

Recording requested by and  
when recorded mail to:

City and County of 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 from Documentary Transfer Tax  
(CA Rev. & Tax. Code § 11922 and SF Bus. and  
Tax Reg. Code § 1105)

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

APN 7308-011; 7308-012

### **EMERGENCY VEHICULAR ACCESS EASEMENT AGREEMENT**

This EMERGENCY VEHICULAR ACCESS EASEMENT AGREEMENT (this "**Agreement**"),  
by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation  
("City"), and PARKMERCED OWNER LLC, a Delaware limited liability company ("**Owner**"),  
is executed as of \_\_\_\_\_ (the "**Effective Date**").

### **RECITALS**

- A. Owner owns the real property located in San Francisco, California, and fully described and depicted on the attached Exhibit A-1 (the "**Burdened Property**").
- B. Owner desires to grant a non- exclusive, irrevocable emergency vehicular ingress, egress and access easement over a portion of the Burdened Property, as described on Exhibit A-2 (the "**Easement Area**").
- C. Owner agrees to grant such an emergency access easement to City on the terms and conditions specified in this Agreement.

### **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Grant of Easement. Pursuant to the terms and conditions specified in this Agreement, and commencing on the Effective Date, Owner grants to City a non-exclusive, irrevocable easement

in gross on, over and across the Easement Area for emergency vehicular access over the Easement Area (“**Emergency Access Easement**”). The vertical limits of the Easement Area shall extend from ground level (finished surface) to a height of sixty-eight (68) feet above ground level (finished surface).

Without limiting the foregoing, this Agreement does not prohibit Owner, its successors, assigns, grantees, and licensees from using the Easement Area after the Effective Date in any manner that does not interfere with the Emergency Access Easement, including, but not limited to, installing, maintaining, repairing, replacing or removing improvements in the Easement Area as long if interim measures are made available for emergency access over the Easement Area or the Burdened Property to the satisfaction of the City’s Fire Department. City acknowledges that Owner may install, maintain, repair, replace or remove structures and appurtenances on the Burdened Property in the airspace above the Easement Area after the Effective Date in any manner that does not interfere with the Emergency Access Easement.

2. As-Is Condition. City’s use of the Emergency Access Easement pursuant to this Agreement shall be with the Easement Area in its “as is” physical condition. Owner makes no representations or warranties under this Agreement with respect to the current physical condition of the Easement Area and shall have no responsibility to City under this Agreement with respect thereto, except as otherwise specifically set forth in this Agreement. City waives any and all claims against Owner arising from, out of or in connection with the suitability of the physical conditions of the Easement Area for the Emergency Access Easement as long as Owner performs its maintenance obligations with respect to the Easement Area as specified in this Agreement and Owner does not take any action or allow any condition to remain that would impair City’s use of the Emergency Access Easement. Nothing herein shall be construed in any way to alter, amend, or otherwise relieve Owner of its responsibilities with regard to the physical condition of the Easement Area (including without limitation, responsibilities with regard to environmental investigation and remediation and construction of public improvements) set forth in any other document, instrument or agreement between City and Owner. Notwithstanding anything to the contrary in this Agreement, City shall have no liability for any claims or damages in connection with any hazardous material on or in the Easement Area, except to the extent that City caused the release on or in the Easement Area.

3. Maintenance and Repair. Commencing on the Effective Date, except as otherwise expressly permitted under Section 1 above, Owner shall maintain the Easement Area, and any surface improvements from time to time constructed on the Easement Area, at all times in a level, good and safe condition consistent with City’s use of the Emergency Access Easement and City’s load requirements for emergency vehicles. Owner shall perform such repair and maintenance at its sole expense and to the City’s reasonable satisfaction. City shall have no obligation under this Agreement to maintain or repair the Easement Area or to maintain, repair, replace or remove any improvements or materials in the Easement Area.

4. No General Liability; Insurance. City shall not be liable pursuant to this Agreement for any injury or damage to any person on or about the Burdened Property or any injury or damage to the Burdened Property, to any property of any tenant or occupant, or to any property of any other person, entity or association on or about the Burdened Property, except to the extent such injury or damage is caused solely by City’s willful misconduct or gross negligence relating to City’s use

of the Emergency Access Easement. City shall have no obligation to carry liability insurance with respect to its use of the Emergency Access Easement.

5. Default; Enforcement. Owner's failure to perform any of its covenants or obligations under this Agreement and to cure such non-performance within thirty (30) days of written notice by City of such failure shall constitute a default under this Agreement; provided that if more than thirty (30) days are reasonably required to cure such failure, no event of default shall occur if Owner commences such cure within such thirty (30) day period and diligently prosecutes such cure to completion. Upon such default, City shall be entitled to all remedies and means to cure or correct such default, both legal and equitable, allowed by operation of law except termination of the easement herein granted. In the event of any breach of this Agreement, the City shall be entitled to recover all attorneys' fees and costs reasonably incurred in connection with City's enforcement activities and actions.

City shall have all rights and remedies at law and in equity in order to enforce the Emergency Access Easement and the terms of this Agreement. All rights and remedies available to City under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other available right or remedy.

6. Run with the Land; Exclusive Benefit of Parties. The rights and obligations set forth herein shall burden the Burdened Property, run with the land, and bind all successor owners of the Burdened Property for the benefit of the City. This Agreement is for the exclusive benefit of City and Owner and their respective successors and assigns and not for the benefit of, nor give rise to any claim or cause of action by, any other party. This Agreement shall not be deemed a dedication of any portion of the Easement Area to or for the benefit of the general public.

7. Abandonment of Easement. City may, at its sole option, abandon the Emergency Access Easement by recording a quitclaim deed. Upon recording such quitclaim deed, this Agreement and the Emergency Access Easement and all rights, duties and liabilities hereunder 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 Section, shall be deemed City's abandonment of the Easement.

8. Notices. All notices, demand, consents or approvals given hereunder shall be in writing and shall be personally delivered, or sent by a nationally-recognized overnight courier service that provides next business day delivery services, provided that next business day service is requested, or by United States first-class mail, postage prepaid, to the following addresses (or any other address that a party designates by written notice delivered to the other party pursuant to the provisions of this Section):

If to City: Director of Department of Public Works  
Department of Public Works  
City and County of San Francisco  
Room 348, City Hall  
Dr. Carlton B. Goodlett Place  
San Francisco, California 94102

with copies to: City Attorney, City of San Francisco  
Room 234, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4682  
Attention: Michelle Sexton

and to: Director of Property  
Real Estate Department  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94108

If to Owner: Parkmerced Owner LLC  
One Maritime Plaza Suite 1900  
San Francisco, California 94111  
Attention: Seth Mallen

with copies to: J. Abrams Law, P.C.  
One Maritime Plaza Suite 1900  
San Francisco, California 94111  
Attention: Jim M. Abrams

9. MacBride Principles – Northern Ireland. City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Owner acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

10. Tropical Hardwood and Virgin Redwood Ban. City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

11. General Provisions. (a) This Agreement may be amended or modified only by a writing signed by City and Owner and recorded in the Official Records of the City and County of San Francisco. (b) No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) This Agreement contains the entire agreement between the parties with respect to the Emergency Access Easement and all prior negotiations, discussions,

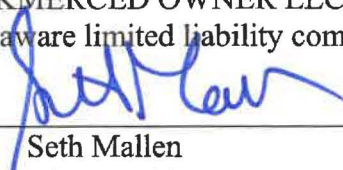
understandings and agreements are merged herein. (d) This Agreement shall be governed by California law and City's Charter. (e) If either party commences an action against the other or a dispute arises under this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes of this Agreement, the reasonable fees of attorneys of the Office of the City Attorney of the City and County of San Francisco shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office. (f) This Agreement does not create a partnership or joint venture between City and Owner as to any activity conducted by Owner on, in or relating to the Easement Area. (g) Time is of the essence of this Agreement and each party's performance of its obligations hereunder. (h) All representations, warranties, waivers, releases, indemnities and surrender obligations given or made in this Agreement shall survive the termination of this Agreement or the extinguishment of the Easement. (i) If any provision of this Agreement is deemed invalid by a judgment or court order, such invalid provision shall not affect any other provision of this Agreement, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as partially invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purpose of this Agreement. (j) All section and subsection titles are included only for convenience of reference and shall be disregarded in the construction and interpretation of the Agreement. (k) Owner represents and warrants to City that the execution and delivery of this Agreement by Owner and the person signing on behalf of Owner below has been duly authorized and Owner is a limited liability company duly formed, validly existing and in good standing under the laws of the State of California. (l) City represents and warrants to Owner that the execution and delivery of this Agreement by City and the person signing on behalf of City below has been duly authorized.

**[REMAINDER OF PAGE INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**OWNER:**

PARKMERCED OWNER LLC,  
a Delaware limited liability company

By:   
\_\_\_\_\_  
Seth Mallen  
Vice President

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: \_\_\_\_\_  
John Updike  
Director of Property

**APPROVED AS TO FORM:**

DENNIS J. HERRERA, City Attorney

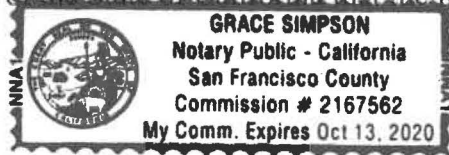
By:   
\_\_\_\_\_  
Deputy City Attorney

**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 )  
 ) ss  
County of San Francisco )

On 11.3.17, before me, Grace Simpson, a notary public in and for said State, 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.



WITNESS my hand and official seal.

Signature [Handwritten Signature] (Seal)

**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 )  
 ) ss  
County of San Francisco )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by the Emergency Vehicular Access Easement Agreement dated \_\_\_\_\_, from Parkmerced Owner, LLC, a Delaware limited liability company, to the City and County of San Francisco, a municipal corporation (“**Grantee**”), is hereby accepted by order of its Board of Supervisors’ Resolution No. \_\_\_\_\_, adopted on \_\_\_\_\_, and approved by the Mayor on \_\_\_\_\_, and Grantee consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: \_\_\_\_\_  
JOHN UPDIKE  
Director of Property



**Exhibit A-1  
Burdened Property**

All that certain real property situate in the City and County of San Francisco, State of California, and being more particularly described as follows:

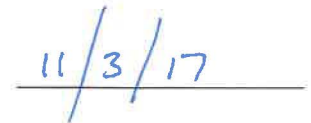
Lot A and Lot 4 as shown on that certain map entitled "FINAL MAP 8532" filed for record in Book \_\_\_\_\_ of Maps, at Pages \_\_\_\_\_ - \_\_\_\_\_, inclusive, in the Office of the Recorder of the City and County of San Francisco, State of California.

This description was prepared by me or under my direction in conformance with the Professional Land Surveyors' Act.





Alex M. Calder, PLS 8863



Date

**END OF DESCRIPTION**

APPROVED LEGAL DESCRIPTION:

By:  FOR  
Bruce R. Storrs  
City and County Surveyor

**Exhibit A-2**  
**Easement Area Legal Description**

All that certain real property situate in the City and County of San Francisco, State of California, being portions of Lot A and Lot 4 as shown on that certain map entitled "FINAL MAP 8532" filed for record in Book \_\_\_\_\_, of Maps, at Pages \_\_\_ - \_\_\_, inclusive, in the Office of the Recorder of the City and County of San Francisco, State of California, and being more particularly described as follows:

The EMERGENCY VEHICLE ACCESS EASEMENT (E.V.A.E) within Lot A and Lot 4 as shown on said Final Map 8532.

This description was prepared by me or under my direction in conformance with the Professional Land Surveyors' Act.





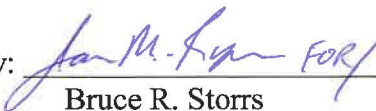
Alex M. Calder, PLS 8863



Date

**END OF DESCRIPTION**

APPROVED LEGAL DESCRIPTION:

By:   
Bruce R. Storrs  
City and County Surveyor