

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

San Francisco Public Utilities Commission
City and County of San Francisco
525 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
Attn: Real Estate Director

WITH A CONFORMED COPY TO:

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

The undersigned hereby declares this instrument to be exempt from Recording Fees (Govt. Code § 27383) and Documentary Transfer Tax (Rev. & Tax. Code §11922).

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

**EASEMENT AGREEMENT BY AND BETWEEN PARKMERCED OWNER LLC AND
THE CITY AND COUNTY OF SAN FRANCISCO**

THIS EASEMENT AGREEMENT (this "**Agreement**") dated _____, 20__, is by and between PARKMERCED OWNER LLC, a Delaware limited liability company, its successors and assigns ("**Grantor**"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**Grantee**" or "**City**"), acting through its San Francisco Public Utilities Commission ("**SFPUC**").

Recitals

A. Grantor is the project sponsor of the Parkmerced Mixed-Use Development Project (the "**Project**"). On June 7, 2011, at a duly noticed public hearing, the Board of Supervisors considered the Project's approvals, which included amendments to 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, approved on June 7, 2011 by Ordinance No. 89-11 (the "**Development Agreement**") (collectively, the "**Project Approvals**"). Ordinance No. 89-11 is on file with the Clerk of the Board in File No. 110300 and is incorporated herein by reference. The SFPUC Commission on June 14, 2011 adopted a consent to the Development Agreement (SFPUC Commission Resolution No. 11-0091).

B. Pursuant to section 6.1.1 of the Development Agreement, City and Grantor have agreed to transfer certain real property to each other, including certain utility easements at the locations generally shown in Exhibit J of the Development Agreement, as and when needed in connection with the development of an approved Development Phase (as such term is defined in the Development Agreement) for the Project. The Planning Director approved Development

Phase 1 of the Project on June 3, 2015. Development Phase 1 is comprised of four Subphases (1A, 1B, 1C, and 1D).

C. On November 2, 2021, Grantor submitted two applications for tentative subdivision maps pursuant to the requirements of the California Subdivision Map Act for Subphases 1C and 1D of the Project. On [____], 2022 Public Works (“**PW**”) pursuant to PW Order No. [____] conditionally approved such tentative maps: (1) Tentative Map No. 10699 requested approval to subdivide Assessor’s Blocks 7333, 7333-A, 7333-B, 7334, and 7337 (Parkmerced Planning Blocks 3W and 4); and (2) Tentative Map No. 10700 requested approval to subdivide Assessor’s Block 7331-253 (Parkmerced Planning Block 21S) (collectively, the “**Subphase 1C and 1D Tentative Maps**”). Grantor is currently processing with PW the approval of a final subdivision map for each of the Subphase 1C and 1D Tentative Maps (each, a “**Final Map**”).

D. Subphase 1C of the Project involves the conditional vacation of certain public service easements (including sewer easements) owned by the SFPUC located within and outside of existing streets (the “**Public Utility Easements Area**”). The Public Utility Easements Area is shown in PW SUR Map Nos. [____], [____], [____], [____], [____], [____], and [____].

E. The vacation of the Public Utility Easements Area is necessary to implement the Project, to fulfill the objectives and requirements of the Development Agreement, and to fulfill the objectives of the Parkmerced Special Use District (Planning Code Section 249.64). The proposed vacations implement the Project vested by the Project Approvals, including the construction of buildings and streets consistent with the Parkmerced Design Standards and Guidelines, the Parkmerced Transportation Plan, and the Parkmerced Infrastructure Report, all of which are incorporated by reference into the Development Agreement.

F. Certain portions of the Public Utility Easements Area contain functioning public utilities operated by the SFPUC (the “**Facilities**”) (as further defined herein), which utilities will be relocated and/or replaced during construction of Subphase 1C of the Project (the “**Replacement Utilities**”).

G. This Agreement is intended to provide a perpetual non-exclusive easement to City to access and maintain the Facilities as further described herein, which easement would be extinguished upon Grantor’s completion and City’s acceptance of the Replacement Utilities in the manner described herein. Grantor and City are entering into this Agreement in furtherance of the Development Agreement.

Now therefore, incorporating the foregoing recitals, the Parties agree as follows:

Agreement

1. **General.** For valuable consideration, receipt of which is hereby acknowledged, Grantor hereby grants to the Grantee, acting through its SFPUC, a perpetual non-exclusive easement (the “**Easement**”) over, across and under the real property legally described in Exhibits A-1 through A-4, and generally shown in Exhibits B-1 through B-4, both attached hereto and

made a part hereof (“**Easement Area**”) for utility purposes, as further described below. The Easement Area is located within the project site of the Project, as described in the Development Agreement.

2. Nature of Easement. The Easement is a perpetual, nonexclusive easement and includes (i) the right to install, construct, reconstruct, operate, maintain, repair, inspect, remove and replace, from time to time, underground sewer facilities and all necessary or desirable accessories and appurtenances thereto, including without limitation, hatches, air valves, braces, connections, fastenings, and other surface and subsurface utility facilities and appurtenances (collectively, the “**Facilities**”) and (ii) the right of access over, across or under (including via surface entry) the Easement Area for all such purposes. The Easement includes the right of ingress to and egress from the Easement Area across adjacent lands of Grantor over any available roadways or such routes as may be agreed upon, to the extent necessary for the convenience of City in the enjoyment of its rights hereunder. The Easement also includes the right to trim and cut trees and vegetation that may be a hazard to the Facilities and the right to do such other things as are necessary for the full enjoyment and accomplishment of the purposes of the Easement. Grantee’s rights under this Easement Agreement may be exercised by Grantee’s agents, contractors, subcontractors, suppliers, consultants, employees, or representatives, or by other authorized persons acting for or on behalf of Grantee. The Easement shall terminate upon the satisfaction of certain conditions described in Section 6 herein.

3. Restrictions on Surface Use. Grantor and Grantee acknowledge and understand that the Easement Area is located on land that will be improved with buildings and infrastructure constructed by the Project and accordingly that construction of the Project will require disturbance of the Easement Area, including excavation of and construction of improvements within and around the Easement Area (“**Grantor’s Work**”). All of Grantor’s Work shall be subject to building and street improvements permits issued by City. Prior to the issuance of any building and street improvement permits, Grantor shall provide SFPUC with copies of all plans and specifications for review and approval by SFPUC, which approval shall not be unreasonably withheld. Except as required to complete the Grantor’s Work, as approved by the SFPUC pursuant to the terms of the preceding sentence, Grantor’s use of the Easement Area shall be subject to the following covenants and conditions:

- a. Grantor shall not cause or allow Grantor’s agents, employees, consultants or contractors to excavate, unless contemplated by the SFPUC’s approval described above.
- b. The “axle loading” of vehicles and equipment operating on the roadway within ten (10) feet of the new pipe centerline must not exceed that allowed for “AASHTO Standard H-20 Loading.” If Grantor proposes to use or allow any vehicle or equipment with axle loading exceeding the H-20 specifications, Grantor shall submit to City for review and approval an engineering calculation prepared by a civil engineer registered in the State of California showing that City’s Facilities will not be adversely affected. Grantor shall be responsible for providing SFPUC with adequate evidence that Grantor’s equipment and vehicles meet the foregoing requirements.

- c. Grantor shall not engage in any construction activities that could cause deep vibrations to the Facilities (a “**DV Activity**”) without the prior written consent of the SFPUC. A DV Activity includes sheet or pile driving, but does not include use of typical hand-operated backfill compaction tools, such as wackers.
- d. Grantor shall not cause or allow any trees to be planted or cultivated or any structures of any kind to be constructed, placed or maintained on, under, over, along, within or across the Easement Area.
- e. No excavation, grading or installation of improvements shall occur on the Easement Area, unless contemplated by the SFPUC approval described above.
- f. For so long as the Easement remains in effect, Grantor shall keep the Easement Area open and free from structures of any kind that may damage or interfere with the proper use, function, maintenance, repair, or replacement of the Facilities or Grantee’s rights under this Agreement.
- g. If the surface is disturbed by Grantee’s use of the Easement, Grantee shall restore the surface to Base Conditions or the cost equivalent. “**Base Conditions**” is defined as three inch (3”) thick asphalt concrete over eight inch (8”) thick Portland cement concrete, for paved easements, and native backfill for unpaved easements. Special finishes, structures and surface improvements (including irrigation lines) removed or damaged in connection with Grantee’s activities performed in accordance with the terms of this Easement will not be replaced by Grantee. Grantee shall not be held liable for any damage to plants or any other surface improvement aside from Base Conditions or the cost equivalent in the Easement Area that may occur as a result of the Grantee’s activities performed in accordance with the terms of this Easement.

4. Nonexclusive. The Easement granted herein is nonexclusive, and Grantor may convey additional easements and install additional subsurface utility lines within the Easement Area provided that such additional easements and lines do not interfere with the Facilities and this Easement, and provided further that any additional subsurface utility lines in the Easement Area shall meet City’s standards for separation of utilities.

5. Abandonment of Easement. City may, at its sole option, abandon all or part of the Easement by recording a quitclaim deed. Except as otherwise provided in this Agreement, upon recording such quitclaim deed, the affected Easement Area and all rights, duties and liabilities hereunder with respect to such Easement Area shall be terminated and of no further force or effect. No temporary non-use of the Easement Area or other conduct, except for recordation of the quitclaim deed as provided in this paragraph, shall be deemed abandonment of the Easement.

6. Relocation of Facilities; Termination of Easement. Grantor shall replace and/or relocate all or any portion of the Facilities at no cost to City, if required to accommodate Grantor’s development of the Project, subject to the terms of this Section and the Development Agreement (such facilities, the “**Replacement Facilities**”). The nature of the Replacement

Facilities, the phasing of the construction of the Replacement Facilities, and the phasing of Grantor's Work in the Easement Area shall be approved and conditioned by City pursuant to street improvement and building permits. As of the Effective Date, Grantor has notified City of the proposed relocation and provided City with detailed plans and specifications for the Replacement Facilities. City shall have the right to request additional detailed plans and specifications. City shall have the right to witness the construction and testing of the new pipe and other Replacement Facilities and provide comments and requests for corrective action onsite through Grantor's resident engineer. City shall consent to such relocation upon satisfaction of the following conditions:

- a. Grantor shall perform, at its sole cost and at no cost to City, all work necessary for the relocation in accordance with plans and specifications approved by City in writing and without material interruption of the service provided by the affected Facilities (other than brief, scheduled interruptions consistent with infrastructure repair and replacement projects). Unless otherwise approved by the SFPUC through a street improvement permit, Grantor does not have a right to cause material interruption other than as stated herein.
- b. Grantor shall remove, or cut, cap and fill the Facilities as shown in the applicable street improvement permit;
- c. Intentionally omitted;
- d. Grantor shall replace, remove, or cut, cap and fill any other City water, sewer or power infrastructure discovered within the Easement Area that is no longer intended to be functional by the City;
- e. Grantor shall provide an irrevocable offer of dedication to the City of the Replacement Facilities and any other replacement utility facilities constructed by Grantor;
- f. Intentionally omitted;
- g. Grantor shall warrant and guarantee all work performed by Grantor or its contractor to be free from faulty materials and workmanship for a period of two years from the date of acceptance by City;
- h. Grantor shall ensure that the Replacement Facilities are qualitatively equal or exceed in every material respect the Facilities and be constructed with new materials and with the same or improved service capacity as the Facilities consistent with approved plans;
- i. Grantor shall ensure that the Facilities are not removed until the Replacement Facilities are constructed consistent with the applicable street improvement permit, inspected and fully operational to the satisfaction of the City (after an appropriate testing period).

- j. Grantor shall fund City's out-of-pocket costs relating to the relocation, including without limitation costs of inspections and engineering and legal review.

Upon completion, offer of dedication and acceptance of each Replacement Facility, the parties will execute and record an amendment to this Agreement changing the description of the Easement Area to omit the applicable Facility. Further, in the event SFPUC determines that no active Facilities exist and therefore no Replacement Facilities are required in any portion of the Easement Area, the parties will execute and record an amendment to this Agreement changing the description of the Easement Area to omit such portions of the Easement Area containing no active Facilities. Upon completion, offer of dedication and acceptance of the last Replacement Facility, Grantee will execute and record a quitclaim deed terminating the Easement. SFPUC's General Manager shall have the authority to execute the amendment and the quitclaim deed without additional action by City's Board of Supervisors, Mayor or Public Utilities Commission. City shall have no obligation to perform or pay for removal of the Facilities. Upon completion, offer of dedication and acceptance of the Replacement Facilities as set forth above and in the Development Agreement, City shall maintain the Replacement Facilities at its own expense, subject to Grantor's above warranty.

7. Run with the Land. The provisions of this Easement shall run with the land, burden the Easement Area, and bind and inure to the benefit of the respective successors and assigns of Grantee and Grantor.

8. No Acceptance of Infrastructure Improvements. Neither the provisions of this Easement Agreement nor Grantee's acceptance of the Easement shall be construed as acceptance of any infrastructure improvements by City or SFPUC.

9. Counterparts. This Easement Agreement may be signed in counterparts, each of which shall be an original and all of which together shall constitute one instrument.

10. Authority. The person executing this Easement Agreement on behalf of Grantor does hereby covenant and warrant that Grantor is a duly formed and existing Delaware limited liability company, that Grantor has full right and authority to enter into this Easement Agreement, and that the person signing on behalf of Grantor is authorized to do so.

11. Exhibits. The exhibits attached to and referenced in this Easement Agreement are incorporated into and made a part of this Easement Agreement.

12. Interpretation. Unless otherwise provided in this Agreement, whenever approval or consent is required of Grantor or Grantee pursuant to this Agreement, it shall not be unreasonably withheld, conditioned or delayed.

[Signatures on following page]

In witness whereof this Easement Agreement is executed as of the _____ day of _____, 20__.

PROPERTY OWNER:

PARKMERCED OWNER LLC,
a Delaware limited liability company

By: _____

ACCEPTED:

CITY AND COUNTY OF SAN
FRANCISCO,
a municipal corporation

By: _____

[_____]

Director of Property

Dated: _____

Authority pursuant to Board of Supervisors
Ordinance No. [_____]

RECOMMENDED:

By: _____

[_____]

General Manager, Public Utilities
Commission

(authority pursuant to SFPUC Resolution
No. [_____])

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By: _____

[_____]

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

(THIS AREA FOR OFFICIAL NOTARIAL SEAL)