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

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

Angela Calvillo
Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

SPACE ABOVE FOR RECORDER'S USE

APN: 7308-010

NOTICE OF SPECIAL RESTRICTIONS
[for Replacement Units]

This NOTICE OF SPECIAL RESTRICTIONS (the "Notice") is made as of November 15, 2017 (the "Effective Date") by PARKMERCED OWNER LLC, a Delaware limited liability company as declarant, its successors and assigns ("Developer"), in favor of the City and County of San Francisco, a charter city and county of the State of California (the "City"), with reference to the following facts and circumstances:

A. Developer is fee title owner of record of that certain real property located in the City legally described in the attached Exhibit A (the "Property").

B. The Property is located within the Project Site of the Parkmerced Development Project (the "Project"), as described in that certain Development Agreement dated for reference purposes only July 6, 2011 (the "Development Agreement") and recorded in the Official Records of San Francisco County as Document No. 2011J20995900. On June 7, 2011, the San Francisco Board of Supervisors adopted Ordinance No. 89-11, approving the Development Agreement and authorizing the Planning Director to execute the Development Agreement on behalf of the City (the "Enacting Ordinance"). The Enacting Ordinance took effect on July 9, 2011. All capitalized terms herein and not otherwise defined herein shall have the meaning set forth in the Development Agreement. In accordance with the Development Agreement, Developer intends to construct an approximately 64- unit residential building on the Property (the "Replacement Building").

C. The Development Agreement requires that the Project provide one-for-one replacement of 1,538 rent-controlled dwelling units currently existing on the Project Site (the "Existing Units") if demolished by Developer as part of the Project with new rent-controlled units (*i.e.*, units that are subject to the provisions of the Residential Rent Stabilization and Arbitration

Ordinance (Administrative Code Chapters 37 and 37A) (the "Rent Ordinance")), each with the same or greater number of bedrooms and bathrooms as the Existing Unit being replaced (each, a "Replacement Unit" and collectively, the "Replacement Units"). Developer has agreed to build the Replacement Units in the Replacement Building as identified in Exhibit A-1.

D. The Development Agreement further requires that Developer relocate the Existing Tenants from their Existing Units to the Replacement Units, with an initial rent and pass through charges equal to the rent and pass through charges charged to the Existing Tenant for his or her Existing Unit at the time of relocation to the Replacement Unit, with the right to remain in the Replacement Unit for an unlimited term subject to the eviction rules, procedures and protections set forth in the Rent Ordinance, and with no pass through charges added to rent of the Replacement Unit for the capital costs of the Project.

E. In order to ensure that Developer provides the Replacement Units in the manner required by the Development Agreement, Developer agreed to record restrictions running with the land, in form and substance satisfactory to the Planning Director and the City Attorney, binding upon Developer and successor owners of all or part of the Replacement Units, that: (i) require that the Replacement Units remain rental for the life of the buildings in which they are located, and require certain language be included in the leases for each Replacement Unit; (ii) waive any and all rights to evict tenants under the Ellis Act (California Government Code section 7060 et seq.; the "Ellis Act") and any other laws or regulations that permit owner move-in evictions; (iii) apply the terms of Rent Ordinance to the Replacement Units, and acknowledge the non-applicability of the Costa-Hawkins Act (California Civil Code sections 1954.50 *et seq.*; the "Costa-Hawkins Act"), and provide the City and each tenant in a Replacement Unit the express right to enforce these provisions and collect attorney's fees and costs in any enforcement action, and expressly include certain remedies if rent control under the Rent Ordinance is deemed not to apply to the Replacement Units for any reason; and (iv) waive any other laws or regulations that would limit the ability of the City or any tenant to enforce the rental-only requirements and the other benefits and amenities relative to the Replacement Units under the Development Agreement.

F. The Development Agreement permits Developer to construct the Project in discrete Development Phases (and certain sub-phases within such Development Phases). The Property is located within Development Phase 1 (and Subphase 1A) of the Project and will include Replacement Units identified in Exhibit A-1. This Notice is executed and recorded to satisfy the requirements of the Development Agreement as related to the Replacement Units on the Property.

NOW, THEREFORE, incorporating the above Recitals, Developer agrees and covenants as follows:

1. Lease Addendum for Replacement Units. Developer agrees to include the language set forth in the lease addendum attached hereto as Exhibit B in each lease for each Replacement Unit on the Property. Developer agrees that the Rent Ordinance, as it may be amended or replaced from time to time, applies to the Replacement Units, and that Developer shall not be permitted to evict any tenant in a Replacement Unit on the basis of any law or regulation that allows owner move-in evictions.

2. General Waiver. Developer agrees not to challenge and expressly waives, now and forever, any and all rights to challenge under the Costa-Hawkins Rental Housing Act the requirements of this Notice and the Development Agreement related to the establishment of the initial and all subsequent rental rates for the Replacement Units and the right to evict tenants under the Ellis Act (as the Costa-Hawkins Act and Ellis Act may be amended or supplanted from time to time) for the Replacement Units, and/or any other laws or regulations that permit owner move-in evictions for the Replacement Units. If and to the extent such general covenants and waivers are not enforceable under law, Developer acknowledges that they are important elements of the consideration for the Development Agreement and Developer should not have the benefits of the Development Agreement without the burdens of the Development Agreement. Accordingly, Developer acknowledges that the City has the right to right to terminate the Development Agreement (as to that Developer and its Affiliates as set forth in Article 12 of the Development Agreement) and to take pursue other rights and remedies at law or in equity if Developer breaches the covenants set forth above.

3. Non-Applicability of Costa-Hawkins Act. Chapter 4.3 of the California Government Code directs public agencies to grant concessions and incentives to private developers for the production of housing for lower income households. The Costa-Hawkins Act provides for no limitations on the establishment of the initial and all subsequent rental rates for a dwelling unit with a certificate of occupancy issued after February 1, 1995, with exceptions, including an exception for dwelling units constructed pursuant to a contract with a public agency in consideration for a direct financial contribution or any other form of assistance specified in Chapter 4.3 of the California Government Code (section 1954.52(b)). Based upon the language of the Costa-Hawkins Act and the terms of the Development Agreement, Developer understands and agrees that Section 1954.52(a) of the Costa-Hawkins Act does not and in no way shall limit or otherwise affect the restriction of rental charges for the Replacement Units on the Property. The Development Agreement and this Notice fall within the express exception to the Costa-Hawkins Act because they are each a contract with a public entity in consideration for contributions and other forms of assistance specified in Chapter 4.3 (commencing with Section 65919 of Division 1 of Title 7 of the California Government Code). Developer is a party to the Development Agreement. The City contributions and other forms of assistance are described in Section 4.1.1 of the Development Agreement.

4. Right to Set Rates Upon Vacancy, with Subsequent Rent Control. While each Replacement Unit shall be subject to the Rent Ordinance, including its supporting fee provisions, Developer does not waive its right to adjust the rent for a Replacement Unit when a tenant has voluntarily vacated or abandoned the premises or been evicted in accordance with the Rent Ordinance, California Code of Civil Procedure section 1161 *et seq.* or any successor statute; *provided, however*, following any such rate adjustment, all provisions of the Rent Ordinance, including but not limited to the rent control provisions, shall apply to the new tenant (and each subsequent tenant) during the length of his or her tenancy for the life of the Replacement Building.

5. Private Right of Action. In addition to the options available to the City to enforce the Development Agreement, Developer acknowledges and agrees that the Development Agreement provides all legal tenants (with a written lease signed by such tenant and Developer or its predecessor) of Replacement Units on the Property (each, a "Replacement Tenant") with a private right of action against Developer, but not against the City, to enforce the Replacement Unit

requirements set forth in the Development Agreement and this Notice (the "Replacement Unit Requirements"), including but not limited to rent control provisions required under the Rent Ordinance, with attorneys' fees and costs awarded to the prevailing party in any enforcement action. Developer recognizes and agrees that the Replacement Tenants are express third party beneficiaries of the Replacement Unit Requirements, with the right to enforce them to the greatest extent under law and equity, and confirm the validity and enforceability of, the Replacement Unit Requirements at any time.

6. Disputes Relating to the Rent Ordinance. Developer agrees to the specific rights and remedies in Section 12.8 and Section 12.9 of the Development Agreement (attached hereto as Exhibit C) if rent control under the Rent Ordinance is deemed not to apply to the Replacement Units for any reason.

7. Governing Law. This Notice shall be governed and construed in accordance with the laws of the State of California.

8. Successors and Assigns; Binding Covenants; Run With the Land. From and after recordation of this Notice, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Notice, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained shall be binding upon Developer and City, and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Property, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Developer and City and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All references to "Developer" in this Agreement shall mean each fee owner of all or part of the Property, during the term of its ownership. All provisions of this Notice shall be enforceable as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable law, including but not limited to California Civil Code section 1468.

9. No Amendment of Development Agreement. The express purpose of this Notice is to satisfy the requirements of the Development Agreement. This Notice solely restates certain rights and obligations of the Development Agreement and does not modify, amend, expand, or limit the rights and obligations of Developer (including but not limited to the release of liability provisions of Section 11.6 of the Development Agreement and the Default provisions of Section 12.3 of the Development Agreement) or City under the Development Agreement in any manner.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Developer has executed this instrument as of the Effective Date.

DEVELOPER:

PARKMERCED OWNER LLC,
a Delaware limited liability company

By: ______________________________
Seth Mallen
Vice President

Acknowledged and Agreed:

CITY:

CITY AND COUNTY OF
SAN FRANCISCO,
a municipal corporation

By: ______________________________
John Rahaim
Director of City Planning

Approved as to form
DENNIS HERRERA, City Attorney

By: ______________________________
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 11.2.17 before me, Grace Simpson, Notary Public
(insert name and title of the officer)

personally appeared Seth Mallen,
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.

GRACE SIMPSON
Notary Public - California
San Francisco County
Commission # 2167562
My Comm. Expires Oct 13, 2020

WITNESS my hand and official seal.

Signature [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 San Francisco)

On November 15, 2017 before me, Nora Priego-Ramos, Notary Public
(insert name and title of the officer)

personally appeared John Raheim,
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.

NORA PRIEGO-RAMOS
Notary Public - California
San Mateo County
Commission # 2162778
My Comm. Expires Sep 12, 2020

Signature [signature] (Seal)

ENGINEERS
SURVEYORS
PLANNERS
100+ YEARS

November 3, 2017
Project No. 20090086-54

Exhibit A
Legal Description of the Property

All that certain real property situate in the City and County of San Francisco, State of California, being Lot 3 as shown on that certain Final Map 8532, said map filed for record in the office of the County Recorder, City and County of San Francisco, State of California on _____________, 2017 in Book _______ of _________ Condominium Maps, at Pages ____to _______, inclusive.

PROFESSIONAL LAND SURVEYOR
ALEX CALDER
No. 8863
STATE OF CALIFORNIA

Alex M. Calder, PLS 8863

11/3/2017
Date

END OF DESCRIPTION

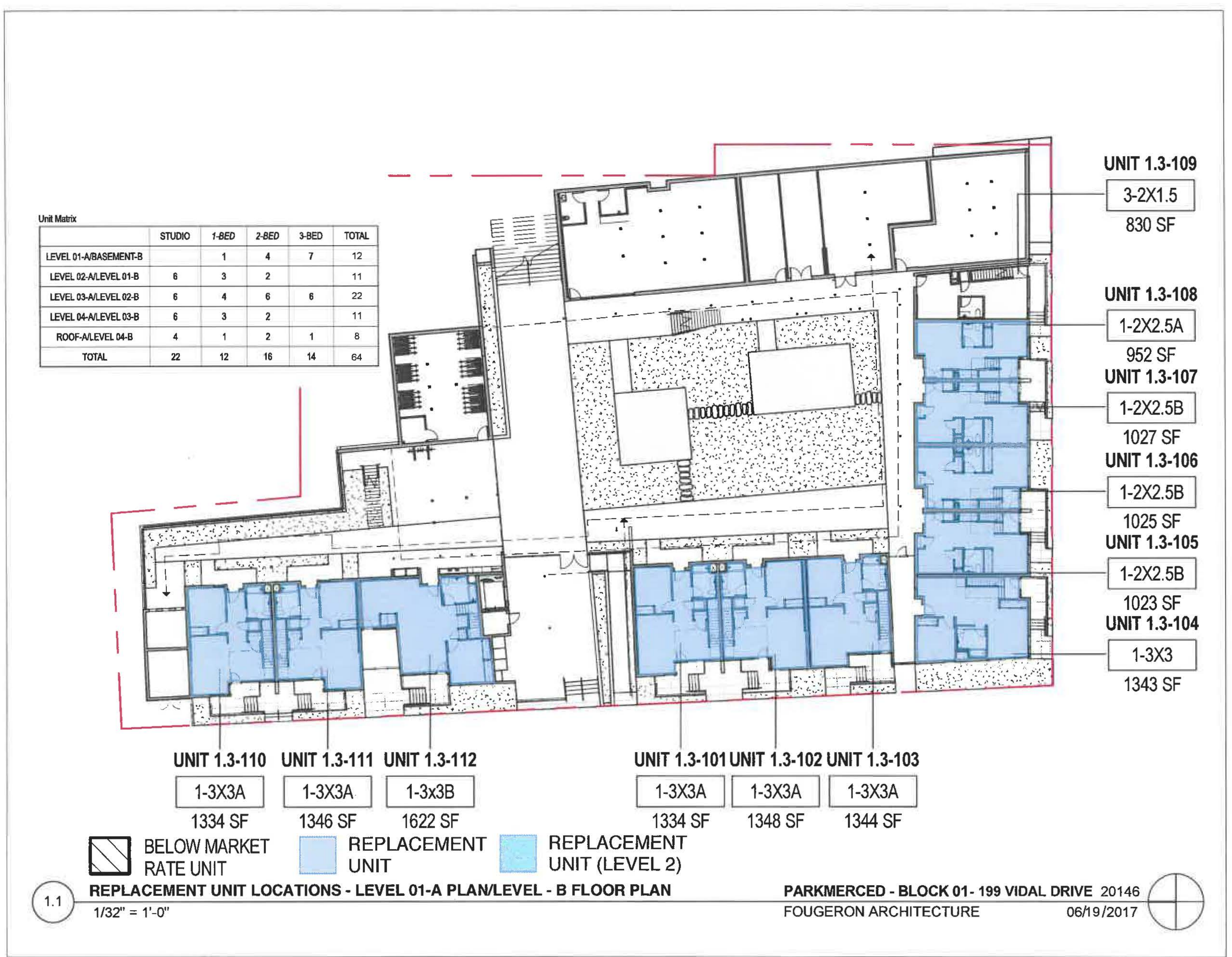
APPROVED LEGAL DESCRIPTION:

By: FOR
Bruce R. Storrs
City and County Surveyor

255 Shoreline Drive
Suite 200
Redwood City
California 94065
phone 650.482.6300
fax 650.482.6399
www.bkf.com

Exhibit A-1

The Replacement Units



Unit Matrix

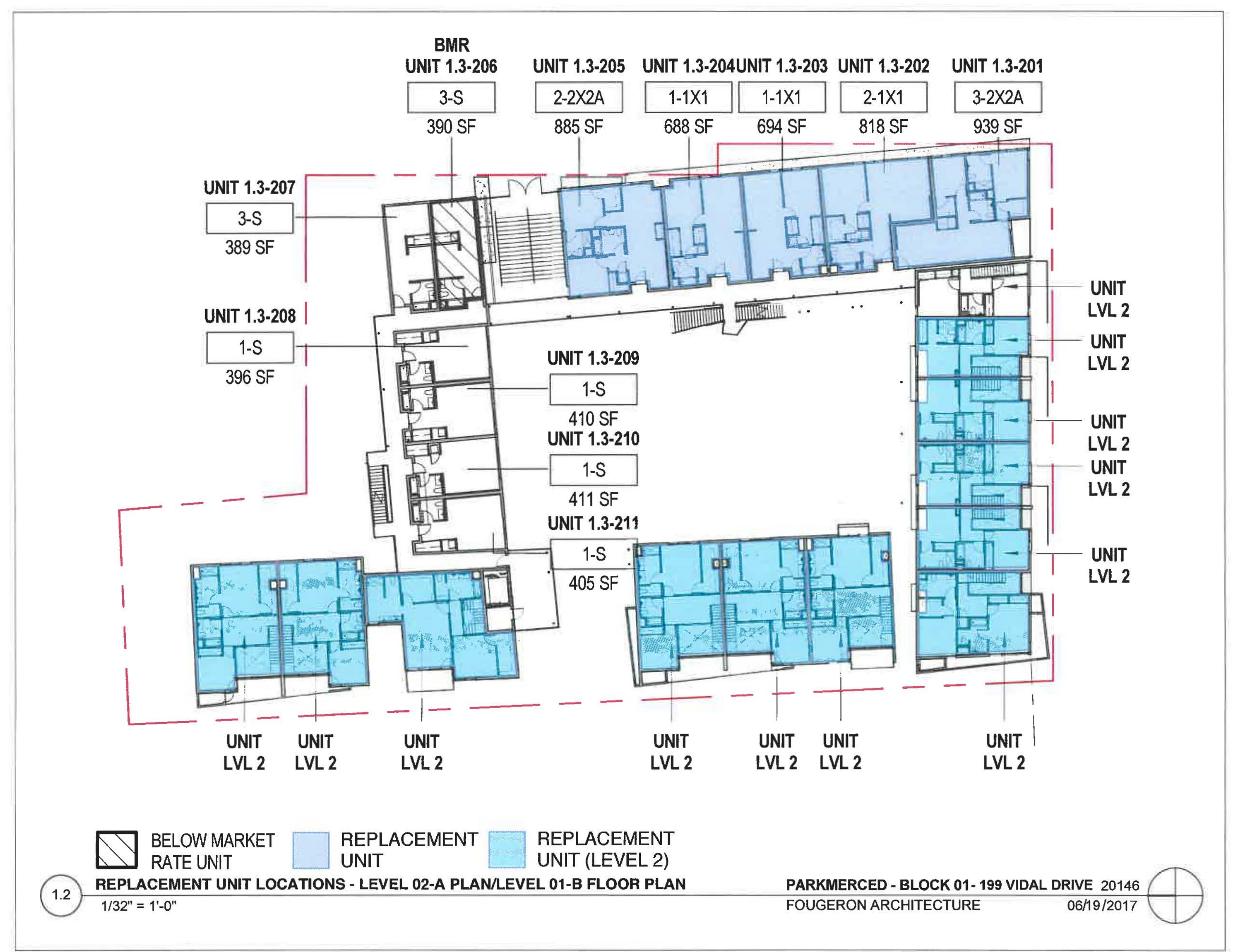
	STUDIO	1-BED	2-BED	3-BED	TOTAL
LEVEL 01-A/BASEMENT-B		1	4	7	12
LEVEL 02-A/LEVEL 01-B	6	3	2		11
LEVEL 03-A/LEVEL 02-B	6	4	6	6	22
LEVEL 04-A/LEVEL 03-B	6	3	2		11
ROOF-A/LEVEL 04-B	4	1	2	1	8
TOTAL	22	12	16	14	64

REPLACEMENT UNIT LOCATIONS - LEVEL 01-A PLAN/LEVEL - B FLOOR PLAN

1/32" = 1'-0"

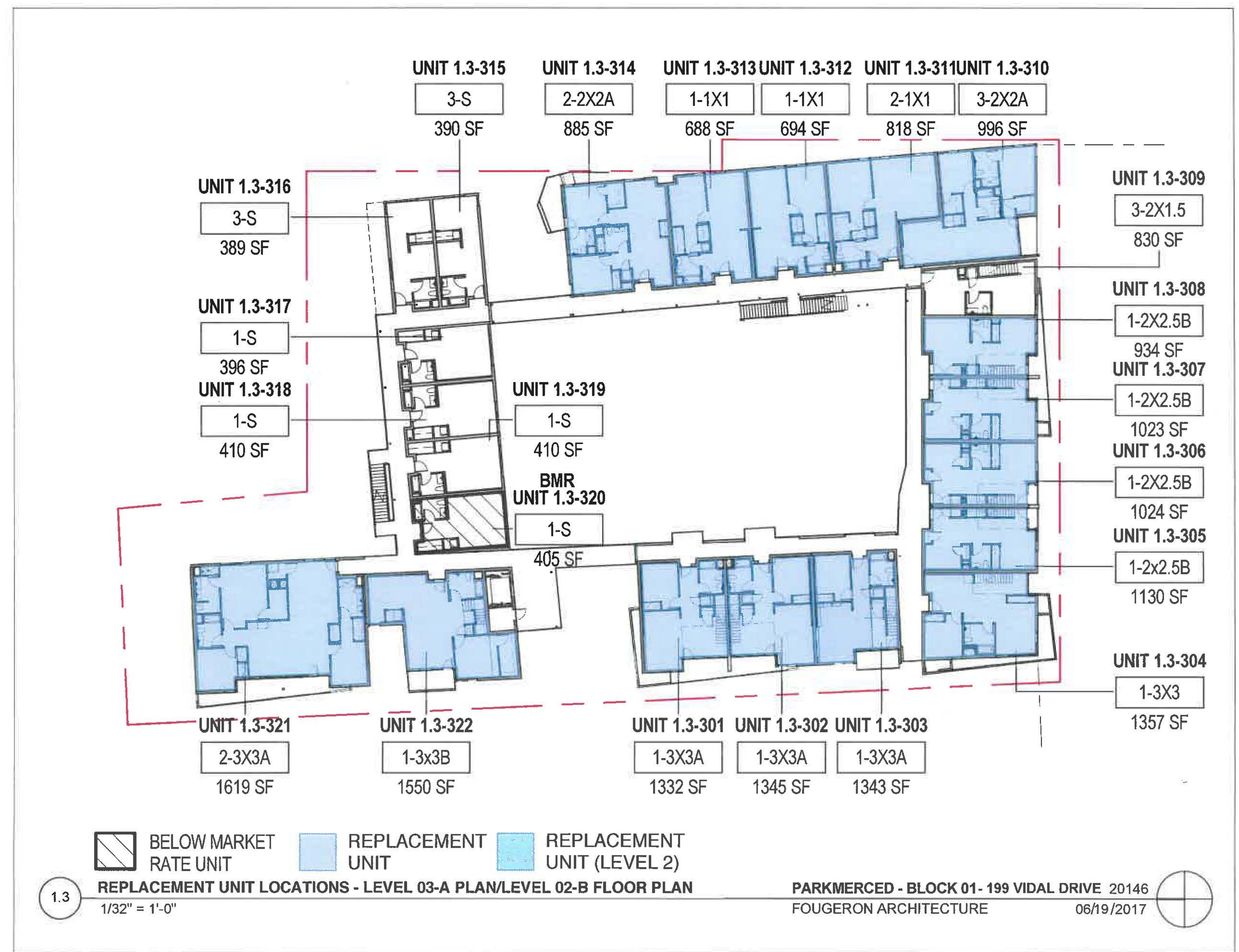
PARKMERCED - BLOCK 01- 199 VIDAL DRIVE 20146

FOUGERON ARCHITECTURE 06/19/2017

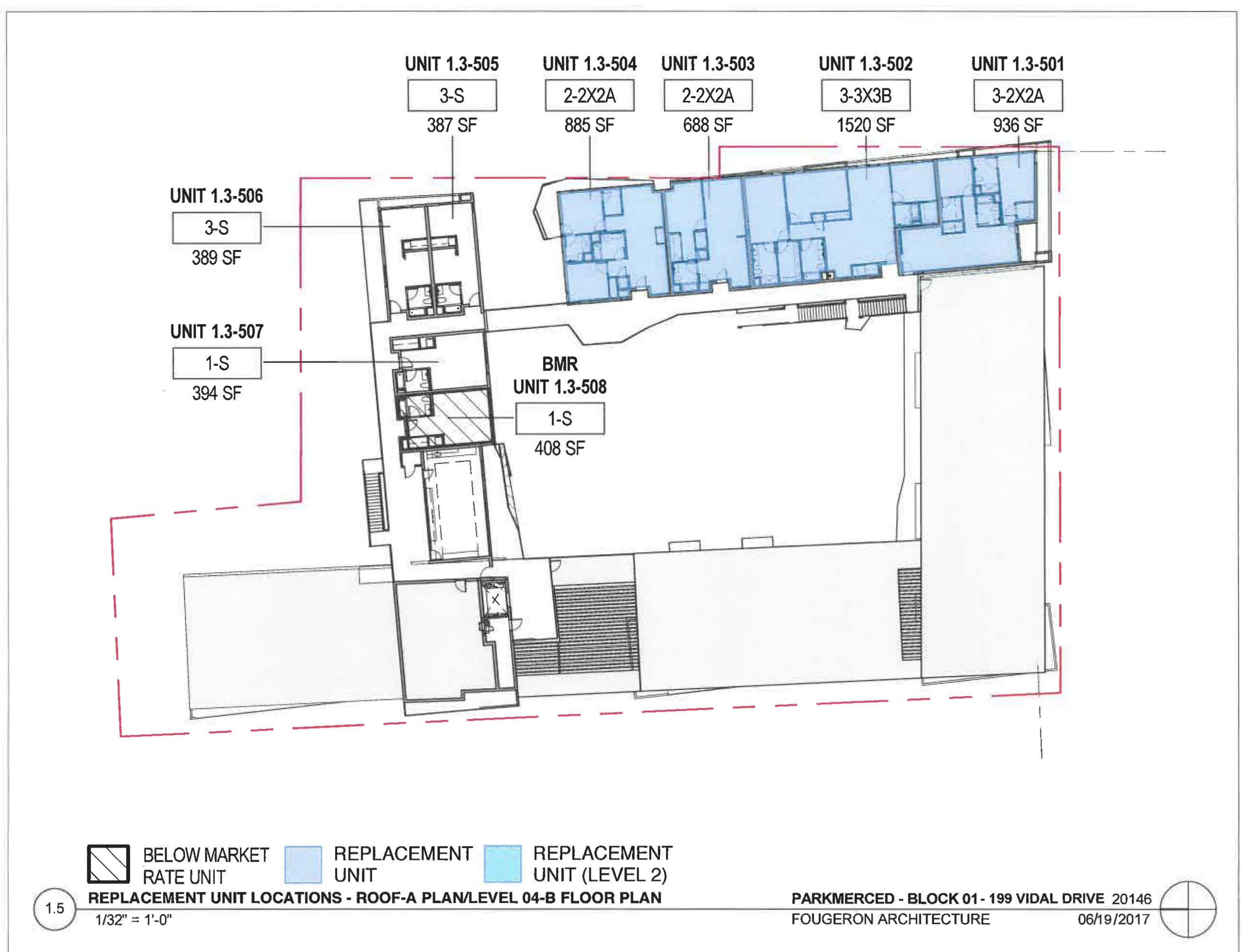


1.2 **REPLACEMENT UNIT LOCATIONS - LEVEL 02-A PLAN/LEVEL 01-B FLOOR PLAN**
1/32" = 1'-0"

PARKMERCED - BLOCK 01 - 199 VIDAL DRIVE 20146
FOUGERON ARCHITECTURE 06/19/2017


UNIT 1.3-315
3-S
390 SF
UNIT 1.3-314
2-2X2A
885 SF
UNIT 1.3-313
1-1X1
688 SF
UNIT 1.3-312
1-1X1
694 SF
UNIT 1.3-311
2-1X1
818 SF
UNIT 1.3-310
3-2X2A
996 SF
UNIT 1.3-316
3-S
389 SF
UNIT 1.3-309
3-2X1.5
830 SF
UNIT 1.3-317
1-S
396 SF
UNIT 1.3-308
1-2X2.5B
934 SF
UNIT 1.3-318
1-S
410 SF
UNIT 1.3-319
1-S
410 SF
UNIT 1.3-307
1-2X2.5B
1023 SF
UNIT 1.3-306
1-2X2.5B
1024 SF
BMR
UNIT 1.3-320
1-S
405 SF
UNIT 1.3-305
1-2x2.5B
1130 SF
UNIT 1.3-304
1-3X3
1357 SF
UNIT 1.3-321
2-3X3A
1619 SF
UNIT 1.3-322
1-3x3B
1550 SF
UNIT 1.3-301
1-3X3A
1332 SF
UNIT 1.3-302
1-3X3A
1345 SF
UNIT 1.3-303
1-3X3A
1343 SF
BELOW MARKET RATE UNIT
REPLACEMENT UNIT
REPLACEMENT UNIT (LEVEL 2)
1.3
REPLACEMENT UNIT LOCATIONS - LEVEL 03-A PLAN/LEVEL 02-B FLOOR PLAN
1/32" = 1'-0"
PARKMERCED - BLOCK 01- 199 VIDAL DRIVE 20146
FOUGERON ARCHITECTURE
06/19/2017

UNIT 1.3-406
3-S
387 SF
UNIT 1.3-405
2-2X2A
885 SF
UNIT 1.3-404
1-1X1
688 SF
UNIT 1.3-403
1-1X1
694 SF
UNIT 1.3-402
2-1X1
817 SF
UNIT 1.3-401
3-2X2A
941 SF
UNIT 1.3-407
3-S
389 SF
UNIT 1.3-408
1-S
394 SF
UNIT 1.3-409
1-S
408 SF
BMR
UNIT 1.3-410
1-S
409 SF
UNIT 1.3-411
1-S
436 SF
UNIT LVL 2
UNIT LVL 2
UNIT LVL 2
UNIT LVL 2
UNIT LVL 2
UNIT LVL 2
UNIT LVL 2
UNIT LVL 2
UNIT LVL 2
UNIT LVL 2
BELOW MARKET RATE UNIT
REPLACEMENT UNIT
REPLACEMENT UNIT (LEVEL 2)
1.4
REPLACEMENT UNIT LOCATIONS - LEVEL 04-A PLAN/LEVEL 03-B FLOOR PLAN
1/32" = 1'-0"
PARKMERCED - BLOCK 01 - 199 VIDAL DRIVE 20146
FOUGERON ARCHITECTURE
06/19/2017



REPLACEMENT UNIT LOCATIONS - ROOF-A PLAN/LEVEL 04-B FLOOR PLAN
1/32" = 1'-0"

PARKMERCED - BLOCK 01 - 199 VIDAL DRIVE 20146
FOUGERON ARCHITECTURE 06/19/2017

Exhibit B
Lease Addendum

This Lease Addendum with Lifetime Term is included, fully integrated into, and made part of the lease documents for the Replacement Unit at:________________________________

This Lease Addendum with Lifetime Term provides Tenant with a lifetime lease for the unit at the address specified above, meaning that Tenant shall have a right to lease the unit for the term of Tenant's life pursuant to the terms of this Lease Addendum with Lifetime Term. Such lifetime lease term shall supercede the term of the Tenant's existing lease.

The Landlord acknowledges and agrees that Tenant is entering into this Lease Addendum with Lifetime Term in reliance on the Landlord's express and voluntary agreement to maintain Tenant's rent at the same rent controlled rates that apply to the Tenant's existing unit at Parkmerced and to limit increases to such rent in accordance with the same provisions as provided by the San Francisco Administrative Code Chapter 37 (the "Rent Ordinance") for so long as the Rent Ordinance or similar successor ordinance remains in effect. In entering into this Lease Addendum with Lifetime Term for a replacement unit (the "Replacement Unit") and agreeing to move from Tenant's existing residential unit, Tenant is relying on Landlord's agreement to provide Tenant with the Replacement Unit at the same rent that Tenant was paying for his or her existing unit as of the date of this Lease Addendum with Lifetime Term.

Alternately, if a Tenant does not have an existing unit Parkmerced, the Landlord acknowledges and agrees that Tenant is entering into this Lease Addendum with Lifetime Term in reliance on the Landlord's express and voluntary agreement to limit increases to such rent in accordance with the same provisions as provided by the Rent Ordinance and attached hereto. In entering into this Lease Addendum with Lifetime Term for a Replacement Unit and agreeing to move from Tenant's existing residential unit outside of Parkmerced, Tenant is relying on Landlord's contractual agreement to provide Tenant with the Replacement Unit and to limit increases in rent payable for the Replacement Units in accordance with the same provisions as the Rent Ordinance and attached hereto.

Landlord acknowledges and agrees that the Costa-Hawkins Rental Housing Act (the "Act") expressly states that owners of residential property may impose whatever rent the owner so chooses for buildings constructed after February 1, 1995, and Landlord is therefore exercising its rights under the Act by voluntarily agreeing to apply the rent increase restrictions set forth in the Rent Ordinance to this Replacement Unit. Landlord is voluntarily contractually obligating itself and its successors and assigns to the same rent increase limitations imposed by the Rent Ordinance and attached hereto, excluding the provisions Section 37.3, subsection (d) thereof.

________________ Landlord's Initials

________________Tenant's initials

EXHIBIT C
Development Agreement Provisions

12.8 Disputes Relating to the Rent Ordinance.

12.8.1 As set forth in Article 4, the Parties would not have entered into this Agreement without rent control under the Rent Ordinance applying to all of the Replacement Units for the life of the Replacement Buildings. Accordingly, notwithstanding anything to the contrary above, the Parties agree to the following rights and remedies relative to the Rent Ordinance and the Replacement Units:

12.8.2 If, notwithstanding the clear intent of the Parties as set forth in this Agreement, Developer or its Affiliates sues or takes other action (against City or any tenant) to challenge the applicability of rent control under the Rent Ordinance to any of the Replacement Units (such Developer and its Affiliates shall be referred to collectively as a "**Reneging Owner**" and such action shall be referred to as a "**Reneging Act**"), then such Reneging Act shall be deemed an Event of Default, which may be cured within thirty (30) days of such Reneging Act if the Reneging Act was made by mistake or inadvertence. Without limiting City's other rights and remedies under this Agreement, each Reneging Owner shall pay the Rent Control Liquidation Amount immediately upon the taking of a Reneging Act, and such amount shall accrue interest at the highest rate permitted by law from the date of the Reneging Act to the date of payment. If a Reneging Owner fails to cure the Event of Default within 30 days (if applicable, as set forth above), the City shall have the immediate right to terminate this Agreement against the Reneging Owner and to take such additional actions and pursue such additional remedies as may be permitted by law or in equity, including but not limited to specific performance of the rent control requirements and limitations as set forth in Article 4. Affected tenants also have the right to pursue all rights and remedies against a Reneging Owner. Notwithstanding anything in this Agreement to the contrary, upon the Reneging Act (or the Owner's failure to cure the Reneging Act as set forth above), the Planning Director shall send a notice of termination which will become effective and terminate this Agreement as to the Reneging Owner upon delivery. This termination right shall apply to the Reneging Owner only, and not to other Developers that continue to recognize and abide by the terms of this Agreement.

12.8.3 In addition, upon publication of a decision by a court of competent jurisdiction (after the Board adopts the Enacting Ordinance) relating to the application of rent control under a development agreement that, in the reasonable opinion of the City Attorney, directly jeopardizes the enforceability of rent control as applied to the Replacement Units under this Agreement, the City shall have the right to issue a notice of suspension and immediately halt the issuance of demolition permits and tenant relocations, but shall not have the right to halt other development work at the Project Site (except against a Reneging Owner). Upon delivery by City of a notice of suspension, the Parties (not including a Reneging Owner) agree to meet and confer for a period of not less than sixty (60) days, as such period may be extended by mutual agreement or, if the matter has been submitted to a court, until the matter has been finally adjudicated beyond any and all appeal periods (the "**Meet and Confer Period**"). The term of this Agreement shall be extended on day to day basis for each day of the Meet and Confer Period. During the Meet

and Confer Period the Parties will use good faith efforts to maintain the benefit of the bargain to both Parties and to protect all tenants. During the Meet and Confer Period, the Parties shall invite each Recognized Resident's Association to meet with the Parties so as to give residents an opportunity to provide input on matters relating to the tenant protections. If the Parties are able to reach agreement on an acceptable approach to maintain the mutual benefit of the bargain and to protect tenants during the Meet and Confer Period, they shall memorialize such agreement in writing. Any such agreement that amends the terms of this Agreement shall be subject to the prior approval of the City's Board of Supervisors, acting by ordinance and in its sole discretion, as an amendment to this Agreement. Any such amendment shall be recorded against the applicable portions of the Project Site. The Parties may also agree to mediation during the Meet and Confer Period to assist with identifying solutions that maintain the benefit of the bargain for both Parties and to protect tenants. Either Party may seek judicial relief to determine their respective rights and obligations under this Agreement if the Parties fail to reach agreement during the Meet and Confer Period.

12.8.4 If the Parties are not able to reach agreement during the Meet and Confer Period or if the Board of Supervisors does not approve the proposed amendment to this Agreement, or if a court with jurisdiction reaches a final, binding, and non-appealable determination (meaning that the appeal period for a decision has expired without an appeal or the decision can no longer be appealed to a higher court) that rent control under the Rent Ordinance does not apply to the Replacement Units notwithstanding the clear language of this Agreement and the applicable leases (each, a "**Rent Control Rejection**"), then Developer shall still be required to build a Replacement Building before demolishing a To-Be-Replaced Building and to comply with all provisions of Article 4, including the Existing Tenant relocation and payment provisions (but excluding the rent control provisions that have been determined by a court to be unenforceable) for so long as this Agreement remains in effect, and:

(a) If the Rent Control Rejection occurs before commencement of substantial construction of any building, Public Improvement, Stormwater Management Improvement, or Community Improvement on the Project Site, then the City shall terminate this Agreement in its entirety, without cost or liability, by written notice to Developer. Upon delivery of such notice to Developer and subject to a hearing by the Board of Supervisors to validate such termination, this Agreement will terminate and the City shall have the right, acting alone, to record a notice of termination.

(b) If the Rent Control Rejection occurs at any time after commencement of substantial construction of any building, Public Improvement, Stormwater Management Improvement, or Community Improvement on the Project Site, then each Developer (other than a Reneging Owner) may prevent a termination of this Agreement by the City and have the right to proceed with its rights and obligations under this Agreement, including the right to demolish To-Be-Replaced Buildings, by performing all of its obligations under Article 4, including the construction, relocation, and payment provisions but excluding any rent control provisions that have been declared unenforceable, and either paying

the Rent Control Liquidation Amount as set forth in subsection (c) below (the "**Rent Control Liquidation Option**") or (ii) voluntarily continue to perform and abide by all of the requirements of Article 4, including the application of rent control under the Rent Ordinance to the Replacement Units (the "**Voluntary Rent Control Option**") and thereby not pay the Rent Control Liquidation Amount for so long as it continues the Voluntary Rent Control Option for all of its Replacement Units; provided under either option Developer shall also be required to pay the Relocation Payments Benefit to any Existing Tenant that vacates its Replacement Unit as a result of a Rent Control Rejection within ninety (90) days following any increase in rent above that which would be permitted under the Rent Ordinance. Following a Rent Control Rejection, each Developer or owner of an existing Replacement Building shall notify the City in writing of its election to proceed under the Voluntary Rent Control Option or the Payment Option. Any election of the Voluntary Rent Control Option shall be (i) made in writing and in recordable form approved by the City and (ii) included in any Assignment and Assumption Agreement for the applicable portion of the Project Site. If a Developer chooses to proceed under the Voluntary Rent Control Option but then subsequently takes a Reneging Act at any time during the remaining life of the Replacement Unit, then that Developer shall be required to immediately pay the Rent Control Liquidation Amount to the City at that time, and such amount shall accrue interest at the highest rate permitted by law from the date of the Reneging Act to the date of payment.

(c) The Rent Control Liquidation Amount shall be equal to one-hundred and twenty percent (120%) of the net present value of the difference between (i) the amount of rent that the tenant would have paid for his or her Replacement Unit under the Rent Ordinance as required by the terms of this Agreement and (ii) the amount of rent the that tenant would be expected to pay for his or her Rent-Controlled Replacement Unit at the prevailing market rate of rent, using the same methodology (including the number of years used to calculate net present value) as was used by CBRE in its document entitled Parkmerced Pro Forma Review & Public Benefits Analysis dated January 6, 2011. Following a Rent Control Rejection, Developer shall, unless it agrees to the Voluntary Rent Control Option as set forth above, promptly provide to the City a detailed analysis, with backup documentation, of its determination of the Rent Control Liquidation Amount. The Parties will meet and confer for a period of not less than 30 days (as such period may be extended by mutual agreement) to reach agreement on the Rent Control Liquidation Amount. If the Parties are not able to reach agreement on the Rent Control Liquidation Amount, then either Party shall have the right to initiate arbitration to determine the Rent Control Liquidation Amount in accordance with Section 12.9 below. With respect to a Reneging Owner, the Rent Control Liquidation Amount shall be determined by the court that adjudicates the dispute between the City and the Reneging Owner.

(d) By entering into this Agreement, and notwithstanding any subsequent Reneging Act, each Developer agrees that it will accept rent from all tenants in a Replacement Unit at the amounts permitted under the Rent Ordinance, and will not attempt to evict any tenant for failing to pay any higher amount, before

payment of the Rent Control Liquidation Amount and, if the matter is being litigated, before the matter is finally adjudicated and upheld beyond any and all appeal periods. In the event of litigation with a Reneging Owner, the City shall have the right to place a lien or lis pendens on the affected property owned by the Reneging Owner to protect tenants and to secure payment of the Rent Control Liquidation Amount.

(e) After negotiation, the Parties have agreed to the Rent Control Liquidation Amount as the damages that the City will suffer in the event that the Rent Ordinance does not apply to the Replacement Units, and such amount will be used by the City as set forth in subsection (f) below. The added twenty percent (20%) is designed to cover City's administrative and other costs in operating the tenant protection programs described in subsection (f) below. Developer further acknowledges and agrees that any collection of the Rent Control Liquidation Amount shall not (i) release or otherwise limit the liability of Developer for default or violation of this Agreement or limit any of City's other rights and remedies in this Agreement, (ii) release or otherwise limit the requirement of Developer to complete each Replacement Building before demolishing a To-Be-Replaced Building, or (iii) release or otherwise limit the requirement of Developer to relocate each Existing Tenant and/or pay the Relocation Benefits Payments as set forth in Article 4 or in subsection (b) above.

(f) City shall deposit all payments of the Rent Control Liquidation Amount into a Tenant Protection Fund to be administered by MOH (or any successor City agency). MOH shall use the funds in the Tenant Protection Fund to provide vouchers to tenants in Replacement Units to pay the difference between the rent that is charged for that Replacement Unit following a Reneging Act and the rent that would have been charged under the Rent Ordinance as applied to that Replacement Unit (the "**Rent Assistance**"). After four (4) years or more of Rent Assistance to a tenant, MOH shall have the right, but not the obligation, to discontinue paying Rent Assistance to that tenant if its household income exceeds one-hundred and twenty (120%) of the area median income for San Francisco, as determined by MOH in accordance with its BMR program. MOH shall continue to pay the Rent Assistance from the Tenant Protection Fund for each tenant in a Replacement Unit for so long as that tenant remains in the Replacement Unit, subject to the right (but not obligation) to eliminate payments for tenants above one-hundred and twenty (120%) area median income as set forth above. Upon MOH's determination that funds in the Tenant Protection Fund equal or exceed 200% of the Rent Assistance required to pay tenants as set forth above, MOH shall also have the right to use any funds in the Tenant Protection Fund in excess of that amount to pay for a first time homebuyer program, to pay for additional housing vouchers, or to purchase increased affordability for existing BMR Units at the Project Site. In no event shall the City or Developer be liable for any payments above the amounts available in the Tenant Protection Fund.

(g) Following a Rent Control Rejection, and unless Developer has elected the Voluntary Rent Control Option for the benefit of the Relocating

Tenants, City shall have a one-time right of first refusal (the "**ROFR**"), for itself or its designee (including Existing Tenants), to rent each Replacement Unit. Developer shall first offer the Replacement Unit to City at the same rent, and under the same conditions and terms, as Developer is willing to accept from a third party (collectively, the "**Rental Terms**"). The Rental Terms shall be contained in a written notice (the "**First Refusal Notice**") from Developer to City, which notice shall include a copy of the proposed lease. City or its designee shall have the right to lease one or more of the Replacement Units by providing to Developer a notice of acceptance within sixty (60) days following City's receipt of the First Refusal Notice, together with the leases as signed by the City or its designee. Notwithstanding anything to the contrary in the Rental Terms, Developer shall not have the right to impose or require a new security deposit on an Existing Tenant, and shall instead transfer any existing security deposit to the new lease. If City or its designee does not deliver an acceptance notice for a Replacement Unit with the signed lease within sixty (60) days, then Developer shall have the right to lease that Replacement Unit to a third party on the Rental Terms for a period of up to one-hundred and eighty (180) days. If Developer leases the Replacement Unit on the Rental Terms during this one-hundred and eighty (180) day period, then the City's ROFR for that Replacement Unit shall terminate. If the Replacement Unit is not leased within 180 days, or if Developer is willing to lower the rent or otherwise change the Rental Terms for a Replacement Unit, then City's ROFR shall continue and Developer shall provide to City a new First Refusal Notice specifying the new Rental Terms that that Developer is willing to accept. Once a Replacement Unit has been leased under the terms set forth above (to either City or its designee, or to a third party), then City's ROFR shall terminate and be of no further force or effect.

12.9 Arbitration for Rent Control Liquidation Amount.

12.9.1 Appointment. Each Party shall appoint one (1) appraiser within thirty (30) days after the notice that the arbitration provisions of this Section have been invoked. Upon selecting its appraiser, each Party shall promptly notify the other party in writing of the name of the appraiser selected. Each such appraiser shall be competent, licensed, qualified by training and experience in the City and County of San Francisco, and shall be a member in good standing of the Appraisal Institute and designated as a MAI, or, if the Appraisal Institute no longer exists, shall hold the senior professional designation awarded by the most prominent organization of appraisal professionals then awarding such professional designations. Each such MAI appraiser may have a prior working relationship with either or both of the Parties, provided that such working relationship shall be disclosed to both Parties. Without limiting the foregoing, each appraiser shall have at least ten (10) years' experience valuing multi-family real estate in the City and County of San Francisco. If either Party fails to appoint its appraiser within such thirty (30)-day period, the appraiser appointed by the other party shall individually determine the Rent Control Liquidation Amount in accordance with the provisions hereof.

12.9.2 Instruction and Completion. Each appraiser will make an independent determination of the Rent Control Liquidation Amount. Each appraiser will be provided with a copy of the CBRE analysis entitled Parkmerced Pro Forma Review & Public

Benefits Analysis dated January 6, 2011, and shall use the same methodology as contained in such CBRE analysis to determine the Rent Control Liquidation Amount. The appraisers may share and have access to objective information in preparing their appraisals, but they will independently analyze the information in their determination of the Rent Control Liquidation Amount. Neither of the appraisers shall have access to the appraisal of the other (except for the sharing of objective information contained in such appraisals) until both of the appraisals are submitted in accordance with the provisions of this Section. Neither party shall communicate with the appraiser appointed by the other party regarding the instructions contained in this Section before the appraisers complete their appraisals. If either appraiser has questions regarding the instructions in this Section, such appraiser shall use his or her own professional judgment and shall make clear all assumptions upon which his or her professional conclusions are based, including any supplemental instructions or interpretative guidance received from the party appointing such appraiser. There shall not be any arbitration or adjudication of the instructions to the appraisers contained in this Section. Each appraiser shall complete, sign and submit its written appraisal setting forth the Rent Control Liquidation Amount to the Parties within sixty (60) days after the appointment of the last of such appraisers. If the higher appraised Rent Control Liquidation Amount is not more than one hundred ten percent (110%) of the lower appraised Rent Control Liquidation Amount, then the Rent Control Liquidation Amount shall be the average of such two (2) Rent Control Liquidation Amount figures.

12.9.3 Potential Third Appraiser. If the higher appraised Rent Control Liquidation Amount is more than one hundred ten percent (110%) of the lower appraised Rent Control Liquidation Amount, then the first two appraisers shall agree upon and appoint an independent third appraiser within thirty (30) days after both of the first two (2) appraisals have been submitted to the Parties, in accordance with the following procedure. The third appraiser shall have the minimum qualifications as required of an appraiser set forth above. The two appraisers shall inform the parties of their appointment at or before the end of such thirty (30)-day appointment period. Each Party shall have the opportunity to question the proposed third appraiser, in writing only, as to his or her qualifications, experience, past working relationships with the Parties, and any other matters relevant to the appraisal. Either Party may, by written notice to the other Party and the two appraisers, raise a good faith objection to the selection of the third appraiser based on his or her failure to meet the requirements of this Section. In such event, if the two (2) appraisers determine that the objection was made in good faith, the two (2) appraisers shall promptly select another third appraiser, subject again to the same process for the raising of objections. If neither Party raises a good faith objection to the appointment of the third appraiser within ten (10) days after notice of his or her appointment is given, each such Party shall be deemed to have waived any issues or questions relating to the qualifications or independence of the third appraiser or any other matter relating to the selection of the third appraiser under this Agreement. If for any reason the two appraisers do not appoint such third appraiser within such thirty (30)-day period (or within a reasonable period thereafter), then either Party may apply to the Writs and Receivers Department of the Superior Court of the State of California in and for the County of San Francisco for appointment of a third appraiser meeting the foregoing qualifications. If the Court denies or otherwise refuses to act upon such application within sixty (60) days from the date on which the Party first applies to the Court for appointment of the third appraiser, either Party may apply to the

American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent third appraiser meeting the foregoing qualifications.

12.9.4 Baseball Appraisal. Such third appraiser shall consider the appraisals submitted by the first two appraisers as well as any other relevant written evidence which the third appraiser may request of either or both of the first two appraisers. If either of the first two appraisers shall submit any such evidence to such third appraiser, it shall do so only at the request of the third appraiser and shall deliver a complete and accurate copy to the other Party and the appraiser such Party selected, at the same time it submits the same to the third appraiser. Neither Party, nor the appraisers they appoint, shall conduct any ex parte communications with the third appraiser regarding the subject matter of the appraisal. Within thirty (30) days after his or her appointment, the third appraiser shall select the Rent Control Liquidation Amount determined by one or the other of the first two (2) appraisers that is the closer, in the opinion of the third appraiser, to the actual Rent Control Liquidation Amount. The determination of the third appraiser shall be limited solely to the issue of deciding which of the determinations of the two appraisers is closest to the actual Rent Control Liquidation Amount. The third appraiser shall have no right to propose a middle ground or to modify either of the two appraisals, or any provision of this Agreement.

12.9.5 Conclusive Determination. Except as provided in California Code of Civil Procedure Section 1286.2 (as the same may be amended from time to time), the determination of the Rent Control Liquidation Amount by the accepted appraisal shall be conclusive, final and binding on the Parties. Neither of the first two (2) appraisers nor the third appraiser shall have any power to modify any of the provisions of this Agreement and must base their decision on the definitions, standards, assumptions, instructions and other provisions contained in this Agreement. Subject to the provisions of this Section, the Parties will cooperate to provide all appropriate information to the appraisers and the third appraiser. The appraisers and the third appraiser will each produce their determination in writing, supported by the reasons for the determination.

12.9.6 Fees and Costs; Waiver. Each Party shall bear the fees, costs and expenses of the appraiser it selects. The fees, costs and expenses of the third appraiser shall be shared equally by City and Developer. If there is more than one Developer at the time the arbitration process begins, then the Developer with the most seniority under this Agreement (i.e., the Developer that is the first to enter into this Agreement with City) shall have the right to determine the Rent Control Liquidation Amount and to participate in the arbitration as set forth in this Section 12.9, and upon determination the Rent Control Liquidation Amount shall apply to all Developers at that time. The City shall not be required or permitted to charge different Rent Control Liquidation Amounts for different Developers; provided, if a Developer agrees to the Voluntary Rent Control Option but then subsequently takes a Reneging Act (by attempting to impose rents above the amount that would be permitted under the Rent Ordinance) at any time during the remaining life of the Replacement Unit, then that Developer shall be required to immediately pay the Rent Control Liquidation Amount, as determined at that time (and by arbitration at that time, if required).