) any rights, legal or equitable, to require marshaling of assets or to require foreclosure sales in a particular order, including any rights under California Civil Code Sections 2899 and 3433. To the fullest extent permitted by applicable law, City shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided by this Deed of Trust and City shall have the right to determine the order in which any or all portions of the Required Infrastructure Secured Amount are satisfied from the proceeds realized upon the exercise of the remedies provided by this Deed of Trust.
- 8.8. Entry Possession and Receivership. At any time an Event of Default has occurred and is continuing and irrespective of whether City accelerates the maturity of all Required Infrastructure Secured Amount secured hereby or records a notice of default and election to sell hereunder, City at any time, in person, or by any agent or employee, or by receiver appointed by court, may, in accordance with applicable law, (a) enter upon and take the possession of the Property or any part thereof and including the right to rent, lease, operate and maintain any part or all of the Property, and may sue for or otherwise collect and receive all rents, royalties, issues, accounts and profits thereof, including those past due as well as those accruing thereafter, (b) take possession of, and for these purposes use, any and all of Trustor's personal property contained in or on the Property and used by Trustor in the operation, rental or leasing thereof or any part thereof, (c) bring or defend any legal action in connection with the Property, as it may deem proper, and may, from time to time, make all necessary or proper repairs, replacements and alterations to the Property, as it may seem judicious, and may insure and reinsure the same, and may lease the property or any part or parts thereof in such parcels and for such periods and on such terms as it may seem fit, including leases for terms and for terms expiring after the maturity of the indebtedness hereby secured, and may terminate any lease for any case which would entitle Trustor to terminate it and (d) after deducting the expenses of managing and operating the same and all maintenance, repairs, replacements and alterations and all payments which may be made for taxes, assessments, liens, claims, insurance premiums, or other proper charges of the Property or any part and for agents employed by City to manage and operate the Property, City may apply any and all remaining funds to the payments of the Indebtedness hereby secured in such order and proportion as City may determine. The expense (including, but not limited to, receivers' fees, attorneys' fees and agents' compensation) incurred by City pursuant to the power herein contained shall be secured hereby.

To the fullest extent permitted by applicable law, (a) neither application of said amounts to such Indebtedness nor any other action taken by City under this paragraph shall cure or waive any default hereunder or nullify the effect of any such notice of default or invalidate any act done pursuant to such notice or any cause of action to foreclose this Deed of Trust (unless the subject Event of Default is actually cured thereby), (b) the right to enter and take possession of the Property, to manage and operate the same, and to collect the rents, issues and profits thereof, whether by a receiver or otherwise, shall be in addition to any other right to remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof and (c) City shall be liable to account only for such rents, royalties, issues, accounts and profits actually received by it.

- 8.9. Exercise of Remedies; Delay. No exercise of any right or remedy herein contained or provided by law, and no delay by City or Trustee in exercising any such right or remedy hereunder shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder.
- 8.10. Trustee Substitution. The irrevocable power to appoint a substitute trustee or trustees hereunder is hereby expressly granted to City to be exercised at any time hereafter, without specifying any reason therefor by filing for record in the office where this Deed of Trust is recorded a deed of appointment and said power of appointment of successor trustee or trustees may be exercised as often as and whenever City deems advisable. The exercise of said power of appointment, no matter how often, shall not be deemed an exhaustion thereof, and upon recording of such deed or deeds of appointment, the trustee or trustees so appointed shall thereupon, without further act or deed of conveyance, succeed to and become fully vested with identically the same title and estate in and to the Property hereby conveyed and with all the rights, powers, trusts and duties of the predecessor in the trust hereunder, with the like effect as if originally named as trustee or as one of the trustees.
- 8.11. Remedies Cumulative. No remedy herein contained or conferred upon City or Trustee is intended to be exclusive of any other remedy or remedies afforded by law or by the terms hereof to the City or Trustee but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.
- 8.12. Intentionally Omitted.
- 8.13. Notice. All notices under this Deed of Trust shall be in writing, and shall be personally delivered by a reputable courier delivery service, sent by United States Postal Service certified mail, postage prepaid, return receipt requested, and shall be deemed received upon the earlier of (i) if personally delivered or delivered by a reputable courier delivery service, the date of delivery to the address of the person to receive the notice, (ii) if mailed, three (3) business days after the date of posting by the United States Postal Service. Additionally:
- (a) All notices to Trustor or City shall be addressed to the intended recipient at its respective address set forth at the end of this Deed of Trust.
 - (b) Any party to this Deed of Trust may change the address to which notices intended for it are to be directed by means of notice given to the other party in accordance with this Section.
 - (c) Any required notice under this Deed of Trust that does not specify how notices are to be given shall be given in accordance with this Section.
- 8.14. No Third Party Beneficiaries, Gender, Number. No creditor of any party to this Deed of Trust and no other person or entity shall be a third party beneficiary of this Deed of Trust. Wherever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall be applicable to all genders.
- 8.15. Headings. The headings are inserted only for convenience of reference and in no way define, limit, or describe the scope or intent of this Deed of Trust, or of any particular provision thereof, or the proper construction thereof.
- 8.16. Actions on Behalf of City. Except as is otherwise specifically provided herein, whenever any approval, notice, direction, consent, request or other action by City is required or permitted under this Deed of Trust, such action shall be in writing.

8.17. Obligations of Trustor. If more than one person has executed this Deed of Trust as Trustor, the obligations of all such persons hereunder shall be joint and several.

8.18. Miscellaneous Provisions.

- a) Beneficiary Statement. To the fullest extent permitted by applicable law, City may require reimbursement for actual and reasonable costs incurred in preparing and furnishing any statement required by California Civil Code Section 2943.
- b) Severability. The invalidity or unenforceability of any provision of this Deed of Trust shall not affect the validity or enforceability of any other provision of this Deed of Trust, which shall remain in full force and effect. This Deed of Trust contains the complete and entire agreement among the parties as to the matters covered, rights granted and the obligations assumed in this Deed of Trust. This Deed of Trust may not be amended or modified except by written agreement signed by the parties to this Deed of Trust.
- c) Reliance. Trustor understands that all statements, representations, and warranties made by Trustor in this Deed of Trust shall be deemed to have been relied on by City as a material inducement to accept this Deed of Trust as alternate security under the Public Improvement Agreement.

8.19. Governing Law; Consent to Jurisdiction and Venue. This Deed of Trust shall be governed by the laws of the State of California, without giving effect to any choice of law provisions thereof that would result in the application of the laws of another jurisdiction. Trustor agrees that any controversy arising under or in relation to this Deed of Trust shall be litigated exclusively in the City and County of San Francisco, State of California. The state and federal courts and authorities with jurisdiction in the City and County of San Francisco, State of California, shall have exclusive jurisdiction over all controversies that arise under or in relation to any security for the Indebtedness. Trustor irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which Trustor might be entitled by virtue of domicile, habitual residence or otherwise.

8.20. Replacement of Security. City acknowledges that under Section 3(b) of the Public Improvement Agreement, Trustor will be required to replace this Deed of Trust with Bonds (or Replacement Security, if such Replacement Security is approved by the City) before the issuance of a Street Improvement Permit for the Required Infrastructure. Without limiting Trustor's rights under the Public Improvement Agreement, City agrees that, whether or not an Event of Default has occurred and is continuing, any mortgagee of the Property whose deed of trust is subordinated to this Deed of Trust (a "Subordinated Lender") will have the right, at any time, to provide the Bonds (or Replacement Security, if such Replacement Security is approved by the City) or a cash escrow or letter of credit in the amount of [Required Infrastructure Secured Amount], in which event the City will accept such Subordinated Lender's delivery on behalf of Trustor, and will fully reconvey the Property held hereunder upon delivery of such Bonds, Replacement Security, cash escrow or letter of credit, as the case may be.

9. **GENERAL REPRESENTATIONS AND WARRANTIES**: To induce City to enter into this Deed of Trust and accept this Deed of Trust as alternate security under the Public Improvement Agreement, Trustor makes the following representations and warranties, which are deemed made as of both the date and the recordation of this Deed of Trust:

- 9.1. Capacity. Trustor and the individuals executing this Deed of Trust on Trustor's behalf have the full power, authority, and legal right to execute and deliver, and to perform and observe the provisions of this Deed of Trust.
- 9.2. Authority and Enforceability. Trustor's execution, delivery, and performance of this Deed of Trust have been duly authorized by all necessary corporate or other business entity action and do not and shall not require any registration with, consent, or approval of, notice to, or any action by any person or Governmental Authority. This Deed of Trust, when executed and delivered by Trustor, shall constitute the legal, valid, binding, and joint and several obligations of Trustor enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and general principles of equity.
- 9.3. Litigation. There are no actions, suits, investigations, or proceedings pending or, to Trustor's knowledge, threatened against Trustor at law or in equity, before or by any person, entity or Governmental Authority, that, if adversely determined, would have a material adverse effect on the validity or enforceability of this Deed of Trust.
- 9.4. Title to Property. As of the date of recordation of this Deed of Trust, Trustor holds full legal and equitable title to the Property, subject only to the Permitted Liens.
- 9.5. Further Acts. Trustor shall, at its sole cost and expense, and without expense to Trustee or City, do, execute, acknowledge, and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers, and assurances as Trustee or City shall from time to time require, for the purpose of better assuring, conveying, assigning, transferring, pledging, mortgaging, warranting, and confirming to Trustee the Property and rights, and as to City the security interest as to the Personalty, conveyed or assigned by this Deed of Trust or intended now or later so to be, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust, or for filing, registering, or recording this Deed of Trust and, on demand, shall execute and deliver, and authorizes City to execute in the name of Trustor, to the extent it may lawfully do so, one or more financing statements, chattel mortgages, or comparable security instruments, to evidence more effectively the lien of this Deed of Trust on the Property, provided that none of the foregoing shall increase Trustor's obligations or decrease Trustor's rights under this Deed of Trust.
- 9.6. Filing Fees. Trustor shall pay all filing, registration, or recording fees, all Governmental Authority stamp taxes and other fees, taxes, duties, imposts, assessments, and all other charges incident to, arising from, or in connection with the preparation, execution, delivery, and enforcement of this Deed of Trust, any supplemental deed of trust or mortgage, or any instrument of further assurance.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust on the day and year set forth above. If mailing addresses are set forth below the Trustor and City shall be deemed to have requested that a copy of any notice of default and of any notice of sale hereunder be mailed to such addresses.

TRUSTOR:

MAXIMUS PM PHASE 1C OWNER LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

MAILING ADDRESSES FOR NOTICES:

Trustor:

Maximus PM Phase 1C Owner LLC
c/o Maximus Real Estate Partners
One Maritime Plaza, Suite 1900
San Francisco, CA 94111
Attention: Robert A. Rosania

Copy to:

Greenberg Traurig, LLP
One Vanderbilt Avenue
New York, New York 10017
Attention: Stephen L. Rabinowitz

[CITY ACKNOWLEDGEMENT AND CONSENT ON FOLLOWING PAGE]

ACKNOWLEDGEMENT AND CONSENT:

City acknowledges and consents to the matters set forth in Section 8.20 above.

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Carla Short
Director

APPROVED AS TO FORM:

DAVID CHIU,
City Attorney

By: _____
Name: John Malamut
Title: Deputy City Attorney

By: _____
Name: Carol Wong
Title: Deputy City Attorney

MAILING ADDRESSES FOR NOTICES:

City:

City and County of San Francisco
San Francisco Public Works
49 South Van Ness Avenue, Suite 1600
San Francisco, California 94103
Attention: Infrastructure Task Force- Parkmerced Project Manager

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

Attention: Public Works General Counsel
Real Estate/Finance Team

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____)

On _____, 20 __ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____)

On _____, 20__ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

**ATTACHMENT A
LEGAL DESCRIPTION OF PROPERTY**

PARCEL ONE:

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL OF LOTS 01, 03, AND A, IN BLOCK 03W, TOGETHER WITH ALL OF LOT 04, IN BLOCK 04, AND ALL OF DEDICATION PARCELS 1, 2, 3, 4, 5, 6, 8, 9, AND 10 AS SAID LOTS AND DEDICATION PARCELS ARE SHOWN ON THAT CERTAIN MAP ENTITLED "FINAL MAP NO. 10699" FILED FOR RECORD ON _____, 2023 IN BOOK _____ OF FINAL MAPS, AT PAGES _____-_____ INCLUSIVE, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

BEING ALL OF APNS 7334-012, 7334-014, 7334-015, 7337-005, 7334-007, 7333B-001, 7333A-001, 7334-008, 7334-009, 7333-004, 7333-008, 7337-003, AND 7334-010.

PARCEL TWO:

A NON- EXCLUSIVE RECIPROCAL EASEMENT FOR UTILITIES AND ACCESS APPURTENANT TO PARCEL ONE PURSUANT TO THAT CERTAIN "RECIPROCAL EASEMENT AGREEMENT AND DEED OF EASEMENT" RECORDED DECEMBER 2, 2019 AS INSTRUMENT NO. 2019K865592 OF OFFICIAL RECORDS.

ATTACHMENT B
PERMITTED LIENS¹

¹ NTD: Needs to include Permitted Lien definitions from existing loan documents and any liens approved by any of the junior lenders.

**NO CHARGE ON THIS DOCUMENT FOR
THE BENEFIT OF THE CITY AND
COUNTY OF SAN FRANCISCO**

Recording Requested By:

When Recorded Mail To:

[City and County of San
Francisco mailing address]

**SUBORDINATION AGREEMENT
(Parkmerced Subphase 1C)**

THIS SUBORDINATION AGREEMENT (“Subordination Agreement”) is dated as of the ____ day of _____, 2023, between Maximus PM Phase 1C Owner LLC, a Delaware limited liability company (“Borrower”), the City and County of San Francisco (the “City”), PARKMERCED A NOTE LENDER LLC, a Delaware limited liability company (together with its successors and assigns, “Senior A Lender”), and YS PARKMERCED B NOTE LENDER LLC, a Delaware limited liability company (together with its successors and assigns, “Senior B Lender”; Senior A Lender and Senior B Lender being referred to herein collectively as “Senior Lender”), and RE-US Parkmerced Investment, LLC, a Delaware limited liability company (together with its successors and assigns, “Junior Lender”; Senior Lender and Junior Lender being referred to herein, collectively, as the “Lenders” and each, individually, as a “Lender”).

RECITALS

A. Borrower is the owner of certain real property commonly known as Parkmerced Subphase 1C and more particularly described on Exhibit A attached hereto (the “Property”).

B. The Property is encumbered by a first priority lien granted pursuant to that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of February 4, 2022, and recorded in the Office of the Recorder of the City and County of San Francisco, State of California (the “Recorder’s Office”) on February 7, 2022, as Instrument No. 2022013585, [as modified by that certain Spreader Agreement and Modification to Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of the date hereof, and being recorded in the Recorder’s Office on the date hereof (collectively, the “Senior Lender Deed of Trust”)], which Senior Lender Deed of Trust secures that certain senior loan to Borrower from Senior Lender (the “Senior Loan”).

C. The Property is also encumbered by a second priority lien granted pursuant to that certain Deed of Trust, Security Agreement, Assignment of Leases and Fixture Filing, dated as of February 4, 2022, and recorded in the Recorder’s Office on February 7, 2022, as Instrument No. 2022013589, as modified by that certain Spreader Agreement and Modification to Deed of Trust,

Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of the date hereof, and being recorded in the Recorder's Office on the date hereof (collectively, the "Junior Lender Deed of Trust"; the Junior Lender Deed of Trust and the Senior Lender Deed of Trust each being referred to herein as a "Lender Deed of Trust"), which Junior Lender Deed of Trust secures that certain junior loan to Borrower from Junior Lender (the "Junior Loan"; the Junior Loan and the Senior Loan each being referred to herein as a "Loan").

D. Borrower desires to subdivide the Property as more particularly described in that certain Final Map No. 10699 (the "Final Map") and the Public Improvement Agreement (as defined below) (such subdivision being referred to herein as "Subdivision Approval").

E. In satisfaction of certain requirements under the Subdivision Code of the City and County of San Francisco (the "Code") with the City's Subdivision Approval, (i) the City and Owner have simultaneously herewith entered into that certain Parkmerced Blocks 3W & 4 ("Subphase 1C") Public Improvement Agreement dated as of the date hereof by and between the City and Borrower (as amended, modified or otherwise supplemented from time to time in accordance with this Agreement, the "Public Improvement Agreement") and (ii) concurrently with recordation of this Subordination Agreement, the Borrower is causing to be recorded against the Property in the Recorder's Office a Deed of Trust executed by Borrower in favor of the City (the "City Deed of Trust"). Except as specifically defined herein, capitalized terms shall have the meaning given in the Public Improvement Agreement.

F. Recording of the City Deed of Trust in favor of the City requires the consent of the Lenders under the loan documents between Borrower and the respective Lenders.

G. The Senior Lender and the Junior Lender have agreed to consent to the City Deed of Trust and the subordination of their respective liens to the City Deed of Trust, subject to the condition that the City agree to the mortgagee protections more particularly set forth herein.

H. The City, the Lenders and Borrower all agree and desire to execute this Subordination Agreement to memorialize their understanding and agreement with regard to the respective priorities of each of the above-referenced documents. It is the intention of the parties that the City Deed of Trust shall unconditionally be and remain at all times a lien, claim and charge on the Property prior and superior to the Senior Lender Deed of Trust and the Junior Lender Deed of Trust, unless and until such City Deed of Trust is repaid, replaced or terminated pursuant to the terms thereof.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the City, the Lenders and Borrower hereby agree as follows:

AGREEMENT

1. Subordination of the Lender Deed of Trust to the City Deed of Trust; Mortgagee Protections.
 - a. Subordination. Subject only to the mortgagee protections set forth below in Section 1(b) and in the City Deed of Trust, the Lender Deed of Trust, together with all rights and privileges of Lender and Borrower thereunder, are hereby irrevocably and unconditionally

made subordinate to and subject to the City Deed of Trust and the City Deed of Trust is and will remain at all times, a lien, claim and charge on the Property prior and superior to the Lender Deed of Trust and to all rights and privileges of Lender and Borrower thereunder, unless and until such City Deed of Trust is repaid, replaced or terminated pursuant to the terms thereof.

- b. Mortgagee Protections. Notwithstanding anything to the contrary set forth elsewhere herein or in the City Deed of Trust, the parties hereto acknowledge and agree as follows:

i. Financing. Borrower may obtain further financing or re-financing of the Property, including further amendments, restatements, increases, extensions and other modifications to either or both Loans (collectively “Secured Financing”) which Secured Financing may be secured by a lien or charge of a mortgage, deed of trust, or other security interest against the Property (including the Senior Lender Deed of Trust, the Junior Lender Deed of Trust and any amendment, restatement, modification or replacement thereof, each a “Mortgage”), all without the City’s consent; provided that any such Secured Financing and Mortgage shall be subordinate to the City Deed of Trust, in which event the lender thereunder (including the Senior Lender and the Junior Lender) shall be entitled to all rights of a “Lender” and a “Mortgagee” under this Agreement. Without limiting the foregoing, any holder or beneficiary of a Mortgage (each, including each Lender, any successors and assigns of a Lender and any future lender of a Secured Financing, a “Mortgagee”) shall have the right to exercise all rights and remedies of such Mortgagee under the Secured Financing and Mortgage against Borrower, including, without limitation, consummating a judicial and/or non-judicial foreclosure, accepting a deed-in-lieu of foreclosure and such other rights and remedies as may be set forth in the Secured Financing documents or otherwise available at law or in equity.

ii. Notices of Default. The City shall provide to all Mortgagees copies of all notices (including without limitation the issuance of any building permit or other similar permit for Borrower to commence the Required Infrastructure and notices of default) provided to Borrower concurrently with its delivery to Borrower; it being agreed that no notice to Borrower shall be valid and no notice, cure, grace or other periods of time shall commence until the date on which such notice is delivered to all Mortgagees. Notwithstanding the foregoing, Borrower acknowledges and agrees that prior to obtaining any type of permit, including a grading permit, or commencing the installation and construction of any portion of the Required Infrastructure, Owner shall substitute Bonds in place of the City Deed of Trust, and upon delivery of such Bonds, the City Deed of Trust and all obligations and liabilities of Borrower thereunder shall be extinguished and the City shall, simultaneously therewith, instruct the Trustee (as defined in the City Deed of Trust) to, and the Trustee shall, fully reconvey, without warranty, the Property and otherwise proceed pursuant to and in accordance with Section 8.5 of the City Deed

of Trust.

iii. Cure Rights. The City agrees that Mortgagee may, but is under no obligation to, satisfy any obligation or liability of Borrower, including, without limitation, to cure any actual or alleged default or Event of Default under the City Deed of Trust prior to the exercise of any of the City's rights and remedies with respect thereto, with Mortgagee's cure period including Borrower's notice, grace and/or cure period under the City Deed of Trust and continuing for thirty (30) days beyond Borrower's cure period therefor (and if Borrower does not have any such cure period, thirty (30) days from Mortgagee's receipt of such notice); provided that, with respect to any nonmonetary defaults, such cure period may be extended for such additional time as Mortgagee is diligently endeavoring to effect such cure, which cure period includes the enforcement of its rights and remedies under its Mortgage. For the avoidance of doubt, if an incurable Event of Default occurs, then the City shall afford the Mortgagees such time as any Mortgagee requires to enforce its rights and remedies under its Mortgage; it being agreed that a foreclosure, deed-in-lieu of foreclosure or similar exercise of remedies that results in the taking possession of the Property away from Borrower shall automatically cure such Event of Default.

iv. Survival of Mortgage. No exercise by the City of its rights and remedies hereunder or under the City Deed of Trust as against Borrower or the Property shall defeat, limit, render invalid, or otherwise extinguish any Mortgage, which Mortgages shall continue as a lien against the Property notwithstanding.

v. No Amendment. In the event a Mortgage exists for which the City has received notice, including the Lender Deed of Trust, the City Deed of Trust shall not be amended, supplemented, restated or otherwise modified in any manner without the prior written consent of the Mortgagee holding such Mortgage. Any such amendment, supplement, restatement or modification entered into in violation of this provision being deemed void and otherwise unenforceable as against such Mortgagee or any Transferee. Borrower acknowledges and agrees that it shall not enter into any amendment, supplement or modification of the Public Improvement Agreement without the prior written consent of each Mortgagee.

vi. Replacement of Security. City agrees that any Lender will have the right, at any time, to exercise any and all rights and remedies of Borrower under the City Deed of Trust. Without limiting the foregoing, any Lender will have the right to exercise the provisions of Section 8.20 of the City Deed of Trust to replace the City Deed of Trust with Bonds (or Replacement Security) or a cash escrow or letter of credit in the amount of the [Required Infrastructure Secured Amount (as defined in the City Deed of Trust)] in accordance with the terms and provisions thereof.

2. Notices. The City agrees to give to Lender copies of all notices under the City Deed of Trust. All notices given under this Subordination Agreement shall be in writing and sent to the party at its address appearing below (a) by certified or registered U.S. mail, return receipt requested,

(b) overnight by a nationally recognized overnight courier such as UPS Overnight or FedEx, or (c) by personal delivery. All notices shall be effective upon receipt (or refusal to accept delivery). These addresses may be changed by any party by written notice to all other parties.

If to the City: [
 [
 [
 [

If to Borrower: Maximus PM Phase 1C Owner LLC
 c/o Maximus Real Estate Partners LLC
 One Maritime Plaza, Suite 1900
 San Francisco, California 94111
 Attention: Robert A. Rosania

with a copy to:

Greenberg Traurig, LLP
One Vanderbilt Avenue
New York, New York 10017
Attention: Stephen L. Rabinowitz, Esq.

If to Senior Lender: Parkmerced A Note Lender LLC
 c/o Parkmerced A Note Manager LLC
 1325 6th Avenue, 28th Floor
 New York, New York 10019
 Attention: Attention: Issac Hera and Joseph Einav
 Email: ihera@ysrei.com; jeinav@ysrei.com

and

YS Parkmerced B Note Lender LLC
c/o Yellowstone Real Estate Investments LLC
1325 6th Avenue, 28th Floor
New York, New York 10019
Attention: Issac Hera and Joseph Einav
Email: ihera@ysrei.com; jeinav@ysrei.com

with a copy to:

Paul Hastings LLP
200 Park Avenue
New York, New York 10166
Attention: Peter C. Olsen, Esq.
Email: peterolsen@paulhastings.com

If to Junior Lender: RE-US Parkmerced Investment, LLC
One Vanderbilt, 16th Floor
New York, NY 10017
Attention: Matt Borstein

with a copy to:

RE-US Parkmerced Investment, LLC
One Vanderbilt, 16th Floor
New York, NY 10017
Attention: Gregory Rubin

and a copy to:

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, New York 10166
Attention: Eric M. Feuerstein

3. Whole Agreement; Binding Effect. This Subordination Agreement is the whole and only agreement with regard to the priority of the lien, claim and charge of the City Deed of Trust and the Lender Deed of Trust. This Subordination Agreement is binding on and inures to the benefit of the legal representatives, heirs, successors and assigns of each of the parties hereto.

4. Attorney's Fees. If any party to this Subordination Agreement brings an action to interpret or enforce its rights under this Subordination Agreement, the prevailing party will be entitled to recover its costs and reasonable attorney's fees as awarded in the action.

5. Governing Law. This Subordination Agreement is governed by, and shall be construed in accordance with, the laws of the State of California.

6. Counterparts. This Subordination Agreement may be executed in counterparts, and all counterparts constitute but one and the same document.

7. Signatures. All individuals signing this Subordination Agreement for a party which is a corporation, limited liability company, partnership, governmental entity or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to each other that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

[Signatures on Following Page(s)]

IN WITNESS WHEREOF, the parties have executed this Subordination Agreement as of the date first set forth above and agree to be bound hereby.

BORROWER:

MAXIMUS PM PHASE 1C OWNER LLC,
a Delaware limited liability company

By:_____

Name: Robert A. Rosania

Title: President

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

SENIOR LENDER:

PARKMERCED A NOTE LENDER LLC,
a Delaware limited liability company

By: Parkmerced A Note Manager LLC, its manager

By: _____

Name: Issac Hera

Title: Manager and CEO

YS PARKMERCED B NOTE LENDER LLC,
a Delaware limited liability company

By: _____

Name: Issac Hera

Title: Manager and CEO

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

JUNIOR LENDER:

RE-US PARKMERCED INVESTMENT, LLC,
a Delaware limited liability company

By: _____

Name:

Title:

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

DAVID CHIU
City Attorney

By: _____
Name: _____
Title: Deputy City Attorney

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of San Francisco)

On _____, 2023, before me, _____, notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

ACKNOWLEDGMENT

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State of California)
)
County of San Francisco)

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(Seal)

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County of San Francisco)

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Signature _____

(Seal)

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State of California)
)
County of San Francisco)

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Signature _____

(Seal)

ACKNOWLEDGMENT

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State of California)
)
County of San Francisco)

On _____, 2023, before me, _____, notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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Signature _____

(Seal)

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State of California)
)
County of San Francisco)

On _____, 2023, before me, _____, notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT H

Form of Notice of Termination

This instrument is exempt from Recording Fees (CA Govt. Code § 27383)

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

[Subdivider:

Attn: _____]

APN(s): [_____] RECORDER'S USE

SPACE ABOVE THIS LINE RESERVED FOR

NOTICE OF TERMINATION

This NOTICE OF TERMINATION (this “**Notice of Termination**”) is made and entered into as of [INSERT DATE THAT TERMINATION OCCURRED] ____, 20__ (the “**Effective Date**”) by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the “**City**”), and [NAME OF SUBDIVIDER], a [_____] (“**Subdivider**”).

RECITALS

- A. Reference is hereby made to that certain Public Improvement Agreement between the City and Subdivider, dated as of ____, 2022 and recorded in the Official Records on ____, 2022 as Document No. ____ [DESCRIBE ANY AMENDMENTS] (collectively, the “**Agreement**”). All initially capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Agreement.
- B. As of the Effective Date, the Agreement terminated in accordance with its terms [in its entirety] [with respect to the portion of the Project Site described on Exhibit A attached hereto (the “**Property**”)].
- C. Pursuant to section 12(c) of the Agreement, the City and Subdivider desire to memorialize in the Official Records that as of the Effective Date the Agreement

terminated in accordance with its terms [in its entirety] [with respect to the Property].

NOW, THEREFORE, the City and Subdivider do hereby acknowledge and agree that as of the Effective Date the Agreement terminated in accordance with its terms [in its entirety] [with respect to the Property]. Except as expressly provided herein, nothing contained in this Notice of Termination shall modify the Agreement. This Notice of Termination may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Notice of Termination has been executed by the City and Subdivider as of the Effective Date.

SUBDIVIDER:

[_____] ,
a [_____]

By: _____
Name: _____
Title: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

DAVID CHIU
City Attorney

By: _____
Name: _____
Title: Deputy City Attorney

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____)

On _____, 20__ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

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State of California

County of _____)

On _____, 20__ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

PROPERTY

[To be provided if applicable]

EXHIBIT J

SFPUC Parcel License

**SAN FRANCISCO PUBLIC UTILITIES COMMISSION
REVOCABLE LICENSE**

(License # _____)

THIS REVOCABLE LICENSE (this “**License**”) dated for reference purposes only as of _____, 20__ (the “**Reference Date**”), is made by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**”), acting by and through its Public Utilities Commission (the “**SFPUC**”), and MAXIMUS PM PHASE 1C OWNER LLC, a Delaware limited liability company, (“**Licensee**”). City and Licensee sometimes are referred to collectively in this License as the “**Parties**” or singularly as a “**Party**.” PARKMERCED OWNER LLC, a Delaware limited liability company (“**PMO**”) acknowledges and consents to the form of this License as an intended future assignee of Licensee’s rights and obligations under this License. All capitalized terms not otherwise defined in this License are defined in the Development Agreement (as defined in Recital B below.)

RECITALS

A. Parkmerced is a 152-acre site in the southwestern part of the City of San Francisco. The Parkmerced Development Project (the “**Project**”), which will be implemented over three decades, includes comprehensive redesign, redevelopment, and improvement of the site with new residential buildings, retail uses, parks, streets, and other amenities.

B. City approved the Development Agreement (the “**Development Agreement**”) for the Parkmerced Project via Ordinance No. 89-11.

C. City owns approximately 5,079 square feet of real property under the SFPUC’s jurisdiction located at 400-448 Vidal Drive in San Francisco, California (“**SFPUC Property**” or “**License Area**”) as further described in the Basic License Information below. The SFPUC Property is located within the Parkmerced Special Use District (Planning Code Section 249.64), which was adopted by the City via Ordinance No. 90-11 to implement the Project. The SFPUC Property occupies the entirety of City Block 7333 Lot 002. The SFPUC Property contains a decommissioned pump station no longer operated by the SFPUC.

D. The Parties desire to enter into this License to implement the Public Improvement Agreement (the “**PIA**”) associated with Final Map No. 10699 (the “**Final Map**”) for the Parkmerced Project. The Final Map was recorded in the Official Records of the City and County of San Francisco on _____, as Document No. _____.

E. The PIA and Final Map are Implementing Approvals under the Development Agreement. City will issue a Street Improvement Permit associated with the PIA (the “**Street Improvement Permit**”), which requires the demolition of the existing decommissioned pump station and surrounding built improvements (such as retaining walls, railings, fencing, and abandoned utilities) located within the License Area (provided such demolition activity will be separately permitted by City building permit). Alternatively, this License permits Licensee to seek a City building permit authorizing demolition of such decommissioned pump station and surrounding built improvements in advance of issuance of the Street Improvement Permit, as set forth herein. Upon City issuance of the Street Improvement Permit or a building permit authorizing demolition as described above

and in the Basic License Information below, Licensee and Licensor will execute a letter in the form attached as **Exhibit A** detailing the summary information associated with the Street Improvement Permit or such building permit, provided that failure of either party to do so shall not affect the effectiveness of the Street Improvement Permit, building permit, or this License.

F. Pursuant to the Final Map and PIA, Licensee will improve and dedicate a portion of the License Area adjacent to Vidal Drive to City to own and maintain as a public right-of-way (the “**Vidal Drive Right-of-Way Area**”).

G. Pursuant to the Street Improvement Permit, Subdivider will install and dedicate improvements located on a portion of the License Area adjacent to Lake Merced Boulevard (the “**Lake Merced Boulevard Public Improvement Area**”) to City for ownership and maintenance, in part as a public right-of-way sidewalk area maintained pursuant to Public Works Code Section 706 and in part as a “multi-use pathway” that would be maintained by either by the San Francisco Public Works Department or the San Francisco Municipal Transportation Agency, pursuant to the terms of the Memorandum of Understanding Between San Francisco Public Works and the San Francisco Municipal Transportation Agency Regarding Maintenance and Repair of Facilities in the Right-Of-Way, which specifies the division of responsibilities between the two City agencies for maintenance and repair of facilities in the public right-of-way, and allows for the agencies to negotiate alternative divisions of responsibilities to be applied to a particular project.

H. Accordingly, the Parties desire to enter into this License on the terms and conditions below.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing Recitals, which are incorporated into this License by this reference, the mutual covenants and obligations of the Parties contained in this License, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agrees as follows.

BASIC LICENSE INFORMATION

The following is a summary of basic license information (the “**Basic License Information**”). Each item below will be deemed to incorporate all of the terms set forth in this License pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this License, the more specific provision will control.

City:	CITY AND COUNTY OF SAN FRANCISCO, acting by and through its Public Utilities Commission
Licensee:	MAXIMUS PM PHASE 1C OWNER LLC, a Delaware limited liability company
License Area (<u>Section 1</u>):	The entirety of the approximately 5,079 square foot City Block 7333 Lot 002 owned by City in San Francisco, California, as more particularly described and shown in the attached <u>Exhibit B</u> , together with any appurtenances. Upon City acceptance of the Vidal Drive Right-of-Way Area and/or Lake

	<p>Merced Boulevard Public Improvement Area for ownership and maintenance pursuant to the Final Map and PIA, the License Area will be automatically amended to exclude from the License Area such Vidal Drive Right-of-Way Area and/or Lake Merced Boulevard Public Improvement Area, as the case may be.</p>
<p>Commencement Date (<u>Section 2</u>):</p>	<p>The Commencement Date of the License is the date on which this License is executed and delivered by SFPUC following Licensee delivery to SFPUC of insurance certificates required to be provided by this License.</p>
<p>Term (<u>Section 2</u>):</p>	<p>Five (5) years commencing on the Commencement Date, subject to the renewal provisions set forth in Section 2(a) below.</p>
<p>Permitted Acts (<u>Section 4(a)</u>):</p>	<p>(i) <i>Initial Phase</i>: For the period between the Commencement Date and the commencement of the Work Phase, Licensee shall be responsible for the maintenance of the surface of the License Area. During the Initial Phase, the terms “maintain,” “maintenance,” and “maintenance obligations,” mean that, with respect to the License Area, Licensee shall be solely responsible for (i) mowing grass and removing weeds, and (ii) regularly (at least twice every calendar month) remove trash, debris, and graffiti as reasonably required or necessary to keep the License Area in a safe, sanitary, and sightly condition and to prevent the existence of a nuisance on the License Area. For avoidance of doubt, Licensee shall not be responsible for the maintenance of the existing pump station improvements and surrounding built improvements (such as retaining walls, railings, fencing, and abandoned utilities) except that: (A) Licensee is responsible for removing graffiti on the surface of such improvements; and (B) Licensee may, at its option, demolish all such improvements in advance of Street Improvement Permit issuance as authorized by City building permit.</p> <p>(ii) <i>Work Phase</i>: The performance of the work under the Street Improvement Permit consisting of: (A) the demolition of the existing pump station improvements, abandoned utility infrastructure and all surrounding structures (such as retaining walls, railings, fencing, and abandoned utilities) within the License Area (provided such demolition shall be permitted by a separate City building permit); (B) the construction of certain public right-of-way improvements in the Vidal Drive Right-of-Way Area; (C) the installation of grading and hydroseeding; on a portion of the License Area; and (D) the installation of pavement, vegetation, and any Multi-Use Pathway in the Lake Merced Boulevard Public Improvement Area (the “Permitted Improvements” or “Facilities”); and</p>

	(iii) <i>Use Phase</i> : The operation, maintenance, repair, and replacement of the Permitted Improvements approved by the City (except for any Permitted Improvements accepted by other City departments for ownership and maintenance such as the improvements within the Vidal Drive Right-of-Way Area and Lake Merced Boulevard Public Improvement Area).
Application Fee	N/A
Recurring Use Fee:	N/A
Licensee's Share of Property Taxes:	See <u>Section 34</u> [Taxes, Assessments, Licenses, License Fees, and Liens].
Notices:	See <u>Section 35</u> [Notices].
Key Contact for City:	SFPUC Real Estate Director
Telephone No. and Email:	(415) 487-5210 RES@sfgwater.org
Key Contact for Licensee:	Rob Rosania, President
Telephone No. and Email:	(415) 316-0120 robrosania@maximusrepartners.com
Alternate Contact for Licensee:	Bill McGivern, Senior Vice President, Development
Telephone No. and Email:	(415) 760-0885 wmcgivern@maximusrepartners.com

SFPUC and Licensee agree as follows:

1. License. SFPUC confers to Licensee a revocable, personal, non-exclusive, and non-possessory privilege to enter upon and use the License Area defined in the Basic License Information, for the limited purpose and subject to the terms, conditions, and restrictions set forth below. The License Area is shown generally on the drawing attached as **Exhibit B**. This License gives Licensee a license only and notwithstanding anything to the contrary in this License, it does not constitute a grant by SFPUC of any ownership, leasehold, easement, or other property interest or estate whatsoever in any portion of the License Area. Nothing in this License will be construed as granting or creating any franchise rights pursuant to any federal, state, or local laws.

THE PRIVILEGE GIVEN TO LICENSEE UNDER THIS LICENSE IS EFFECTIVE ONLY INsofar AS THE RIGHTS OF SFPUC IN THE LICENSE AREA ARE CONCERNED, AND LICENSEE WILL OBTAIN ANY FURTHER PERMISSION NECESSARY BECAUSE OF

ANY OTHER EXISTING RIGHTS AFFECTING THE LICENSE AREA. WITHOUT LIMITING THE FOREGOING, THIS LICENSE IS BEING ISSUED SUBJECT AND SUBORDINATE TO ALL OF THE TERMS AND CONDITIONS OF THAT CERTAIN DEED DATED AND RECORDED MARCH 3, 1930 IN LIBER 2002, AT PAGE 1, OF OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, PURSUANT TO WHICH CITY ACQUIRED ITS INTEREST IN THE LICENSE AREA, A COPY OF WHICH IS ATTACHED TO THIS LICENSE AS **EXHIBIT C** (THE “**DEED**”), AND ALL OTHER EXISTING AND FUTURE DOCUMENTS AND INSTRUMENTS OF RECORD AFFECTING THE LICENSE AREA (COLLECTIVELY, WITH THE DEED, THE “**RECORDED DOCUMENTS**”). LICENSEE MUST SECURE ALL ADDITIONAL NECESSARY APPROVALS, PERMITS, LICENSES, AND CONSENTS, AND DELIVER ALL NECESSARY NOTICES, BEFORE COMMENCING WORK IN THE LICENSE AREA, INCLUDING ANY APPROVALS, PERMITS, LICENSES, CONSENTS, OR NOTICES REQUIRED FROM OR TO THE GRANTOR UNDER THE RECORDED DOCUMENTS. FOR CITY’S BENEFIT, LICENSEE COVENANTS AND AGREES THAT LICENSEE WILL FULLY COMPLY WITH THE TERMS AND CONDITIONS OF THE RECORDED DOCUMENTS AND ANY OTHER RULES AND REGULATIONS PROMULGATED BY CITY AS THEY APPLY TO ANY WORK TO BE PERFORMED OR FACILITIES TO BE INSTALLED BY LICENSEE ON THE LICENSE AREA PURSUANT TO THIS LICENSE, AND CITY WILL HAVE NO RESPONSIBILITY OR LIABILITY OF ANY KIND WITH RESPECT THERETO. LICENSEE ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY OF ITS DEPARTMENTS, COMMISSIONS, OFFICERS, DIRECTORS, AND EMPLOYEES, AND ALL PERSONS ACTING BY, THROUGH, OR UNDER EACH OF THEM HAVE MADE, AND CITY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PRESENT OR FUTURE SUITABILITY OF THE LICENSE AREA FOR LICENSEE’S INTENDED WORK OR FACILITIES, THE IMPACT OF ANY TERM OR CONDITION OF THE RECORDED DOCUMENTS ON LICENSEE’S RIGHTS UNDER THIS LICENSE, OR THE ABILITY TO OBTAIN OR DELIVER, OR THE PROCEDURE FOR OBTAINING OR DELIVERING, ANY NECESSARY APPROVALS, LICENSES, PERMITS, CONSENTS OR NOTICES FROM OR TO THE GRANTOR UNDER THE RECORDED DOCUMENTS OR ANY OTHER PARTY WITH RESPECT TO ANY MATTERS CONTAINED IN THIS LICENSE.

2. Term of License; Revocability.

(a) **Term.** The privilege conferred to Licensee pursuant to this License will commence on the Commencement Date, as defined in the Basic License Information. Following the Commencement Date, the term of this License will immediately expire five (5) years after the Commencement Date or upon written notice from SFPUC revoking this License on the basis that SFPUC needs the License Area for a utility purpose.

Notwithstanding the foregoing, if Licensee desires to renew the term of this License less than (5) years, then before the date that is five (5) years after the Commencement Date, Licensee shall give written notice to SFPUC requesting such renewal and identifying the length of the additional term requested. If SFPUC is agreeable to the renewal term sought by Licensee, SFPUC will seek approval for such a renewal term from its Commission, and the Board of Supervisors and Mayor if required, to be granted, withheld, or conditioned at their respective sole discretion; provided, however, that (i) at its sole discretion, SFPUC may not seek such renewal if City has other uses for the License Area, desires a shorter renewal term than that requested by Licensee, or

if SFPUC determines that Licensee has not adequately performed its obligations under this License; and (ii) at all times prior and after any such renewal, SFPUC will retain its right to revoke this License at any time without cause or liability, and without any obligation to pay any consideration to Licensee or return to Licensee any part of the license fee or, if applicable, the use fee.

(b) **Revocability.** If SFPUC determines that the License Area is needed for a utility purpose, SFPUC may at its sole option revoke this License without cause or liability, and without any obligation to pay any consideration to Licensee. Upon any such revocation, Licensee will immediately surrender the License Area in the condition required by this License. The installation of Facilities or the existence of other improvements to, or alterations of, the License Area, regardless of cost, will not in any way whatsoever limit SFPUC's right to revoke this License.

3. **Intentionally Omitted.**

4. **Use of License Area.**

(a) **Permitted Acts.** Licensee may enter and use the License Area for the purposes of

- (i) *Initial Phase:* For the period between the Commencement Date and the commencement of the Work Phase, Licensee shall be responsible for the maintenance of the surface of the License Area. During the Initial Phase, the terms "maintain," "maintenance," and "maintenance obligations," mean that, with respect to the License Area, Licensee shall be solely responsible for (i) mowing grass and removing weeds, and (ii) regularly (at least twice every calendar month) remove trash, debris, and graffiti as reasonably required or necessary to keep the License Area in a safe, sanitary, and sightly condition and to prevent the existence of a nuisance on the License Area. For avoidance of doubt, Licensee shall not be responsible for the maintenance of the existing pump station improvements and surrounding built improvements (such as retaining walls, railings, fencing, and abandoned utilities) except that: (A) Licensee is responsible for removing graffiti on the surface of such improvements; and (B) Licensee may, at its option, demolish all such improvements in advance of Street improvement Permit issuance as authorized by a City building permit.
- (ii) *Work Phase:* The performance of the work under the Street Improvement Permit consisting of: (A) the demolition of the existing pump station improvements, abandoned utility infrastructure and all surrounding structures (such as retaining walls, railings, fencing, and abandoned utilities) within the License Area (provided such demolition shall be permitted by a separate City building permit); (B) the construction of certain public right-of-way improvements in the Vidal Drive Right-of-Way Area; (C) the installation of grading and hydroseeding; on a portion of the License Area; and (D) the installation of pavement, vegetation, and any Multi-Use Pathway in the Lake Merced Boulevard Public Improvement Area (the "**Permitted Improvements**" or "**Facilities**"); and

- (iii) *Use Phase:* The operation, maintenance, repair, and replacement of the Permitted Improvements approved by the City (except for any Permitted Improvements accepted by other City departments for ownership and maintenance such as the improvements within the Vidal Drive Right-of-Way Area and Lake Merced Boulevard Public Improvement Area).

(b) Subject to City Uses. Notwithstanding anything to the contrary in this License, all of Licensee's activities pursuant to this License will be subject and subordinate at all times to City's existing and future use of the License Area for municipal and other purposes.

5. Improvements to License Area, Conditions to Permitted Acts. Licensee's use of the License Area and its implementation or installation of any Permitted Improvements, are subject to its satisfaction of all of the following conditions (to the extent applicable), which are for City's sole benefit:

(a) Approval of Plans and Specifications. Licensee will not install or implement any improvements without City's prior written consent. Licensee will only install or implement the Permitted Improvements in accordance with the Street Improvement Permit and the City building permit necessary for permitted demolition activities.

(b) Energy Service, and Related Facilities. Section 3.13 of the Development Agreement required SFPUC to prepare a study to determine the feasibility of the SFPUC providing electric service and natural gas to the Development Agreement Project Site. On May 5, 2015, the SFPUC concluded that it was not feasible for SFPUC to provide energy service and related facilities to implement the Project. Licensee will arrange and pay for all utilities and services furnished to the License Area, including gas, electricity, water, sewage, telephone, and trash collection services, and for all deposits, connection, and installation charges.

Except as otherwise provided in this License, the SFPUC has no responsibility or liability of any kind with respect to any utilities that may be on or about the License Area. Licensee has the sole responsibility to locate any utility facilities within the License Area and protect them from damage resulting from Licensee's use of the License Area.

(c) Permits, Licenses, and Approvals. Before beginning any permitted improvement or alteration work in the License Area, Licensee will obtain all permits, licenses, and approvals (collectively, "**Approvals**") of all regulatory agencies and other third parties required to construct, complete, and maintain the Permitted Improvements. Promptly upon receipt of such Approvals, Licensee will deliver copies of them to the SFPUC (excepting any Approvals granted by the SFPUC). SFPUC's execution of this License will not be deemed to constitute the approval of any federal, state, or local regulatory authority with jurisdiction, and nothing in this License limits Licensee's obligation to obtain all such regulatory Approvals, at Licensee's sole cost.

(d) Limits of City's or SFPUC's Consent. City's or the SFPUC's consent to or approval of the Permitted Improvements will not relieve Licensee or its engineers, architects, or contractors from any liability for negligence, errors, or omissions associated with the design and construction of any such improvements. In no event will the SFPUC's approval of plans or specifications be deemed to constitute a representation or warranty by City concerning the suitability of the improvements, equipment, or fixtures for Licensee's purposes or that the work called for in the plans and specifications complies with applicable building codes or other

applicable Laws (defined in Section 9 [Compliance with Laws] below), or industry standards, nor will such approval release Licensee from its obligation to supply plans and specifications that conform to applicable building codes, other applicable Laws, and industry standards.

(e) **Exercise of Due Care.** Licensee will use and will cause its Agents (defined in Section 19 [Indemnity] below) to use, due care at all times to avoid any damage or harm to existing improvements, native vegetation, and natural attributes. Once demolition, grading, or construction commence, this duty will only apply insofar as existing improvements, native vegetation, and natural attributes remain on the License Area pursuant to the Street Improvement Permit and the City building permit authorizing demolition of existing improvements. Licensee will not disturb the surface of the License Area or perform any excavation work except as pursuant to the Street Improvement Permit and the City building permit authorizing demolition of existing improvements.

(f) **Cooperation with Public Utilities Commission.** While completing work pursuant to an issued Street Improvement Permit, Licensee and its Agents will work closely with City personnel to minimize disruption (even if temporary) of City facilities, in, under, on, or about the License Area and City uses of such facilities.

(g) **Intentionally Omitted**

(h) **Work Schedule.** At least ten (10) business days prior to the commencement of any construction of the Permitted Improvements, Licensee will notify Mr. Steve Jones, the SFPUC's Superintendent of Facilities and Emergency Response ("**SFPUC Contact**"), at (415) 920-4928, of the date such work will commence and the intended construction schedule. Notification must also be given to Underground Service Alert at least two (2) days prior to the start of such work. Notwithstanding the approval of such schedule by the SFPUC, the SFPUC Contact will have the right to require Licensee to adjust such schedule from time to time. All work must be performed during regular working hours in accordance with an issued Street Improvement Permit or City building permit authorizing demolition, as the case may be.

(i) **Restoration of License Area.** Immediately following completion of the Permitted Improvements, Licensee will remove all debris and any excess dirt in accordance with the Street Improvement Permit or City building permit authorizing demolition, as the case may be.

(j) **Intentionally Omitted.**

(k) **As-Built Drawings/Reports.** Licensee will furnish the City with copies of the final as-built drawings for the Facilities in accordance with the PIA. If Licensee or any of its Agents or consultants prepares any environmental, seismic, geophysical, or other written report directly relating to construction of the Facilities in the License Area, Licensee will furnish to SFPUC a complete copy of such report, including any schedules, exhibits, and maps, promptly upon completion of the same.

(l) **Contractors.** Licensee will not release its contractor for work authorized or required by this License before securing issuance of the Street Improvement Permit.

(m) **Intentionally Omitted.**

(n) **Intentionally Omitted.**

(o) **Potholing.** Any potholing authorized by this License will be subject to the direction of SFPUC's Contact and pursuant to the Street Improvement Permit or City building permit authorizing demolition, as the case may be.

6. Restrictions on Use. The following uses (by way of example only) of the License Area by Licensee, or any other person claiming by or through Licensee, are inconsistent with the limited purpose of this License and are strictly prohibited as provided below:

(a) **Improvements.** Except as otherwise expressly provided in this License, Licensee will not construct or place any temporary or permanent structures or improvements in, on, under, or about the License Area, nor will Licensee make any alterations or additions to any existing structures or improvements on the License Area, unless such improvements pursuant to the Street Improvement Permit.

(b) **Trees and Other Plantings.** Licensee will not plant any trees or other vegetation in or on the License Area, except to replant any existing grass or as otherwise expressly provided in the Street Improvement Permit.

(c) **Dumping.** Licensee will not cause or permit the dumping or other disposal in, on, under, or about the License Area of landfill, refuse, Hazardous Material (defined in subsection (d) [Hazardous Material] below), or any other materials, including materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment.

(d) **Hazardous Material.** Licensee will not cause, nor will Licensee allow any of its Agents or Invitees (defined in Section 19 [Indemnity] below) to cause, any Hazardous Material to be brought upon, kept, used, stored, generated, released, or disposed of in, on, under, or about the License Area, or transported to, from, or over the License Area. Licensee will immediately notify City when Licensee learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on, under, or about any part of the License Area. Licensee will further comply with all applicable Laws requiring notice of such releases or threatened releases to governmental agencies and will take all actions necessary or desirable to mitigate the release or minimize the spread of contamination. If Licensee or its Agents or Invitees cause a release of Hazardous Material, Licensee will promptly return the License Area to the condition immediately prior to the release, without cost to City, in accordance with all Laws, and using the highest and best technology available. In connection with such remedial action, Licensee will afford City a full opportunity to participate in any discussion or negotiations with governmental agencies and environmental consultants regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise proceeding involving Hazardous Material, and any other abatement or cleanup plan, strategy, and procedure. For purposes of this License, "**Hazardous Material**" means material that, because of its quantity, concentration, or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state, or local governmental authority to pose a present or potential hazard to public health, welfare, or the environment. Hazardous Material includes the following: any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code or any other federal, state, or local Law; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any

asbestos and asbestos-containing materials whether or not such materials are part of the License Area or are naturally occurring substances in the License Area; and any petroleum, including crude oil or any crude-oil fraction, natural gas, or natural gas liquids, provided, the foregoing will not prohibit Licensee from traversing to, from, and across the License Area in standard motor vehicles that do not exceed the weight limitations set forth below. The term “**release**” or “**threatened release**” when used with respect to Hazardous Material will include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under, or about the License Area.

(e) **Nuisances.** Licensee will not conduct any activities in, on, under, or about the License Area that constitute waste, nuisance, or unreasonable annoyance (including emission of objectionable odors, noises, or lights) to City, to the owners or occupants of neighboring property, or the public, or that constitute waste or nuisance per se.

(f) **Damage.** Licensee will not do anything in, on, under, or about the License Area that could cause damage to or interference with any pipelines, facilities, or other property located in, on, under, or about the License Area except pursuant to the Street Improvement Permit or pursuant to other prior written approval by the SFPUC such as a demolition permit in the Initial Phase. Licensee will compensate City for all damage caused to the License Area and City facilities (except pursuant to the Street Improvement Permit, City building permit authorizing demolition, or pursuant to other prior written approval by the SFPUC) resulting from the activities of Licensee and its Agents and Invitees, including damage resulting from defective work.

(g) **Intentionally Omitted.**

(h) **Ponding; Water Courses.** Licensee will not cause any ponding on the License Area or any flooding on adjacent land, except as allowed or required pursuant to an erosion and sediment control plan associated with the Street Improvement Permit. Licensee will not engage in any activity that causes any change, disturbance, fill, alteration, or impairment to the bed, bank, or channel of any natural water course, wetland, or other body of water on, in, under, or about the License Area except as allow or required pursuant to an erosion and sediment control plan associated with the Street Improvement Permit, nor will Licensee engage in any activity that could pollute or degrade any surface or subsurface waters or result in the diminution or drainage of such waters.

(i) **Intentionally Omitted.**

(j) **Intentionally Omitted.**

(k) **Intentionally Omitted.**

7. Intentionally Omitted

8. Required Insurance Coverages. Licensee’s compliance with the provisions of this Section 8 will in no way relieve or decrease Licensee’s indemnification or other obligations under this License. Licensee must maintain in force, during the full term of this License, insurance in the amounts and coverages listed below. In addition, Licensee will cause each Agent (defined in Section 19 [Indemnity] below) performing work on the License Area to procure and keep in effect

during the course of such work appropriate amounts of insurance and add City as additional insureds for those respective policies.

(a) Commercial General Liability Insurance, or in conjunction with umbrella/excess liability, with limits not less than \$3,000,000 for each occurrence of Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Independent Contractors, Explosion, Collapse, and Underground (XCU), Broad Form Property Damage and Products, and Completed Operations.

(b) Commercial Automobile Liability Insurance, or in conjunction with umbrella/excess liability, with limits not less than \$2,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned, and Hired auto coverage, as applicable.

(c) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness.

(d) Pollution Liability Insurance applicable to Licensee's activities and responsibilities under this License with limits not less than \$1,000,000 each occurrence combined single limit, including coverage for on-site third-party claims for bodily injury and property damage.

Licensee also will procure and keep in effect at all times during the term of this License, at Licensee's expense, and cause its contractors and subcontractors to maintain at all times during any construction activities on the License Area, pollution legal liability, environmental remediation liability and other environmental insurance, including coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; Environmental Damages; property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed; defense costs, charges and expenses incurred in the investigation, adjustment of defense claims for such compensatory damages; sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of Hazardous Materials into or upon City's property, the atmosphere or watercourse or body of water, which results in Environmental Damages; transportation coverage for the hauling of any Hazardous Materials by Licensee or Licensee's Agents, from City's real property to the final disposal location; and first party environmental remediation that pays for the cost of cleanup and remediation of City's real property required to comply with all applicable Laws. Such insurance will be endorsed to provide third party disposal site coverage that covers third party bodily injury, property damage and cleanup coverage for pollution conditions emanating from a disposal site or landfill used by the Licensee or Licensee's Agents. Licensee will maintain limits no less than: Four Million Dollars (\$4,000,000) per accident and Eight Million Dollars (\$8,000,000) annual aggregate for bodily injury and property damage. The SFPUC, its Agents and Employees will be included as additional insureds on the policy as loss payees under the Pollution Legal Liability/Environmental Remediation/Cleanup Liability Insurance Policy.

(e) Additional Insured Endorsements.

(i) The Commercial General Liability and Pollution Liability policies must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(ii) The Commercial Automobile Liability Insurance policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(f) **Waiver of Subrogation Endorsements.** The Workers' Compensation policy(ies) and all Liability Policies referenced above will be endorsed with a waiver of subrogation in favor of City for all work performed by Licensee or its Agents.

(g) **Primary Insurance Endorsements.**

(i) The Commercial General Liability policy will provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this License, and that the insurance applies separately to each insured against whom a claim is made or suit is brought.

(ii) The Commercial Automobile Liability Insurance policy will provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this License, and that the insurance applies separately to each insured against whom a claim is made or suit is brought.

(iii) The Pollution Liability Insurance policy will provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this License, and that the insurance applies separately to each insured against whom a claim is made or suit is brought.

(iv) Such policies will also provide for severability of interests and that an act or omission of one of the named insureds that would void or otherwise reduce coverage will not reduce or void the coverage as to any insured and will afford coverage for all claims based on acts, omissions, injury, or damage that occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(h) **Other Insurance Requirements.**

(i) Thirty (30) days' advance written notice will be provided to City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice will be provided to City. Notices will be sent to the City address set forth in Section 30 [Notices].

(ii) Should any of the required insurance be provided under a claims-made form, Licensee will maintain such coverage continuously throughout the term of this License and, without lapse, for a period of three years beyond the expiration of this License, to the effect that, should occurrences during the License term give rise to claims made after the expiration of the License, such claims will be covered by such claims-made policies.

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

(iv) Should any required insurance lapse during the term of this License, requests for payments originating after such lapse will not be processed until City receives satisfactory evidence of reinstated coverage as required by this License, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this License effective on the date of such lapse of insurance.

(v) Prior to the Commencement Date of this License, Licensee will furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Licensee and its contractors will submit or cause their respective insurance brokers to submit requested information through the Exigis insurance verification program designated by City or any successor program used by City for verification of Licensee and contractor insurance coverage. Approval of the insurance by City will not relieve or decrease Licensee's liability hereunder. If Licensee will fail to procure such insurance, or to deliver such policies or certificates, at its option, City may procure the same for the account of Licensee, and Licensee will reimburse City for any costs so paid by City within five (5) business days after delivery to Licensee of bills therefor.

(vi) If Licensee will use any subcontractor(s) to perform the Permitted Acts, Licensee will require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees, and the Licensee as additional insureds.

(vii) Upon City's request, Licensee and City will periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Licensee for risks comparable to those associated with the License Area, then, at its discretion (subject to the provisions of Section 3.1 and 3.9.1 of the Development Agreement), City may require Licensee to increase the amounts or coverage carried by Licensee hereunder to conform to such general commercial practice.

9. Compliance with Laws. At its expense, Licensee will conduct and cause to be conducted all activities on the License Area permitted by this License in a safe and reasonable manner and in compliance with all laws, statutes, ordinances, rules, regulations, policies, orders, edicts, and the like (collectively, "**Laws**") of any governmental or other regulatory entity with jurisdiction (including the Americans with Disabilities Act) and all covenants, restrictions, and provisions of record, whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. At its sole expense, Licensee will procure and maintain in force at all times during its use of the License Area all business and other licenses or approvals necessary to conduct the activities allowed by this License. City is entering into this License in its capacity as a property owner with a proprietary interest in the License Area and not as a regulatory agency with police powers. Execution of this License by SFPUC will not be deemed to constitute approval of any federal, state, City, or other local regulatory authority with jurisdiction, and nothing in this License will limit Licensee's obligation to obtain all such regulatory approvals at Licensee's sole cost or limit in any way City's exercise of its police powers.

Licensee will keep itself fully informed of City's Charter, codes, ordinances and regulations and all state and federal laws, rules and regulations affecting the performance of this License, and will at all times comply with such laws and regulations. Licensee agrees to maintain

its good standing as a corporation, nonprofit, LLC, partnership, JV, or similar legal entity at all times during the term of this License. This agreement to maintain good standing includes, without limitation, Licensee's continued timely submission of all required information and payments when due to the California Secretary of State, Franchise Tax Board, Internal Revenue Service, California Attorney General's Registry of Charitable Trusts, or any other applicable agency or entity. Licensee will immediately notify City of any change in its eligibility to perform under this License. Upon City request, Licensee will provide documentation demonstrating its compliance with all applicable legal requirements. If Licensee will use any contractors to perform the License, Licensee is responsible for ensuring they are also in compliance with all applicable legal requirements at the time of contract execution and for the duration of the agreement. Any failure by Licensee or any of its contractors to remain in good standing with applicable requirements will be a material breach of this License.

10. Covenant to Maintain License Area and Permitted Improvements. Licensee will be solely responsible for the maintenance obligations during the Initial Phase described in the Basic License Information and for repairing and maintaining the Facilities in good, clean, safe, secure, sanitary, and slightly condition, and City will have no duty whatsoever for any repair or maintenance of the License Area (except as described in the Initial Phase in the Basic License Information) or any Facilities, or other Licensee improvements or alterations. Throughout the term of this License, at its sole cost, Licensee will maintain the License Area at all times in a good, clean, safe, secure, sanitary, and slightly condition, so far as the License Area may be affected by Licensee's activities under this License. Licensee will notify City in writing not less than five (5) days before performing any repair work in the License Area, except in the case of an emergency when Licensee will notify City telephonically and in writing as soon as reasonably possible. For avoidance of doubt, no such notice is required for Licensee to conduct the routine maintenance permitted under this License, consisting of ensuring no overgrowth of grass and weeds, removing graffiti, irrigating and otherwise caring for or replanting grass, and periodically clearing and disposing of any trash or debris from the License Area.

11. Intentionally Omitted.

12. Intentionally Omitted.

13. Intentionally Omitted.

14. Intentionally Omitted.

15. Intentionally Omitted.

16. Intentionally Omitted.

17. Signs. Except for any pipeline markers required by City or any regulatory agency with jurisdiction, Licensee will not place, erect, or maintain any sign, advertisement, banner, or similar object in, on, or about the License Area without City's prior written consent, which City may give or withhold at its sole discretion; provided, however, that, without City's prior written consent, if necessary for Licensee's construction use, Licensee may place in the License Area a temporary sign of less than thirty (30) days' duration that does not penetrate the ground surface.

18. Surrender. Upon the expiration of this License or within ten (10) days after any sooner revocation or other termination of this License, Licensee will surrender the License Area, broom clean, free from hazards, and clear of all debris. At such time, Licensee will remove all of its property from the License Area. Licensee's obligations under this Section will survive any termination of this License.

19. Intentionally Omitted.

20. City's Right to Cure Defaults by Licensee. If Licensee fails to perform any of its obligations under this License or if Licensee defaults in the performance of any of its other obligations under this License, then, at its sole option, City may remedy such failure for Licensee's account and at Licensee's expense by providing Licensee with three (3) days' prior written or oral notice of City's intention to cure such default (except that no such prior notice will be required in the event of an emergency as determined by City). Such action by City will not be construed as a waiver of any of City's rights or remedies under this License, and nothing in this License will imply any duty of City to do any act that Licensee is obligated to perform. Licensee will pay to City upon demand, all costs, damages, expenses, or liabilities incurred by City, including reasonable attorneys', experts', and consultants' fees, in remedying or attempting to remedy such default. Licensee's obligations under this Section will survive the termination of this License.

21. No Costs to City. Licensee will bear all costs or expenses of any kind or nature in connection with its use of the License Area and will keep the License Area free and clear of any liens or claims of lien arising out of or in any way connected with its use of the License Area.

22. Indemnity. Licensee will indemnify, defend, reimburse, and hold harmless City, its officers, agents, employees, and contractors, and each of them, from and against all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages, and liabilities of any kind ("**Claims**"), arising in any manner out of (**a**) any injury to or death of any person or damage to or destruction of any property occurring in, on, or about any part of the License Area, whether such injury, death, damage, or destruction is caused by the person or property of Licensee, its officers, directors, members, employees, agents, consultants, contractors, or subcontractors (collectively, "**Agents**"), its invitees, guests, or business visitors (collectively, "**Invitees**"), or third persons, relating to any use or activity under this License, (**b**) any failure by Licensee to faithfully observe or perform any of the terms, covenants, or conditions of this License, (**c**) the use of the License Area or any activities conducted on the License Area by Licensee, its Agents, or Invitees, (**d**) any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by Licensee, its Agents, or Invitees, on, in, under, or about the License Area, any improvements or into the environment, or (**e**) any failure by Licensee to faithfully observe or perform any terms, covenants, or conditions of the Recorded Documents to the extent that such terms, covenants, or conditions relate to or are triggered by the work to be performed or Facilities or other Licensee improvements or alterations on the License Area; except to the extent of Claims resulting directly from the gross negligence or willful misconduct of City or City's authorized representatives. In addition to Licensee's obligation to indemnify City, Licensee has an immediate and independent obligation to defend City from any claim that actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent, or false, which obligation arises at the time such claim is tendered to Licensee by City and continues at all times thereafter. The foregoing indemnity will include reasonable attorneys', experts', and consultants' fees and costs, investigation and remediation costs, and all other

reasonable costs and expenses incurred by the indemnified parties, including damages for decrease in the value of the License Area and claims for damages or decreases in the value of adjoining property. Licensee's obligations under this Section will survive the expiration or other termination of this License.

23. Waiver of Claims.

(a) Neither City nor any of its commissions, departments, boards, officers, agents, or employees will be liable for any damage to the property of Licensee, its officers, agents, employees, contractors, or subcontractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the condition of the License Area or its use by Licensee, or Licensee's Agents or Invitees, except to the extent resulting directly from the gross negligence or willful misconduct of City or City's authorized representatives.

(b) Because this License is revocable by City, Licensee expressly assumes the risk of making any expenditure in connection with this License, even if such expenditures are substantial. Without limiting any indemnification obligations of Licensee or other waivers contained in this License and as a material part of the consideration for this License, Licensee fully RELEASES, WAIVES, AND DISCHARGES forever all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors, and employees, and all persons acting by, through, or under each of them, under any present or future Laws, including any claim for inverse condemnation or the payment of just compensation under law or equity, if City exercises its right to revoke or terminate this License.

(c) Licensee acknowledges that it will not be a displaced person at the time this License is terminated or revoked or expires by its own terms, and Licensee fully RELEASES, WAIVES, AND DISCHARGES forever all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors, and employees, and all persons acting by, through, or under each of them, under any present or future Laws, including all claims for relocation benefits or assistance from City under federal and state relocation assistance laws.

(d) The SFPUC's granting of this License without any fees due does not take into account any potential City liability for any consequential or incidental damages including lost profits and arising out of disruption to or any Facilities or other Licensee improvements or alterations on the License Area; or Licensee's uses of the License Area permitted by this License. City would not be willing to grant this License in the absence of a waiver of liability for consequential or incidental damages resulting from the acts or omissions of City or its departments, commissions, officers, directors, and employees, and by all persons acting by, through, or under each of them, and Licensee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Licensee or other waivers contained in this License and as a material part of the consideration for this License, Licensee fully RELEASES, WAIVES, AND DISCHARGES forever all claims, demands, rights, and causes of action against for consequential and incidental damages (including lost profits) and covenants not to sue for such damages City, its departments, commissions, officers, directors, and employees, and all persons acting by, through, or under each of them, arising out of this License or the uses authorized under this License, including any interference with uses conducted by Licensee pursuant to this License, regardless of the cause, and whether or not due to the negligence of City or its departments, commissions, officers, directors, and employees, and all persons acting by, through, or under each

of them, except for the gross negligence and willful misconduct of City or its departments, commissions, officers, directors, and employees, and all persons acting by, through, or under each of them.

(e) As part of Licensee's agreement to accept the License Area in its "As Is" condition as provided below, and without limiting such agreement, Licensee, on behalf of itself and its successors and assigns, waives its right to recover from, and forever releases and discharges, City and its officers, agents, and employees, and their respective heirs, successors, administrators, personal representatives, and assigns, from all Claims, whether direct or indirect, known or unknown, foreseen and/or unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the License Area and/or any related improvements as of the Commencement Date or any applicable Laws or the suitability of the License Area for Licensee's intended use.

(f) In connection with the foregoing releases, Licensee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

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

24. As Is Condition of License Area; Disability Access; Disclaimer of Representations.

Licensee accepts the License Area in its "AS IS" condition, without representation or warranty of any kind by City, its departments, commissions, officers, directors, and employees, and all persons acting by, through, or under each of them, and subject to all applicable Laws governing the use of the License Area. Without limiting the foregoing, this License is made subject to all existing and future covenants, conditions, restrictions, easements, encumbrances, and other title matters affecting the License Area, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey.

City discloses (a) City has not been issued a disability access inspection certificate as described in California Civil Code Section 55.53(e), (b) pursuant to California Civil Code Section 1938, that City has not ordered, performed, or caused to be performed, a Certified Access Specialist ("CASp") inspection of the License Area (sometimes referred to as "premises" or "subject premises" for the herein disclosures), and (c) City makes the following statutory disclosure per California Civil Code Section 1938 (the required "CASp Disclosure"):

"A Certified Access Specialist ("CASp") can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may

not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties will mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.”

25. Assignment; Proposed Transfer. This License is personal to Licensee and will not be assigned, conveyed, or otherwise transferred by Licensee under any circumstances without the prior written consent of City, in its sole discretion. Notwithstanding the foregoing, Licensee may assign this License, without City consent if such assignment is to PMO following completion of the Work Phase and commencement of the Use Phase as those terms are defined in the Basic License Information.

Notice of any such permitted assignment or transfer shall be provided to City in the manner specified in Section 35.

26. Assignments. Any attempt to assign, convey, or otherwise transfer this License without City’s prior written consent or otherwise in compliance with Section 25 will be null and void and cause the immediate termination and revocation of this License.

27. Cessation of Use. Licensee will not terminate its activities on the License Area pursuant to this License without prior written notice to City.

28. No Joint Ventures or Partnership; No Authorization. This License does not create a partnership or joint venture between City and Licensee as to any activity conducted by Licensee on, in, or relating to the License Area. Licensee is not a state actor with respect to any activity conducted by Licensee on, in, under or around the License Area. City’s provision of this License does not constitute City’s authorization or approval of any activity conducted by Licensee on, in, around, or relating to the License Area.

29. MacBride Principles - Northern Ireland. The provisions of San Francisco Administrative Code Section 12F are incorporated into and made a part of this License by this reference. By signing this License, Licensee confirms that Licensee has read and understood that City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

30. Non-Discrimination in City Contracts and Benefits Ordinance.

(a) Covenant Not to Discriminate. In the performance of this License, Licensee will not discriminate against any employee of, any City employee working with Licensee, or applicant for employment with, Licensee, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person’s race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) **Other Subcontracts.** Licensee will include in all subcontracts relating to the License Area a non-discrimination clause applicable to such subcontractor in substantially the form of Section 26(a) [Covenant Not to Discriminate] above. In addition, Licensee will incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and will require all subcontractors to comply with such provisions. Licensee's failure to comply with the obligations in this subsection will constitute a material breach of this License.

(c) **Non-Discrimination in Benefits.** Licensee does not as of the date of this License and will not during the term of this License, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, all subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) **Condition to License.** As a condition to this License, Licensee will execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the license of City property are incorporated in this Section by reference and made a part of this License as though fully set forth. Licensee will comply fully with and be bound by all of the provisions that apply to this License under such Chapters of the San Francisco Administrative Code, including the remedies provided in such Chapters. Without limiting the foregoing, Licensee understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this License may be assessed against Licensee and/or deducted from any payments due Licensee.

31. Requiring Health Benefits for Covered Employees. To the extent applicable and unless exempt or preempted by other Laws, Licensee will comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance ("HCAO"), as set forth in San Francisco Administrative Code Chapter 12Q ("**Chapter 12Q**"), including the implementing regulations, as the same may be amended or updated from time to time. The provisions of Chapter 12Q are incorporated into this License by reference and made a part of this License as though fully set forth in this License. The text of the HCAO is currently available on the web at <http://www.sfgov.org/olse/hcao>. Capitalized terms used in this Section and not defined in this License will have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee Licensee will provide the applicable health benefit set forth in Section 12Q.3 of the HCAO. If Licensee chooses to offer the health plan option, such health plan will meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if Licensee meets the requirements of a “small business” as described in Section 12Q.3(d) of the HCAO, it will have no obligation to comply with subsection (a) above.

(c) Licensee’s failure to comply with any applicable requirements of the HCAO will constitute a material breach by Licensee of this License and City’s remedies will be those set forth in the HCAO. If, within thirty (30) days after receiving City’s written notice of a breach of this License for violating the HCAO, Licensee fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Licensee fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, City will have the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies will be exercisable individually or in combination with any other rights or remedies available to City.

(d) Any Contract or Subcontract regarding services to be performed on the License Area entered into by Licensee will require the Contractors and Subcontractors, as applicable, to comply with the requirements of the HCAO and will contain contractual obligations substantially the same as those set forth in this Section. Licensee will notify the Purchasing Department when it enters into such a Contract or Subcontract and will certify to the Purchasing Department that it has notified the Contractor or Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Contractor or Subcontractor through written agreement with such Contractor or Subcontractor. Licensee will be responsible for ensuring compliance with the HCAO by each Contractor and Subcontractor performing services in the License Area. If any Contractor or Subcontractor fails to comply, City may pursue the remedies set forth in this Section against Licensee based on the Contractor’s or Subcontractor’s failure to comply, provided that the Contracting Department has first provided Licensee with notice and an opportunity to cure the violation.

(e) Licensee will not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Licensee represents and warrants that it is not an entity that was set up or is being used, for the purpose of evading the requirements of the HCAO.

(g) Licensee will keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon request, Licensee will provide reports to City in accordance with any reporting standards promulgated by City under the HCAO, including reports on Subcontractors or Contractors.

(i) Within five (5) business days after any request by City, Licensee will provide City with access to pertinent records relating to any Licensee’s compliance with the HCAO. In addition, City and its officers, agents, and employees may conduct random audits of Licensee at any time during the term of this License. Licensee will cooperate with City in connection with any such audit.

32. Notification of Prohibition on Contributions. Licensee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with City for the selling or leasing of any land or building to or from City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to **(a)** the City elective officer, **(b)** a candidate for the office held by such individual, or **(c)** a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the contract is approved. Licensee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$100,000 or more. Licensee further acknowledges that **(i)** the prohibition on contributions applies to each Licensee; each member of Licensee's board of directors, and Licensee's chief executive officer, chief financial officer, and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Licensee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Licensee; and **(ii)** within thirty (30) days of the submission of a proposal for the contract, the City department seeking to enter into the contract must notify the Ethics Commission of the parties and any subcontractor to the contract. Additionally, Licensee certifies it has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract to City, and has provided the names of the persons required to be informed to the City department seeking to enter into that contract within thirty (30) days of submitting its contract proposal to the City department receiving that submittal, and acknowledges the City department receiving that submittal was required to notify the Ethics Commission of those persons.

33. Tropical Hardwoods and Virgin Redwoods. City urges companies not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code. Except as permitted by the application of Sections 802(b) and 803(b), Licensee will not use or incorporate any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product in the performance of this License.

34. Taxes, Assessments, Licenses, License Fees, and Liens.

(a) Licensee recognizes and understands that the County Assessor may determine that this License creates a possessory interest subject to property taxation and that Licensee may be subject to the payment of property taxes levied on such interest. Licensee further recognizes and understands that any transfer or assignment permitted under this License and any exercise of any option to renew or extend this License may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder.

(b) Licensee will pay taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the interest created by this License and will pay all other taxes, excises, licenses, permit charges, and assessments based on Licensee's usage of the License Area that may

be imposed upon Licensee by law, all of which will be paid when the same become due and payable and before delinquency.

(c) Licensee will not allow or suffer a lien for any such taxes or charges to be imposed upon the License Area or upon any equipment or property located on the License Area without promptly discharging the same, provided that Licensee may contest the validity of the same by paying under protest or posting adequate (at City's sole discretion) security during any such contest.

(d) San Francisco Administrative Code Sections 23.38 and 23.39 require that City report certain information relating to this License, and any renewals of this License, to the County Assessor within sixty (60) days after any such transaction, and that Licensee report certain information relating to any assignment of or transfer under this License to the County Assessor within sixty (60) days after such assignment or transfer transaction. Licensee will provide such information as may be requested by City to enable City to comply with this requirement.

35. Notices.

(a) Any notice, consent, or approval required or permitted to be given under this License will be in writing and will be given by (i) hand delivery, against receipt, (ii) reliable next-business-day courier service that confirms delivery, or (iii) United States registered or certified mail, postage prepaid, return receipt required, and addressed as follows (or to such other address as either party may from time to time specify in writing to the other upon five (5) days' prior, written notice in the manner provided above):

City or the SFPUC:	Real Estate Services Division San Francisco Public Utilities Commission 525 Golden Gate Avenue, 10 th Floor San Francisco, CA 94102 Attn: Real Estate Director Re: Park Merced License License P [_____] Telephone No.: (415) 487-5210
Licensee:	MAXIMUS PM PHASE 1C OWNER LLC One Maritime Plaza, Suite 1900 San Francisco, California, 94111 Attn: Rob Rosania, President Re: Parkmerced Phase 1C SFPUC Pump Station License Telephone No.: (415) 316-0120 E-mail: robrosania@maximusrepartners.com
with a copy to	J. Abrams Law, P.C. 538 Hayes Street San Francisco, CA 94102 Re: Parkmerced Phase 1C SFPUC Pump Station License

A properly addressed notice transmitted by one of the foregoing methods will be deemed received upon the confirmed date of delivery, attempted delivery, or rejected delivery, whichever occurs first. Any e-mail addresses, telephone numbers, or facsimile numbers provided by one party to the other will be for the convenience of communication only; neither party may give official or binding notice orally or by e-mail or facsimile. The effective time of a notice will not be affected by the receipt, prior to receipt of the original, of an oral notice or an e-mail or telefacsimile copy of the notice.

(b) Emergency Contacts. Licensee will immediately notify the SFPUC Wastewater Enterprise Superintendent by telephone at (415) 920-4928 of any emergency or incident requiring emergency response.

36. Prohibition of Tobacco Sales and Advertising. No advertising or sale of cigarettes or tobacco products is allowed in the License Area. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product.

37. Prohibition of Alcoholic Beverage Advertising. No advertising of alcoholic beverages is allowed on the License Area. For purposes of this Section, “alcoholic beverage” will be defined as set forth in California Business and Professions Code Section 23004, and will not include cleaning solutions, medical supplies, and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

38. Restrictions on the Use of Pesticides. Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or “**IPM Ordinance**”) describes an integrated pest management (“**IPM**”) policy to be implemented by all City departments. Licensee will not use or apply or allow the use or application of any pesticides on the License Area or contract with any person or entity to provide pest abatement or control services to the License Area without first receiving City’s written approval of an IPM plan that **(a)** lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Licensee may need to apply to the License Area during the term of this License, **(b)** describes the steps Licensee will take to meet the City’s IPM Policy described in Section 300 of the IPM Ordinance and **(c)** identifies, by name, title, address, and telephone number, an individual to act as the Licensee’s primary IPM contact person with City. Licensee will comply, and will require all of Licensee’s contractors to comply, with the IPM plan approved by City and will comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Licensee were a City department. Among other matters, such provisions of the IPM Ordinance: **(i)** provide for the use of pesticides only as a last resort, **(ii)** prohibit the use or application of pesticides on property owned by City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City’s Department of the Environment), **(iii)** impose certain notice requirements, and **(iv)** require Licensee to keep certain records and to report to City all pesticide use at the License Area by Licensee’s staff or contractors.

If Licensee or Licensee’s contractor will apply pesticides to outdoor areas at the License Area, Licensee must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation (“**CDPR**”) and any such pesticide application will be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified

Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found on the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

39. Conflict of Interest. Licensee acknowledges that it is familiar with the provisions of Section 15.103 of City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the California Government Code and certifies that it does not know of any facts that would constitute a violation of said provisions. If Licensee becomes aware of any such fact during the term of this License, Licensee will immediately notify City.

40. Disclosure. City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (Gov't Code Section 6250 et seq.), apply to this License and all records, information, and materials submitted to City in connection with this License. Accordingly, all such records, information, and materials may be subject to public disclosure in accordance with City's Sunshine Ordinance and the State Public Records Law. Licensee authorizes City to disclose any records, information, and materials submitted to City in connection with this License.

41. Food Service and Packaging Waste Reduction. Licensee will comply fully with and be bound by all of the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated into this License by this reference and made a part of this License as though fully set forth. Capitalized terms used in this Section that are not otherwise defined in this License have the same meaning assigned to such terms in San Francisco Environment Code, Chapter 16. Accordingly, Licensee acknowledges that City contractors, lessees, and licensees may not use Disposable Food Service Ware that contains Polystyrene Foam in City Facilities while performing under a City contract, lease, or license, and will instead use suitable Biodegradable/Compostable or Recyclable Disposable Food Service Ware. This provision is a material term of this License.

42. Severability. If any provision of this License, or its application to any person, entity, or circumstance, will be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this License, or the application of such provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each other provision of this License will be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this License without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this License.

43. Cooperative Drafting. This License has been drafted through a cooperative effort of both Parties, and both Parties have had an opportunity to have the License reviewed and revised by legal counsel. No party will be considered the drafter of this License, and no presumption or rule that any ambiguity will be construed against the party drafting the clause will apply to the interpretation or enforcement of this License.

44. Criminal History in Hiring and Employment Decisions.

(a) Unless exempt, Licensee will comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; “**Chapter 12T**”), which are hereby incorporated into this License by reference as the same may be amended from time to time, with respect to applicants and employees of Licensee who would be or are performing work at the License Area. Capitalized terms used in this Section that are not otherwise defined in this License will have the meanings assigned to such terms in Chapter 12T.

(b) Licensee will incorporate by reference the provisions of Chapter 12T in all contracts to perform work within the License Area and will require all contractors to comply with such provisions. Licensee’s failure to comply with the obligations in this subsection will constitute a material breach of the License.

(c) Licensee and its contractors performing work in the License Area will not inquire about, require disclosure of, or if such information is received, base an Adverse Action on an applicant’s or potential applicant for employment, or employee’s: (i) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (ii) participation in or completion of a diversion or a deferral of judgment program; (iii) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (iv) a Conviction or any other adjudication in the juvenile justice system; (v) a Conviction that is more than seven years old, from the date of sentencing; or (vi) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Licensee and its contractors will not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Licensee and its contractors will not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Licensee and its contractors will state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Licensee or its contractor at the License Area, that the Licensee or contractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Licensee and its contractors will post the notice prepared by the Office of Labor Standards Enforcement (“**OLSE**”), available on OLSE’s website, in a conspicuous place at the License Area and at other workplaces within San Francisco where interviews for job opportunities at the License Area. The notice will be posted in English, Spanish, Chinese, and any language spoken by at least five percent (5%) of the employees at the License Area or other workplace at which it is posted.

(g) Upon any failure to comply with the requirements of Chapter 12T, City will have the right to pursue any rights or remedies available under Chapter 12T or the License, including a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee,

applicant, or other person as to whom a violation occurred or continued, or termination or suspension in whole or in part of the License.

(h) If Licensee has any questions about the applicability of Chapter 12T, it may contact City's Real Estate Division for additional information. City's Real Estate Division may consult with the Director of City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

45. San Francisco Packaged Water Ordinance. Licensee will comply with San Francisco Environment Code Chapter 24 ("Chapter 24"). Licensee will not sell, provide or otherwise distribute Packaged Water, as defined in Chapter 24 (including bottled water), in the performance of this License or on City property unless Licensee obtains a waiver from the City's Department of the Environment. If Licensee violates this requirement, City may exercise all remedies in this License and the Director of the City's Department of the Environment may impose administrative fines as set forth in Chapter 24.

46. General Provisions. (a) This License may be amended or modified only by a writing signed by City and Licensee. (b) No waiver by any party of any of the provisions of this License will be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. No waiver will be deemed a subsequent or continuing waiver of the same, or any other, provision of this License. (c) The exhibits referenced in and attached to this instrument are incorporated into this License. (d) This License contains the entire agreement between the Parties regarding the subject matter of this License, and all prior written or oral negotiations, discussions, understandings, and agreements are merged into this License. (e) The Section and other headings of this License are for the convenience of reference only and will be disregarded in the interpretation of this License. (f) Time is of the essence in all matters relating to this License. (g) This License will be governed by California law and City's Charter. (h) If either party commences an action against the other or a dispute arises under this License, the prevailing party will be entitled to recover from the other reasonable attorneys' fees and costs. For purposes of this License and the indemnifications set forth in this License, reasonable attorneys' fees of City will be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding City's use of its own attorneys. (i) If Licensee consists of more than one person then the obligations of each person will be joint and several. (j) Licensee may not record this License or any memorandum of this License. (k) Subject to any prohibition against assignments or other transfers by Licensee hereunder, this License will be binding upon and inure to the benefit of the Parties and their respective heirs, representatives, successors, and assigns. (l) Any sale or conveyance of the property burdened by this License by City will automatically revoke this License. (m) Each of the persons executing this License on Licensee's behalf do hereby represent and warrant that Licensee is a duly formed or organized (as applicable) and validly existing entity under the laws of California that Licensee is in good standing and qualified to do business in California (and covenants to maintain such status during the term of this License), that Licensee has full right and authority to enter into this License, and that each and all of the persons signing on behalf of Licensee are authorized to do so. Upon City's request, Licensee will provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties. (n) Except as expressly provided to the contrary, all approvals, consents, and determinations to be made by City under this License may be made at City's sole and absolute discretion (subject to the provisions of Section 3.1 and 3.9.1 of the Development Agreement). (o) Whenever this License

requires City's or the SFPUC's consent or approval, the General Manager of the SFPUC, or his or her designee, will be authorized to provide such consent or approval, except as otherwise provided by applicable Laws, including City's Charter, or by the SFPUC's Real Estate Guidelines. No consent, approval, election, or option will be effective unless given, made, or exercised in writing. **(p)** This License may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument. **(q)** Use of the word "including" or similar words will not be construed to limit any general term, statement, or other matter in this License, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

[SIGNATURES ON THE FOLLOWING PAGE]

LICENSEE REPRESENTS AND WARRANTS TO CITY THAT IT HAS READ AND UNDERSTANDS THE CONTENTS OF THIS LICENSE, HAS HAD AN OPPORTUNITY TO REVIEW AND DISCUSS IT WITH COUNSEL OF ITS CHOOSING, AND AGREES TO COMPLY WITH AND BE BOUND BY ALL OF ITS PROVISIONS.

LICENSEE:

MAXIMUS PM PHASE 1C OWNER LLC,
a Delaware limited liability company,

By: _____

Its: _____

Date: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____

DENNIS J. HERRERA
General Manager
San Francisco Public Utilities Commission

Date: _____

APPROVED AS TO FORM:

DAVID CHIU
City Attorney

By: _____

Anna Parlato Gunderson
Deputy City Attorney

EXHIBIT A

NOTICE OF STREET IMPROVEMENT PERMIT / BUILDING PERMIT ISSUANCE

Date _____

Ms. Rosanna Russell, Real Estate Director
Real Estate Services Division
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 10th Floor
San Francisco, California 94102

RE: Acknowledgement of Street Improvement Permit or Building Permit Issuance pertaining to the License No. _____ (the "License"), dated _____, 20__ between the City and County of San Francisco, by and through its Public Utilities Commission ("SFPUC") and MAXIMUS PM PHASE 1C OWNER LLC, a Delaware limited liability company ("Licensee")

Dear Ms. Russell:

This letter confirms that: (1) the permit number assigned to the Street Improvement Permit or building permit authorizing demolition as described in the Basic License Information of the Licensee is No. _____; (2) the parties agree such Street Improvement Permit or building permit has now been approved by the City and the work on the License Area contemplated thereunder is a Permitted Act under the License; and (3) SFPUC is in receipt of the plans associated with the Street Improvement Permit or building permit.

Please acknowledge your acceptance of this letter by signing and returning a copy of this letter.

Very truly yours,

By: _____
Title: _____

Accepted and Agreed:

By: _____
Rosanna S. Russell
Real Estate Director

Dated: _____

EXHIBIT B

Description of License Area

All that certain real property located in the City and County of San Francisco, California, described as follows:

Approximately 5,079 square feet of San Francisco Assessor's Block 7333 Lot 002 (also known as 400-448 Vidal Drive), according to SFPUC records and as shown on the drawing below and made a part of this License.

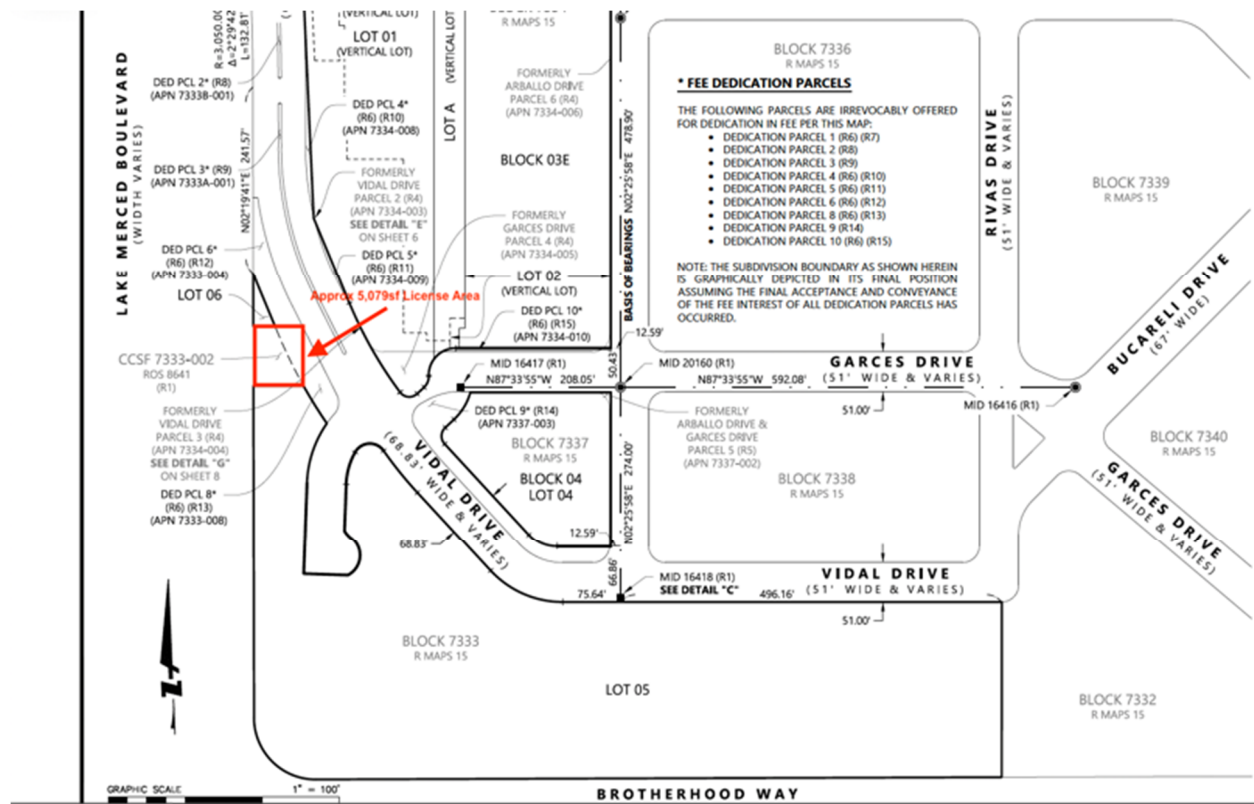


EXHIBIT C

Deed

[see attached]

SECTION 3. The City hereby reserves ownership of its two existing water pipe lines located on said Parcel "A", together with the necessary right of way for the operation, maintenance, repair, use, reconstruction or removal of such structures, which right of way shall be 25 feet in width, 11.5 feet each side of the center line between said two pipe lines. Said company shall grant to the City the necessary easements for appurtenant pipes and structures used in connection with the sewage pumping station constructed on Parcel "B".

SECTION 4. As appurtenant to the real property described as San Francisco Parcel 55 in deed from Spring Valley Water Company to the City dated March 3, 1930, recorded March 3, 1930 in Book 2002, at Page 1, Official Records of the City and County of San Francisco, and for the purpose of protecting and augmenting the waters and water sources of Lake Merced, and also for the purpose of facilitating the supply and distribution of water to consumers in the City and County of San Francisco and vicinity, the City hereby reserves all subterranean waters under said land described as Parcel "A".

SECTION 5. The Director of Property has made an appraisal of said real property and estimates the value of Parcel "B" and the improvements thereon to exceed the value of Parcel "A".

SECTION 6. The Mayor and the Clerk of the Board of Supervisors on behalf of the City and County of San Francisco, a municipal corporation, are hereby authorized and directed to execute the necessary deed for the conveyance of Parcel "A" to the Metropolitan Life Insurance Company, a corporation. The Director of Property is hereby authorized and directed to deliver said deed to the Metropolitan Life Insurance Company, upon receipt of a deed conveying parcel "B" to the City and to accept and record the latter deed.

THE form of said deeds shall be approved by the City Attorney.

PASSED for Second Reading - Board of Supervisors, San Francisco, August 14, 1944.

AYES: Supervisors BROWN, COLMAN, GALLAGHER, GARTLAND, GREEN, MacPHEE, MANCUSO, MEAD, MEYER, SULLIVAN, UHL.

DAVID A. BARRY, Clerk.

NOTICE OF FINAL PASSAGE

BILL NO. 2995

ORDINANCE NO. 2864

(Series of 1939)

AUTHORIZING CONVEYANCE OF CERTAIN LAND TO METROPOLITAN LIFE INSURANCE COMPANY IN EXCHANGE FOR SEWAGE PUMPING STATION.

MEAD Second time and Finally Passed - BOARD OF SUPERVISORS, San Francisco, Aug. 26, 1944.

AYES: Supervisors BROWN, GALLAGHER, GARTLAND, GREEN, MacPHEE, MANCUSO, MEAD, MEYER, SULLIVAN, UHL.

ABSENT Supervisor: COLMAN.

I hereby certify that the foregoing ordinance was finally passed by the Board of Supervisors of the City and County of San Francisco.

DAVID A. BARRY, Clerk.

APPROVED San Francisco, Aug. 30, 1944.

DAN GALLAGHER, Acting Mayor.

DEED

METROPOLITAN LIFE INSURANCE COMPANY, a New York corporation, the first party, hereby grants to CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the second party, the following described real property situated in the City and County of San Francisco, State of California:

BEGINNING at a point on the easterly line of Lake Merced Boulevard, as shown upon that certain "Record of Survey Map of Parkmerced, San Francisco, California", filed February 2, 1944, in Book "O" of Maps, Pages 97 to 101 inclusive, in the office of the Recorder of the City and County of San Francisco, State of California, distant thereon South 2° 29' 53" West 310.710 feet from the Southerly extremity of that certain curve with a radius of 3050 feet, central angle 2° 30' 03" an arc distance of 133.125 feet (said curve also forms a part of the easterly boundary line of Block 7333-A as shown upon map above referred to); running thence South 2° 29' 53" West along said Easterly line of Lake Merced Boulevard 77.000 feet; thence South 87° 30' 07" East 66.000 feet; thence North 2° 29' 53" East 77.000 feet; thence North 87° 30' 07" West 66.000 feet to the point of beginning.

BEING a portion of Block 7333 as shown upon the map above referred to.

TOGETHER with the improvements, machinery, and equipment thereon.

SUBJECT to easements and encumbrances of record.

IN WITNESS WHEREOF, the said first party has executed this conveyance this 27th day of July 1944.

()

METROPOLITAN LIFE INSURANCE COMPANY, a New York Corporation

By F. H. ECKER, Chairman of the Board

By CHURCHILL RODGERS, Assistant General Counsel

State of ~~California~~ New York)

County of New York) ss.

ON this 27th day of July in the year one thousand nine hundred and ~~thirty~~ forty-four, before me, Albert V. Zielfeldt, a Notary Public in and for said New York County, residing therein, duly commissioned and sworn, personally appeared F. H. Ecker and Churchill Rodgers, respectively, Chairman of the Board and Assistant General Counsel, of Metropolitan Life Insurance Company, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

x'd b/4
rcdg.

x' d b/4
rcdg.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, in said County of New York, the day and year in this certificate first above written.

(See 2)

ALBERT V. ZIELFELDT, Notary Public

in and for said County of New York, State of ~~California~~ New York.

Notary Public, Bronx County, Bronx Co. Clk's No. 7 Reg. No. 1625, N. Y.
Co. Clk's No. 37, Reg. No. 3725, Commission expires March 30, 1945.

State of New York)

County of New York) ss.

No. 61914

I, ARCHIBALD R. WATSON, County Clerk and Clerk of the Supreme Court, New York County, the same being a Court of Record having by law a seal, do hereby certify, that Albert V. Zielfeldt, whose name is subscribed to the annexed deposition, certificate of acknowledgment or proof, was at the time of taking the same a Notary Public acting in and for said County, duly commissioned and sworn, and qualified to act as such; that he has filed in the Clerk's office of the County of New York a certified copy of his appointment and qualification as a Notary Public for the County of Bronx with his autograph signature; that as such Notary Public he was duly authorized by the laws of the State of New York to protect notes, to take and certify depositions, to administer oaths and affirmations, to take affidavits and certify the acknowledgment or proof of deeds and other written instruments for lands, tenements and hereditaments, to be read in evidence or recorded in this State. And further, that I am well acquainted with the handwriting of such Notary Public, or have compared the signature of such officer with his autograph signature filed in my office, and believe that the signature to the said annexed instrument is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal
this 27 day of July 1944.

(Seal)

ARCEIBALD R. WATSON, County Clerk and

Clerk of the Supreme Court, New York County

Recorded at request of Cal. Pac. T.I. Co. Oct 10 1944 at 30 min. past 8 A.M.

No. F 17733

Free Off.

Fol. 28

Compared-Book

Compared-Document

[illegible]

AMER. SECURITIES CO. TR.

70

A. PROSSER & WIFE

AMERICAN SECURITIES COMPANY, As Trustee, does hereby remise, release and reconvey unto the person or persons legally entitled thereto, without any warranty, all of the estate and interest demised to the trustee in the lands described in the deed of trust executed by ALBERT PROSSER and DORIS PROSSER (his wife) to AMERICAN SECURITIES COMPANY, a corporation, trustee for the benefit of AMERICAN TRUST COMPANY, a corporation, dated March 2, 1943, and recorded in the office of the County Recorder of the City and County of San Francisco, State of California, in Liber 3987 of Official Records, at Page 327, reference being hereby specifically made to said deed of trust and the record thereof for a particular description of said lands. This reconveyance is executed at the request of the beneficiary of said deed of trust.

IN WITNESS WHEREOF, said trustee has executed these presents this 26th day of September 1944.

(Corp. Seal)

AMERICAN SECURITIES COMPANY, Trustee

By E. D. O'BRIEN, Vice-President

By A. C. McINTYRE, Assistant Secretary

State of California)

City and County of San Francisco) ss.

ON this 29th day of September in the year A.D. one thousand nine hundred and forty-four, before me, Frank L. Owen, a Notary Public in and for said City and County of San Francisco, duly commissioned and sworn, and residing therein, personally appeared E. D. O'Brien and A.C. McIntyre, known to me to be a Vice-President and an Assistant Secretary respectively, of American Securities Company, the corporation that executed the within instrument, as trustee, and known to me to be the persons who executed the within instrument on behalf of said corporation, and they acknowledged to me that such corporation executed the same as such trustee.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year above written.

(Seal)

FRANK L. OWEN, Notary Public

in and for the said City and County of San Francisco, State of California.

Recorded at request of Grantee Oct 10 1944 at 9:18 A.M.

No. T 17738

Fee \$1.00

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Compared-Document

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