

[CCSF Draft 9.28.21]

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San Francisco Public Works
Bureau of Street-Use and Mapping
Office of the City and County Surveyor
1155 Market Street, 3rd Floor
San Francisco, CA 94103

APN: 8719A-002, 8719A-003, 8719A-004
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SPACE ABOVE THIS LINE FOR RECORDER'S

Address: 1051 Third Street, San Francisco CA

**SECOND AMENDMENT TO
PUBLIC IMPROVEMENT AGREEMENT
(MISSION ROCK – PHASE 1A)**

**SECOND AMENDMENT TO
PUBLIC IMPROVEMENT AGREEMENT
(MISSION ROCK - PHASE 1A)**

This SECOND AMENDMENT TO THE PUBLIC IMPROVEMENT AGREEMENT (MISSION ROCK - PHASE 1) (this “**Second Amendment**”) is entered into as of _____, 2021 (the “**Effective Date**”), by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation of the State of California (“**City**”) acting by and through its DEPARTMENT OF PUBLIC WORKS (“**Public Works**”), and the City acting by and through the SAN FRANCISCO PORT COMMISSION (“**Port**”), and MISSION ROCK HORIZONTAL SUB (PHASE 1), L.L.C., a Delaware limited liability company (“**Subdivider**”).

RECITALS

- A. A tentative subdivision map, entitled “Tentative Map, Seawall Lot 337 / Mission Rock Project” for condominium and other purposes for the proposed subdivision of approximately 21.49 acres of property was approved by the Department of Public Works (“**Public Works**”) Director, acting as the advisory agency for purposes of the Subdivision Map Act and the San Francisco Subdivision Code, subject to certain requirements and conditions contained in the Conditions of Approval set forth in Public Works Order No. 202,368 dated December 13, 2019.

- B. On June 2, 2020, the San Francisco Board of Supervisors approved Board Motion No. M20-60, which approved Final Map No. 9443 (“**Final Map**”). The property subdivided pursuant to the Final Map consists of Lots 1, 2, 3, 4, A, B, C, D, E, F, G, H, and I (“**Property**”) and constitutes Phase 1A of the project. Lots J, K, and L of the Final Map will be subdivided pursuant to future phased final maps.

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- C. The City, Port and Subdivider are parties to that certain Public Improvement Agreement (Mission Rock – Phase I), recorded in the Official Records on June 12, 2020 as DOC-2020-K940619-00 (the “**Original Agreement**”) to secure the completion of public improvements required by the Conditions of Approval subsequent to the approval and recording of the Final Map.
- D. On October 1, 2020, Public Works issued Street Improvement Permit No. 20IE-00486, approving Improvement Plans and Specifications prepared by BKF Engineers, entitled “Seawall Lot 337 / Mission Rock Phase 1 On-Site Street Improvement Plans” dated September 25, 2020. Street Improvement Permit No. 20IE-00486 and the Seawall Lot 337 / Mission Rock Phase 1 On-Site Street Improvement Plans (“**Phase 1 SIP**”), as revised, constituted a Plan Revision as defined in Subsection 4(c) of the Original Agreement.
- E. Pursuant to the Subsection 4(c) of the Original Agreement, Subdivider requested, and the Director approved, that certain First Amendment to the Original Agreement recorded in the Official Records on December 2, 2020, as Document No. 2020061907 (“**First Amendment**”). The First Amendment addressed the above-referenced Plan Revision, the incorporation of the Approved Criteria (as defined in the First Amendment), Subdivider’s obligations to complete certain Required Offsite Improvements (as defined in the First Amendment), and other amendments to the Original Agreement. Sections 8(b) and 8(c) of the Original Agreement became operative on the effective date of the First Amendment. The Original Agreement, as amended by the First Amendment, is referred to hereafter as the “**Agreement.**”
- F. On March 19, 2021, Public Works conditionally approved Instructional Bulletin No. 3 to the Phase SIP (“**IB No. 3**”), authorizing the construction of a 12-kilovolt power line and associated subsurface and overhead facilities (“**12-kV Line**”) to provide power for

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construction and to buildings within the Project's initial Phase. Per the conditions of approval to IB No. 3, Subdivider is required to offer the 12-kV Line for Acceptance by the City as a discrete public improvement separate from other "City Improvements" as defined in the Agreement. Acceptance of the 12-kV Line shall be conditioned upon Subdivider's agreement to replace the 12-kV Line with the permanent underground electrical line in an underground ductbank in the future Bridgeview Street running north from the terminus of the Bay Corridor Transmission Distribution vault at Mission Rock Street and Terry Francois Boulevard within the Mission Rock project ("**Permanent Power Line**"), consistent with the Infrastructure Plan and the SFPUC's Rules and Regulations for Electric Service, and remove the 12-kV Line, at Subdivider's sole cost, no later than the date that is ninety (90) days after the date the SFPUC has determined that the Permanent Power Line has been electrified and all other electrical service facilities to the 12-kV Line have been disconnected from the 12-kV Line and transferred to the Permanent Power Line. The Permanent Power Line constitutes required public improvements subject to the security requirements set forth in the Subdivision Code and the Subdivision Regulations. An executed Irrevocable Offer of Dedication of Improvements for the 12-kV Line is attached hereto as Exhibit L. The conditions of approval for IB No. 3 contemplate that upon Acceptance, the 12-kV Line will be owned, operated, and maintained by the San Francisco Public Utilities Commission ("**SFPUC**") on property owned by the Port pursuant to an agreement between the Port and SFPUC. On September 16, 2021, Subdivider submitted a written request for Plan Revisions to the Interim Director of Public Works to implement the conditions of approval for IB No. 3. Subdivider's Request for a Plan Revision includes amendments to Exhibit A-1 (Plans and Specifications), Exhibit C (Estimated Costs), Exhibit D (Documentation Required for Public Improvement Agreement), and Exhibit F-1 (List of Documents Required by City in Order to Issue a Notice of Completion) as required by the conditions of approval for IB No. 3.

G. The Interim Director of Public Works reviewed Subdivider's request for a Plan Revision and determined that the request satisfies the requirements of Section 4(c) of the Agreement and also that the proposed amendments to the Agreement are in the City's best interest and do not materially increase the City's obligations or materially diminish the City's rights.

AGREEMENT

NOW, THEREFORE, in order to ensure satisfactory performance of Subdivider's obligations under the Code, Subdivider, the Port, and the City agree to amend the Agreement as follows:

1. Amended Agreement. The Agreement, as amended by this Second Amendment shall constitute the Public Improvement Agreement for the project phase and the Property depicted in the Final Map.
2. Amendments.
 - a. Amendments to Section 7. Section 7(b) is hereby amended as follows:

(b) Maintenance and Liability Following Acceptance. Following Acceptance, and subject to Subsection 7(c) and Section 8, City and Port shall assume the responsibility of operation, maintenance, and liability of the Mission Rock Infrastructure, unless otherwise provided. 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 Mission Rock Infrastructure, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except to the extent that such Losses consist of or result from Subdivider's damage to the 12-kV Line, and except to the extent such Loss

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is the result of the active negligence or willful misconduct of the Subdivider, or a party for whom Subdivider is liable, and except for losses due to a Failure (as defined in the Conditions of Approval) of LCC during the Initial Warranty Period or the Extended Warranty Period as defined in Subsections 8(b) and 8(c), respectively. Without limiting the generality of the foregoing, nothing in this Agreement shall be construed to mean that Subdivider is responsible for the repair, replacement, restoration, or maintenance of the Mission Rock Infrastructure damaged by the actions of third parties following the City's Acceptance of such Mission Rock Infrastructure.

b. Amendments to Subsection 8(a). Section 8 is hereby amended as follows:

Acceptance Does Not Constitute Waiver of Warranties. Acceptance of the Mission Rock Infrastructure by the City or the Port shall not constitute a waiver of any defects covered by any applicable warranty under this Section 8. Subdivider covenants that all Mission Rock Infrastructure constructed or installed by Subdivider shall be free from defects in material or workmanship and shall perform satisfactorily during the applicable warranty period, described further below, provided that no warranty period shall commence until the date of issuance of the last Notice of Completion for all Mission Rock Infrastructure subject to this agreement, provided further that the warranty period for plant materials and trees planted as part of the Mission Rock Infrastructure shall not commence until the Director receives a certification from the City's Construction Manager that a plant establishment period set in accordance with the Plans and Specifications has passed. During the applicable warranty period, Subdivider shall, as necessary, and upon receipt of a request in writing from the Director, or the Director's designee, that the work be done ("Notice of Warranty Work"), inspect, correct, repair or replace any defects in the Mission Rock Infrastructure at its own expense, subject to Subsection 8(c)(ii) with respect to the Extended Warranty. Should Subdivider fail to act with reasonable promptness to make such inspection, correction, repair or replacement, or should an

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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 actual cost thereof. During the applicable warranty period, the City shall hold the Subdivider's Security, reduced as described in Section 5 (as applicable to the Initial Warranty Period), 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 Mission Rock Infrastructure by the City, or any agent or agency of either. Subsections 8(b) and 8(c) shall not become operative until the City Engineer has adopted the Approved Criteria and the City has issued a street improvement permit for LCC Infrastructure.

(b) Initial Warranty.

Condition No. 8.f.i of the Conditions of Approval states as follows:

Subdivider shall provide an "Initial Warranty" that covers the failure of the LCC Infrastructure to meet the Approved Criteria and any defects in materials or workmanship (each failure or defect a "Failure") of the LCC Infrastructure for a period of two (2) years from the date of issuance of the last Notice of Completion for all LCC Infrastructure for the applicable Phase.

Based on the foregoing, Subdivider covenants that all Mission Rock Infrastructure constructed or installed by Subdivider shall be free from failure for a period of two years from the date of issuance of the last Notice of Completion for all LCC Infrastructure for the applicable Phase (the "Initial Warranty Period"), provided however, that all LCC Infrastructure shall be free from "Failure" during the Initial

Warranty Period. The Initial Warranty Period shall not commence until Subdivider has requested a Final Notice of Completion pursuant to Section 6(a), and the Director has issued such Final Notice of Completion. Following the Initial Warranty Period, consistent with the Conditions of Approval, Subdivider shall provide an Extended Warranty against Failure for the duration of Extended Warranty Period, as defined in the Conditions of Approval and set forth in Section 8(c) below.

- c. New Subsection 8(e). Section 8 is hereby amended to include the following as a new Subsection 8(e):

The City's Acceptance of the 12-kilovolt electrical line to provide power for construction and to buildings within the Project's initial Phase, as permitted through Instructional Bulletin No. 3 to the Phase SIP ("**IB No. 3**"), conditionally approved on March 19, 2021 ("**12-kV Line**"), and expressly contingent upon Subdivider's replacement of the 12-kV Line with a permanent underground electrical line consistent with the alignment depicted in **Exhibit A-2** ("Permanent Power Line") and consistent with the Infrastructure Plan and the SFPUC Power Enterprise Rules and Regulations Governing Electric Service, effective May 9, 2017 ("SFPUC Power Rules"), and removal of the 12-kV Line, at Subdivider's sole cost, no later than the date that is ninety (90) days after the date the SFPUC has determined that the Permanent Power Line has been electrified and all other electrical service facilities to the 12-kV Line have been disconnected from the 12-kV Line and transferred to the Permanent Power Line. Acceptance of the 12-kV Line shall not constitute a waiver of any defects. Notwithstanding any contrary provision in Subsection 8(b), Subdivider covenants that the 12-kV Line constructed and installed by Subdivider shall be free from defects in material or workmanship and shall perform satisfactorily ("**12-kV Line Warranty**") for a period of one (1) year ("**12-kV Line Warranty Period**"), which period shall begin upon the issuance of the Notice of Completion for

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the 12-kV Line. The 12-kV Line Warranty shall cover the satisfactory performance of the 12-kV Line installed by the Subdivider. During the 12-kV Warranty Period, Subdivider shall, as necessary, and upon receipt of a request in writing from the Director or from the Port that the work be done, inspect, correct, repair, or replace any defects in the 12-kV Line 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 or the Port may, at either's option and upon providing notice to Subdivider, perform the required inspection, correction, repair, or replacement, or otherwise perform the necessary work and Subdivider shall reimburse the City or the Port for the actual cost thereof. The City shall hold the Security to secure completion of the Permanent Power Line, removal of the 12-kV Line, and performance of Subdivider's foregoing warranty obligations, reduced as described in Section 5, as applicable. 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 12-kV Line by the City, the Port, or any agent or agency of either.

d. Amendments to Section 9. Section 9 is hereby amended as follows:

Indemnification of City.

* * *

(b) Construction Obligations. Notwithstanding any contrary provisions in Section 9, Subdivider shall comply with all the conditions and requirements set forth in the Phase 1 SIP and IB#3, including the Subdivider's obligation to hold harmless, defend, and indemnify the City as specified in the Phase 1 SIP and IB#3. In addition, t~~F~~o the extent provided under the DDA

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and Master Lease, Subdivider as to the Horizontal Improvements, and to the extent provided under its Vertical DDA and Parcel Lease, each Vertical Developer as to the pertinent Vertical Improvements, agrees to indemnify the City Parties Losses arising from:

(i) the failure of any Improvements constructed at the Project Site to comply with all applicable laws, including any New City Laws permitted under the Development Agreement; and

(ii) any accident, bodily injury, death, personal injury, or loss or damage to property caused by the construction by Developer or any DA Successor or their agents or contractors, of any Improvements on the Project Site, or outside of the Project Site in connection with project activities.

(c) Exclusions. Subdivider's and DA Successors' obligations will not apply to the extent that:

(i) the indemnification obligations are found unenforceable by a final judgment; or

(ii) the Loss is the result of the gross negligence or willful misconduct by City Parties or the breach by any City Party under a ~~Transaction Document~~ this Agreement.

3. Amended Exhibits.

- a. Exhibit A-1. Plans and Specifications. Exhibit A-1 to the Agreement is hereby replaced in its entirety by Exhibit A-1 attached hereto.
- b. Exhibit A-2. Exhibit A-2 to the Agreement is hereby replaced in its entirety by Exhibit A-2 attached hereto.
- c. Exhibit C. Security. Exhibit C to the Agreement is hereby replaced in its entirety by Exhibit C attached hereto.

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- d. Exhibit D. Documentation Required for Public Improvement Agreement. Exhibit D to the Original Agreement is hereby replaced in its entirety by Exhibit D attached hereto.
 - e. Exhibit F-1. List of Documents Required by City in Order to issue a Notice of Completion. Exhibit F-1 to the Original Agreement is hereby replaced in its entirety by Exhibit F-1 attached hereto.
4. New Exhibits.
- a. Exhibit L, titled, “Executed Irrevocable Offer of Dedication of Improvements - Power Facilities” is incorporated into the Agreement.

[SIGNATURES ON NEXT PAGE]

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IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the Effective Date set forth above.

SUBDIVIDER:

MISSION ROCK HORIZONTAL SUB (PHASE 1), L.L.C.,
a Delaware limited liability company

By: Sewall Lot 337 Associates, LLC, its Sole Member

By: Mission Rock Partners, LLC, its Sole Member

By: TSCE 2007 Mission Rock, L.L.C., Its Administrative Member

By: _____
Name: Carl Shannon
Its: Authorized Signatory

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: Carla Short
Its: Interim Public Works Director

APPROVED AS TO FORM:

Dennis J. Herrera, City Attorney

By: _____
Christopher T. Tom
Deputy City Attorney

[Signature Pages Continue]

PORT:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation,
operating by and through the San Francisco
Port Commission

By: Elaine Forbes
Port Director

APPROVED AS TO FORM:

Dennis J. Herrera, City Attorney

By: _____
Michelle Sexton
Deputy City Attorney

[SIGNATURE PAGES END]

EXHIBIT A-1

Approved Street Improvement Permit Plans and Specifications

1. Public Works Street Improvement Permit (SIP) No. 20IE-00486 (October 1, 2020)
2. Mission Rock Phase 1 Street Improvement Plans and Specifications prepared by BKF Engineers, including “Technical Specifications for Seawall Lot 337 / Mission Rock Phase 1 Street Improvement Plans” (dated September 25, 2020 and approved October 1, 2020 pursuant to SIP No. 20IE-00486)
3. Instructional Bulletin (IB) #3 (dated March 10, 2021) and IB#3 Revision 1 (dated March 19, 2021) Proposing Amendments to Public Works Street Improvement Permit (SIP) No. 20IE-00486, Conditionally Approved on March 19, 2021
4. Instructional Bulletin (IB) #1 Revision 3 (dated June 14, 2021) Proposing Amendments to the Public Works Street Improvement Permit No. 20IE-00486, Approved on July 12, 2021

EXHIBIT A-2

**Permits Authorizing Construction of Required Offsite Improvements (Prospective)
and Corresponding Plans and Specifications**

1. Improvement Plans and Specifications for Bioretention Facility (prospective)
2. Permit(s) Authorizing Construction of Bioretention Facility (prospective)
3. Improvement Plans and Specifications for Sanitary Sewer Pump Station (prospective)
4. Permit(s) Authorizing Construction of Sanitary Sewer Pump Station (prospective)
5. Permit(s) Authorizing Construction of Permanent Power Line (prospective); Diagram
Depicting Permanent Power Line Alignment as of September __, 2021

EXHIBIT C
ESTIMATED COSTS

EXHIBIT D

Documentation Required for Public Improvement Agreement

1. Public Works Street Improvement Permit No. 20IE-00486 (October 1, 2020)
2. Irrevocable Offer of Dedication of Improvements (recorded June 12, 2020 as Document No. 2020K940595)
3. Payment and Performance Bonds and Monument Bonds
4. Maintenance Matrix
5. Master Homeowner Association Covenants, Conditions and Restrictions (applies only if Final Map authorizes residential condominiums)
6. Bonding to complete the Mission Rock Improvements
7. Instructional Bulletin (IB) #3, dated March 10, 2021, and IB#3 Revision 1, dated March 19, 2021, Proposing Amendments to Public Works Street Improvement Permit (SIP) No. 20IE-00486 (“IB#3”), Conditionally Approved on March 19, 2021
8. Instructional Bulletin (IB) #1 Revision 3 (dated June 14, 2021) Proposing Amendments to the Public Works Street Improvement Permit No. 20IE-00486, Approved on July 12, 2021
9. Irrevocable Offer of Dedication of Improvements (12-kV Line)

EXHIBIT F-1

List of Documents Required by City in Order to issue a Notice of Completion

1. Subdivider's Letter Requesting Notice of Completion
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. Record of City's approval of all required infrastructure testing including but not limited to SS/SD post-construction CCTV, SS/SD vacuum/pressure tests, LPW/AWSS hydrostatic tests, mandrel tests, in place density/compaction tests, concrete and LCC tests, irrigation tests, rolling straight edge tests, etc.
8. City's Confirmation that Final Punch-List Items Have Been Completed
9. Utility Conformance Letter
10. As-Built Plan Approval Letter
11. Final Draft of Notice of Completion (to be recorded)
12. Survey Monuments
13. Test Reports
14. Joint Trench Conduits Mandrel Test
15. Confirmation of Removal of all Non-Compliance Reports ("NCR")
16. Confirmation from City that all Change Orders/Instructional Bulletins have been approved
17. Confirmation from City that all required spare parts have been provided
18. Confirmation from City that Infrastructure satisfies all requirements of Public Works Order No. 203,636 and Public Works Order No. 203,637
19. Confirmation from City that all conditions of SIP have been satisfied
20. Operation and Maintenance Manuals
21. Executed Corporate Guaranty for the Extended Warranty Acceptable to the City (due at the time of first request for the final NOC within Phase 1A; Subdivider shall submit a final completed form of the Corporate Guaranty, including all parties and terms, with its first request for any NOC)
22. Final Form of Master Encroachment Permit(s) sufficient for consideration by the Board of Supervisors and associated agreement for Private Utility Improvements and other non-standard public or private improvements in the right-of-way
23. NOC Recommendation from Public Works
24. Separate agreement between the Port and SFPUC pursuant to which SFPUC may own, operate and maintain the 12-kilovolt electrical line authorized by Instructional Bulletin (IB) #3 (dated March 10, 2021) and IB#3 Revision 1 (dated March 19, 2021) Proposing Amendments to Public Works Street Improvement Permit (SIP) No.20IE-00486, and which does not require SFPUC to compensate the Port for the right to occupy Port property. **This requirement applies only to issuance of a NOC for the 12-kilovolt**

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**line authorized by IB#3, and not to other improvements contemplated by this
Public Improvement Agreement.**

EXHIBIT L

Executed Irrevocable Offer of Dedication of Improvements - Power Facilities

RECORDING REQUESTED BY, AND
WHEN RECORDED RETURN TO:

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

Assessor’s Block (“AB”)
AB:

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

OFFER OF DEDICATION OF IMPROVEMENTS

(12-kV Distribution Line)

MISSION ROCK HORIZONTAL SUB (PHASE 1), L.L.C., a Delaware limited liability company (“Developer”), and its successors and assigns, does hereby irrevocably offer to dedicate to the City and County of San Francisco a municipal corporation (“City”), and its successors and assigns, all improvements constructed or installed by or on behalf of Developer, pursuant to Instructional Bulletin No. 3, dated March 10, 2021, inclusive of Revision No. 1 thereto, dated March 19, 2021, amending the Mission Rock Phase 1 Improvement Plans Street Improvement Permit (Street Improvement Permit No. No. 20IE-00486), and the improvement plans and specifications described therein.

The property where the improvements are located is shown on Exhibit A hereto, which is located in the City.

It is understood and agreed that: (i) upon acceptance of this offer of public improvements the City shall own and be responsible for maintenance of the offered public improvements, and (ii) The City and its successors or assigns shall incur no liability or obligation whatsoever hereunder with respect to such offer of public improvements, and, except as may be provided by separate instrument, shall not assume any responsibility for the offered improvements, unless and until such offer has been accepted by appropriate action of the Board of Supervisors.

IN WITNESS WHEREOF, the undersigned has executed this instrument this ___ day of _____, 2021

DEVELOPER

MISSION ROCK HORIZONTAL SUB (PHASE 1), L.L.C.,
A Delaware limited liability company

By: Sewall Lot 337 Associates, LLC, its Sole Member

By: Mission Rock Partners, LLC, its Sole Member

By: TSCE 2007 Mission Rock, L.L.C., Its Administrative Member

By: _____

Name: Carl Shannon

Its: Authorized Signatory

Exhibit A

Legal Description and Plat