

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

Recording requested by
and when recorded mail to:

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

APN: 7331-256, 7331-258, 7331-260, 7331-261 and 7331-254

SPACE ABOVE THIS LINE RESERVED FOR
RECORDER'S USE

**PARKMERCED BLOCKS 21S ("SUBPHASE 1D")
PUBLIC IMPROVEMENT AGREEMENT**

Affecting Assessor Parcel Number: A re-subdivision of a portion of current Assessor's Block
7331-253

Situs: NO SITUS ADDRESS

FINAL MAP NO. 10700: The area situated east of Gonzalez Drive, southerly of Font Boulevard,
west of Chumasero Drive, and north of Brotherhood Way, San Francisco, California

Subdivider: Maximus PM Phase 1D Owner LLC

PUBLIC IMPROVEMENT AGREEMENT
(PARKMERCED BLOCKS 21S (“SUBPHASE 1D”))

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

RECITALS

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

B. Pursuant to the Development Agreement, Subdivider is engaged in subdividing the property that is subject to “Final Map No. 10700” (“Final Map”) consisting of approximately 7.8 acres, as shown therein (“Property”). A tentative subdivision map, entitled “Tentative Final Map 10700”, being an 11 Lot Subdivision, and authorizing up to 545 Residential Condominium Units and retaining 201 existing rental residential units on the Property (“Tentative Map”) was approved by the Director of the Department of Public Works (“Director”, with references to Director also including the Director’s designee where authorized by law) by Order 206742, acting as the advisory agency for purposes of the Subdivision Map Act (“Advisory Agency”), subject to certain requirements and conditions contained in the Director’s Conditions of Approval dated June 23, 2022 (the “Conditions of Approval”).

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

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

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

F. Pursuant to Section 6.1.1 of the Development Agreement, the City is to transfer certain real property to Developer and Developer is to transfer certain real property to City to reconfigure the public rights of way in the Project Site. City’s transfer of real property does not occur in Subphase 1D.

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

H. Pursuant to the Development Agreement, Subdivider is obligated to construct horizontal infrastructure and public improvements within the Property. Such infrastructure and public improvements contemplated are described in the Infrastructure Plan (described below), Tentative Map, and Final Map, and are more particularly described in those certain improvement plans identified in Exhibit A-1 (as such plans are revised from time to time, the “Plans and Specifications”). The Plans and Specifications provide for the construction, installation and completion of the horizontal infrastructure and public improvements identified therein (the “Required Infrastructure”). The Required Infrastructure includes improvements that the Development Agreement and Infrastructure Plan anticipate would be (i) offered for dedication to the City, and subsequently dedicated for public use, and accepted for maintenance and liability by the Board of Supervisors upon completion pursuant to Section 6 (“Publicly Owned

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

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

J. The Interim Facilities are (i) a low-pressure water system (“Low-Pressure Water System”) and (ii) a recycled water system (“Recycled Water System”) to be constructed, owned, operated, and maintained by Subdivider, unless and until Subdivider offers the Low-Pressure Water System and Recycled Water System to the City for acceptance and dedication and the City accepts such offer, all in accordance with that certain Restatement and Amendment of Water System Easement dated December 18, 2017 and recorded in the Official Records of the City and County of San Francisco (the “Official Records”) on December 20, 2017 as Document No. 2017K553669, as amended by that certain First Amendment to Restatement and Amendment of Water System Easement dated _____, 2023 and recorded in the Official Records on _____, 2023 as Document No. _____ (the “Water System Easement”). Pursuant to the Water System Easement, the Subdivider intends to dedicate the

Recycled Water System to the City at the completion of Development Phase 1 and intends to dedicate the Low Pressure Water System to the City at the completion of all Development Phases of the Project and City acceptance of each system would take place as set forth in the Water System Easement.

K. The Parkmerced Infrastructure Plan (a component of the Development Agreement and sometimes alternatively referred to as the “Parkmerced Infrastructure Report”)) provides that the Subdivider would design and construct a dedicated underground piping system and fire hydrants within Parkmerced as an auxiliary water supply system (“AWSS”) during each phase of construction of the Project. Figure 4.4 of the Infrastructure Plan shows the layout of the AWSS (the “Original AWSS Layout”) approved as part of the Development Agreement. Although reviewed in detail and agreed-upon by the San Francisco Public Utilities Commission (“SFPUC”) and the San Francisco Fire Department (“SFFD”) as part of the Development Agreement, the Original AWSS Layout would not have allowed the AWSS to function until completion of multiple phases of the Project and a source of water had not been identified to pressurize the system. To improve fire protection and create the potential for a functional AWSS during Development Phase 1 of the Project, the SFFD, and SFPUC requested in 2015 that Parkmerced modify the Original AWSS Layout. Pursuant to Section 2.2.4 of the Development Agreement, amendment of the Original AWSS Layout requires approval of an amendment of the Infrastructure Plan by Parkmerced, SFFD, SFPUC, and the Director of the San Francisco Planning Department. Pursuant to a letter agreement dated April 7, 2017, Parkmerced, SFPUC, SFFD, and the Planning Director approved modifications to the Parkmerced AWSS layout. No AWSS infrastructure is required in Subphase 1D.

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

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

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

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

2. Subdivider's Obligations.

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

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

(c) Other Required Documentation.

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

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

(iii) At the time of a request for Acceptance of any Required Infrastructure pursuant to Section 6(b), Subdivider shall provide all the documents required pursuant to Exhibit F, plus any other materials previously deferred by the Director pursuant to subsections (i) and (ii) above. In addition, as part of compliance with this Section 2, Subdivider shall coordinate with the City and assist in the City's process for the subsequent dedication and Acceptance of the Required Infrastructure by (i) providing necessary maps, legal descriptions and plats for street openings, proposed easements and/or dedications for right of way or utility purposes and for relinquishment of existing rights of access and utilities associated with on-site and off-site development, and (ii) executing easement agreements or grant deeds, or modifying existing easements or grant deeds consistent with the Conditions of Approval.

3. Improvement Security.

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

(i) Performance bonds in the amount of Four Hundred Twelve Thousand Five Hundred Eighty-Nine and No/100 DOLLARS (\$412,589.00 -- 100% of estimated

cost of completion of the construction and installation of the Required Infrastructure as determined by the Director) to secure the satisfactory performance of Subdivider's obligations; and

(ii) A payment bond or other acceptable security in the amount of Two Hundred Six Thousand Two Hundred Ninety-Four and 50/100 DOLLARS (\$206,294.50 -- 50% of the estimated cost of completion of the Required Infrastructure as determined by the Director) as guarantee of payment for the labor, materials, equipment, and services required for the Required Infrastructure; and

(iii) A monument bond in the total amount of Seventy-Three Thousand Forty-Nine and No/100 DOLLARS (\$73,049.00), representing 100% of the cost of installation of seventeen (17) monuments in as guarantee of payment for the labor, materials, equipment, and services required for furnishing and installing required survey monuments and to pay the Subdivider's engineer or surveyor for said work.

(b) Other Acceptable Security. In lieu of providing the Bonds on the full execution of this Agreement, Subdivider has proposed providing a deed of trust, assignment of rents, security agreement and fixture filing as security under Section 66499(a) of the Government Code ("Deed of Trust"). The Deed of Trust is in the form attached as Exhibit G and would secure Subdivider's obligation to build the Required Infrastructure pursuant to this Agreement. The Director has determined that the Deed of Trust constitutes adequate security until a Street Improvement Permit is issued for the Required Infrastructure. Notwithstanding anything to the contrary in this Agreement, prior to the issuance of the Street Improvement Permit for the Required Infrastructure, Subdivider must replace the Deed of Trust with Bonds or another form of security as described in Section 66499 of the Government Code and acceptable to City, in an amount and form that is subject to approval of the Director ("Replacement Security"). The City shall execute a full reconveyance of the Deed of Trust within thirty (30) days of Subdivider's delivery of the Bonds or the Replacement Security to the City, as further set forth in the Deed of Trust.

(c) Use of Security. If the Required Infrastructure is not completed within the time periods specified in Section 2(b) and such period is not extended by the City or as otherwise provided under this Agreement, or Subdivider has not satisfactorily corrected all deficiencies during the Warranty Period, as specified in Section 9(a), the security ("Security") provided by

Subdivider under Section (a) or Section (b) may, by resolution of the Board of Supervisors, be used by the City for completion of the Required Infrastructure in accordance with the Plans and Specifications and for the correction of any such deficiencies.

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

4. Construction of the Required Infrastructure.

(a) Permits and Fees. Due to overlapping scopes of work between the Required Infrastructure to be constructed pursuant to this Agreement and the Subphase 1B Required Infrastructure being constructed pursuant to that certain Parkmerced Blocks 20, 21S and 22 ("Subphase 1B") Public Improvement Agreement recorded in the Official Records on December 14, 2017 as Document No. 2017K551928 (the "Phase 1B PIA"), the City shall not issue a Street Improvement Permit for the Required Infrastructure until: (1) a Determination of Completeness for the Subphase 1B Required Infrastructure has been issued by the Director in accordance with Section 5(a) of the Phase 1B PIA; or (2) the Director makes a determination in writing that sufficient progress has been made on the pertinent Subphase 1B Required Infrastructure such that the Required Infrastructure may be installed in an integrated and orderly manner. Subdivider shall not thereafter perform any of the Required Infrastructure until all required permits have been obtained for the portion of work involved, and all applicable fees, including inspection and testing fees, have been paid. In addition, no work shall commence until Subdivider has submitted to the City and the City has approved all required items described in Section 2(c) and any additional requirements of and authorizations specified in the Code, Subdivision Regulations, Conditions of Approval, and this Agreement, unless the Director, in his or her discretion, has granted a written deferral for one or more of these materials.

(b) Extensions. The Subdivider may request an extension of the time period specified in Section 2(b) for completion of the Required Infrastructure by written request to the

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

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

(i) Any Infrastructure Plan amendments or other related documentation related to the Required Infrastructure and required for a Plan Revision shall be processed by the City in accordance with the Development Agreement and Infrastructure Plan, and with reasonable

promptness, and approval of the Plan Revision shall not be deemed final until such amendment has been completed.

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

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

(a) One Year Warranty for Completed Required Infrastructure. Upon (i) the Director's issuance of a Notice of Completion or Certificate of Conformity, as applicable, for a portion of the Required Infrastructure in accordance with Section 6(a) or 6(e), as applicable, and (ii) a certification from the Clerk of the Board of Supervisors (or the Clerk's designee) that no claims by any contractor, subcontractor or person furnishing labor, materials or equipment for the Required Infrastructure have been filed against the City (any such claim a "Contractor Claim") prior to or within a 100-day period following the Notice of Completion or Certificate of Conformity, as applicable, for such Required Infrastructure, the Security shall be reduced to no less than ten percent (10%) of the original amount of the Security for such portion of the Required Infrastructure for the purpose of warranting repair of any defect for said Required Infrastructure that occurs within one (1) year of the date of such Notice of Completion or Certificate of Conformity; provided, however, that if any Contractor Claim has been filed against the City, then the Security shall be reduced only to an amount equal to the amount of any and all such Contractor Claims filed or to ten percent (10%) of the original amount, whichever is greater.

(b) Partial Release of Security. Notwithstanding the release provisions in Section 5(a) and except as provided in Section 5(c), the Security may be reduced in conjunction with the Director's issuance of a Notice of Completion or Certificate of Conformity, as applicable, for any portion of the Required Infrastructure in compliance with Section 6(a) or 6(e), as

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

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

(i) One (1) year following the date of (A) Acceptance (as defined in Section 6(b)) of the relevant portion of Publicly Owned Infrastructure or Interim Facilities (or for Privately Owned Infrastructure, Acceptance of the portion of Publicly Owned Infrastructure or Interim Facilities that functionally rely upon or are encumbered by such Privately Owned Infrastructure), or one year has passed since the date any claim of defect or deficiency of the relevant portion of Required Infrastructure has been corrected or waived in writing by the Director; and

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

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

(a) Director’s Inspection. No sooner than ninety (90) days prior to the date that Subdivider intends to request the Director issue a “Notice of Completion” (which, for avoidance of confusion, is a term used by Public Works as of the Effective Date) for any portion of the Publicly Owned Infrastructure or Interim Facilities, Subdivider shall make a written request to the

Director of Subdivider's intent to initiate the Notice of Completion process ("Letter of Intent to Request Notice of Completion"). Upon delivery of a Letter of Intent to Request Notice of Completion, accompanied with any and all materials that are required under Section 2(c)(ii) related to the requested Notice of Completion and any other materials that the Director deferred in writing at the time of approval of this Agreement, the Director shall initiate the inspection within 90 days. If the Subdivider fails to submit a Letter of Intent to Request Notice of Completion, the Director need not consider Subdivider's request for the Director's issuance of a Notice of Completion until such a Letter of Intent to Request Notice of Completion is submitted to the Director and ninety (90) days have passed from the submission of the Letter of Intent to Request Notice of Completion; provided, however, that the Director, in his or her discretion, may agree in writing to a period of less than ninety (90) days from receipt of the Letter of Intent to Request Notice of Completion to consider issuance of a Notice of Completion. If the Director determines that the Publicly Owned Infrastructure or Interim Facilities subject to the requested Notice of Completion have not been completed or does not satisfy the above requirements, Director shall notify Subdivider as soon as reasonably practicable of such determination together with a statement setting forth with particularity the basis for that determination. If the Director determines that the Publicly Owned Infrastructure or Interim Facilities have been completed in accordance with the Plans and Specifications to the satisfaction of the Director, and that such improvements are ready for their intended use, the Director shall issue the Notice of Completion.

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

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

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

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

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

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

(e) Privately Owned Infrastructure Shall Not Be Publicly Dedicated. Subdivider shall not offer for dedication Privately Owned Infrastructure. The Privately Owned Infrastructure shall be owned, operated, and maintained by Subdivider subject to the requirements of the MMEP. The Privately Owned Infrastructure are integral components of the Required Infrastructure and are necessary components of a fully functional utility system. Promptly upon Subdivider's request, the City shall inspect Privately Owned Infrastructure, and the City shall issue a "Certificate of Conformity" for Privately Owned Infrastructure (or portions thereof) that meet

the standard for “Notice of Completion” of Publicly Owned Infrastructure, set forth in Section 5. The Subdivider shall obtain a Certificate of Conformity for Privately Owned Infrastructure prior to City’s Acceptance of Publicly Owned Infrastructure or Interim Facilities that functionally rely upon or are encumbered by such Privately Owned Infrastructure; provided, however, that the Director, in consultation with any affected City department, may grant an exception to this requirement on a case-by-case basis.

7. Subdivider’s Maintenance Responsibility.

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

(b) Maintenance and Liability Following Acceptance. Following Acceptance, and subject to Section 7(c) and Section 9(a), the City shall assume the responsibility of operating and maintaining and shall be liable for such Accepted Publicly Owned Infrastructure and Interim Facilities. City shall indemnify Subdivider and the officers, agents and employees of each of them from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims by third parties (“Losses”) to the extent first arising from and after City’s Acceptance of any applicable portion of the Accepted Publicly Owned Infrastructure or Interim Facilities, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except to the extent such Loss is the result of the active negligence or willful misconduct of Subdivider. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs, and the City’s cost of investigating any claims against the City. Without limiting the generality of the foregoing, nothing in this Agreement shall be construed to mean that Subdivider is responsible (or that City shall have right to call or foreclose on the Security) for the repair, replacement, restoration, or maintenance of the Accepted Publicly Owned Infrastructure or Interim Facilities damaged by the actions of third parties following Acceptance by the City or by ordinary wear and tear or harm or damage from improper

maintenance or operation of the Accepted Publicly Owned Infrastructure or Interim Facilities by the City, or any agent or agency of the City.

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

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

may not determine that the construction fence or other physical barrier constitutes an unreasonable restriction of ingress and egress of the public to and from a public right of way.

8. Intentionally Deleted.

9. Warranty and Indemnity.

(a) Warranty. Subdivider covenants that all Required Infrastructure constructed or installed by Subdivider shall be free from defects in material or workmanship and shall perform satisfactorily for a period of two (2) years following a Notice of Completion of the Required Infrastructure (or portion thereof) unless a longer warranty period applies based on applicable law (“Warranty Period”), except that the Warranty Period for plant materials and trees planted as part of the Required Infrastructure shall not commence until the Director receives a certification from the City’s Construction Manager that the trees have passed a plant establishment period set in accordance with the Plans and Specifications. Such Warranty shall begin upon the issuance of a Certificate of Conformity for Privately Owned Infrastructure. During the Warranty Period, Subdivider shall, as necessary, and upon receipt of a request in writing from the Director, inspect, correct, repair or replace any defects in the Required Infrastructure at its own expense. Should Subdivider fail to act with reasonable promptness to make such inspection, correction, repair or replacement, or should an emergency require that inspection, correction, repair or replacement be made before Subdivider can be notified (or prior to Subdivider’s ability to respond after notice), the City may, at its option, upon notice to Subdivider, make the necessary inspection, correction, repair or replacement or otherwise perform the necessary work and Subdivider shall reimburse the City for the reasonable, actual cost thereof. During the Warranty Period, the City shall hold Subdivider’s Remaining Security (as described in Section 5), to secure performance of Subdivider’s foregoing warranty obligations. Subdivider’s responsibility during the Warranty Period shall include repairing defects and defective material or workmanship, but not ordinary wear and tear or harm or damage from improper maintenance or operation of the Required Infrastructure by the City, or any agent or agency of the City. Acceptance of Publicly Owned Infrastructure or Interim Facilities by the City shall not constitute a waiver of any defects.

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

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

10. Miscellaneous.

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

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

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

diligently and in good faith to avoid foreseeable delays in performance, to remove the cause of the delay or to develop a reasonable alternative means of performance.

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

(e) Notices.

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

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

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

With a copy to:

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

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

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

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

with a copy to:

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

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

- (A) the Section of this Agreement pursuant to which the notice is given and the action or response required, if any;
- (B) if applicable, the period of time within which the recipient of the notice must respond thereto;

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

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

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

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

(f) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties, and upon transfer by Subdivider, Subdivider shall be released from its obligations hereunder. Any assignment of Subdivider’s rights and obligations under this Agreement shall be in writing, shall clearly identify the scope of the rights and/or obligations assigned and shall be subject to the reasonable approval of the Director; provided, however, that if Subdivider assigns its rights under the Development Agreement with respect to the Property or any portion thereof, this Agreement shall be deemed automatically assigned to the same assignee without the Director’s approval so long as: (1) Subdivider provides notice of the intended assignment to the Director (which Subdivider shall endeavor to do within five days after providing any required notice to the City under the Development Agreement); (2) Subdivider provides to the Director a copy of the executed Development Agreement assignment and assumption (from which confidential information may be redacted but shall include the transfer of rights and obligations under this Agreement); (3) unless the Security is the Deed of Trust at that time, the assignee provides replacement Security in the amount required to secure any remaining obligations under this Agreement applicable to the transferred property; (4) the assignee provides proof of adequate insurance in the amount previously provided by Subdivider and by an

insurer with an equal or better credit rating; (5) the assignee has obtained all real estate rights required under the Development Agreement for an assignment of the Development Agreement; and (6) the assignment requires assignee to perform any remaining obligations of this Agreement applicable to the Property subject to the assignment.

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

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

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

(j) Amendment. This Agreement may be amended, from time to time, by written supplement or amendment hereto and executed by the City and Subdivider. The Director of Public Works is authorized to execute on behalf of the City any amendment that the Director

determines is in the City's best interests and does not materially increase the City's obligations or materially diminish the City's rights under this Agreement.

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

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

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

12. Recording.

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

(b) Purpose and Effect of Recording. This Agreement shall be recorded for the purpose of providing constructive notice to any future owner of the Property of Subdivider's obligations and responsibilities under Sections 2 and 7, respectively. This Agreement shall not be interpreted as creating a lien or security interest against any parcel against which it is recorded, or

to effect any secured interest now or in the future, as the obligations hereunder are personal to Subdivider and its successors and assigns as may be authorized pursuant to Section 10(f).

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

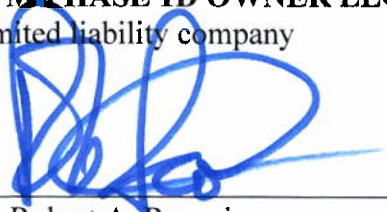
IN WITNESS WHEREOF, the City and Subdivider have executed this Agreement in one or more copies as of the Effective Date.

[SIGNATURES ON FOLLOWING PAGE]

SUBDIVIDER

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

By: _____

A handwritten signature in blue ink, appearing to read 'R. Rosania', is written over a horizontal line. The signature is stylized and somewhat illegible.

Name: Robert A. Rosania
Title: President

[Signature Pages Continue]

ACKNOWLEDGMENT

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

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

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



Notary Public

[SEAL]

My commission expires:

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

Carla Short
Director of Public Works

APPROVED AS TO FORM:

DAVID CHIU
CITY ATTORNEY

John Malamut
Deputy City Attorney

NOTARY ACKNOWLEDGMENT

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

STATE OF _____)SS
COUNTY OF _____)

On _____

before me, _____, a Notary Public, personally appeared

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

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

WITNESS my hand and official seal.

Signature of Notary Public

LIST OF EXHIBITS

Exhibit A-1 – Plans and Specifications for Required Infrastructure

Exhibit A-2 – Privately Owned Infrastructure

Exhibit A-3 – Interim Facilities

Exhibit B – Estimated Costs

Exhibit C – Documents required with Public Improvement Agreement

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

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

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

Exhibit G – Deed of Trust

Exhibit H – Notice of Termination

EXHIBIT A-1

Plans and Specifications for Required Infrastructure

The Parkmerced Phase 1D Street Improvement Permit Plans prepared by BKF Engineers, dated October 12, 2023.

EXHIBIT A-2

Privately Owned Infrastructure

In Public ROW

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

EXHIBIT A-3

Interim Facilities

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

EXHIBIT B

Estimated Costs

See attached schedule of values



BKF Engineers

Opinion of Probable Construction Cost

Parkmerced Phase 1D

October 12, 2023

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

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





Introduction

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

The following documents were used in preparation of this opinion:

1. Plan Set titled PARKMERCED PHASE 1D 100% STREET IMPROVEMENT PLANS, CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA by BKF Engineers, October 12, 2023.

Assumptions

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



Exclusions

The following items are excluded:

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

PARKMERCED - PHASE 1D						
STREET IMPROVEMENT PLANS						
ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COSTS						
ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	AMOUNT	ASSUMPTIONS
MOBILIZATION						
1	Mobilization	EA	1	\$ 18,816	\$ 18,816	
SUBTOTAL MOBILIZATION					\$ 18,816	
DEMOLITION						
1	Remove Existing Pavement Section, Walls, Curbs, Gutters and Sidewalks (Concrete, Asphalt, Base, Subbase)	SF	11,520	\$ 1.14	\$ 13,133	
SUBTOTAL DEMOLITION					\$ 13,133	
LOW PRESSURE WATER						
1	6" LPW Service Line (DIP)	EA	1	\$ 17,100.00	\$ 17,100	Includes valve, service line and meter
2	8" Fire Service Line (DIP)	EA	1	\$ 34,200.00	\$ 34,200	Includes valve and service line
3	Connect to Existing Water System	EA	2	\$ 5,700.00	\$ 11,400	
4	Water Line Testing and Sterilization	LS	1	\$ 11,400.00	\$ 11,400	
SUBTOTAL LOW PRESSURE WATER					\$ 74,100	
RECYCLED WATER						
1	4" Recycled Water Service (DIP)	EA	1	\$ 11,400.00	\$ 11,400	Includes valve, service line and meter
2	Connect to Low Pressure Water System	EA	1	\$ 5,700.00	\$ 5,700	
3	Water Line Testing and Sterilization	LS	1	\$ 5,700.00	\$ 5,700	
SUBTOTAL RECYCLED WATER					\$ 22,800	
COMBINED SEWER						
1	8" CS Lateral (HDPE)	LF	75	\$ 190.00	\$ 14,250	
2	Clean-Out/Air Vent	EA	2	\$ 1,710.00	\$ 3,420	
3	Connect to Existing Combined Sewer	EA	2	\$ 5,700.00	\$ 11,400	
SUBTOTAL COMBINED SEWER					\$ 29,070	
ROADWAY						
1	Sidewalk	SF	6,800	\$ 11.40	\$ 77,520	
2	Curb Ramp	EA	6	\$ 3,800.00	\$ 22,800	
3	Vertical Curb	LF	360	\$ 42.75	\$ 15,390	
4	Deepened Vertical Curb	LF	90	\$ 52.25	\$ 4,703	
5	Subgrade Preparation	SF	11,520	\$ 0.57	\$ 6,566	
6	3.5" AC/6" AB	SF	4,490	\$ 11.40	\$ 51,186	Bike path
7	Trapezoidal Delineator	LF	535	\$ 28.50	\$ 15,248	
8	Construction Traffic Control	LS	1	\$ 23,750.00	\$ 23,750	
SUBTOTAL ROADWAY					\$ 217,162	
TOTAL					\$ 375,081	
CONSTRUCTION CONTINGENCY (10%)					\$ 37,508	
GRAND TOTAL					\$ 412,589	

EXHIBIT C

Documents Required for Public Improvement Agreement

1. Approved Street Improvement Permit Plans
2. Offer of improvements
3. Offer of public street dedication (Parcels 11), including grant deed
4. Deed of Trust (attached as Exhibit G)
5. Maintenance matrix

EXHIBIT D

Subdivider Letter Request for Deferral and Conditions
for Deferred Compliance

Parkmerced

November 6, 2023

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

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

Dear Ms. Short,

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

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

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

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

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

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

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

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

This condition requires that:

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

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

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

This condition requires that:

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

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

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

This condition requires that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,



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

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

Nick Roosevelt, Jim Abrams Law P.C.

EXHIBIT E

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

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

EXHIBIT F

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

1. Subdivider Request for Acceptance Letter
2. Lien Notification to General Contractor and Subs
3. Utility Bill of Sale
4. 3rd Party Reimbursement Checks-Copies
5. Assignment of Warranties and Guaranties
6. Mechanic's Lien Guarantee
7. Modified Offers of Improvements (as applicable)
8. Updated Grant Deeds (as applicable)

9. NOC Letter of Recommendation from Public Works
10. Recorded Notice of Completion
11. A17 and Q- Grade and boundary maps
12. Recorded Notice of Completion

EXHIBIT G

Deed of Trust

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

WHEN RECORDED, PLEASE RETURN THIS INSTRUMENT TO:

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

SPACE ABOVE FOR RECORDER'S USE ONLY

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

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (“Deed of Trust”) is made and entered into as of _____, 2023 (the “Effective Date”), by MAXIMUS PM PHASE 1D OWNER LLC, a Delaware limited liability company, whose business address is c/o Maximus Real Estate Partners, One Maritime Plaza, Suite 1900, San Francisco, CA 94111 (“Trustor”), to [_____ TITLE COMPANY, a _____, whose business address is _____, as trustee (“Trustee”)], for the benefit of the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“City”), as beneficiary, whose address is at 49 South Van Ness Avenue, Suite 1600, San Francisco, California 94103. Except as specifically defined herein, capitalized terms shall have the meaning given in the Parkmerced Blocks 21S (“Subphase 1D”) Public Improvement Agreement dated as of the date hereof by and between the City and Trustor (“Public Improvement Agreement”).

RECITALS

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

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

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

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

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

3. THE ABOVE GRANT, TRANSFER, AND ASSIGNMENT IS FOR THE SOLE PURPOSE OF SECURING the payment by Trustor of each agreement, covenant, obligation and undertaking of Trustor to construct, complete and warranty the Required Infrastructure as set forth in the Public Improvement Agreement, as and when such Required Infrastructure is required to be constructed, completed and warranted under the Public Improvement Agreement, and to secure payment of the costs of such Required Infrastructure Work in an amount of not to exceed \$691,932.50 (the “Required Infrastructure Secured Amount”; it being agreed that the maximum amount due and payable by Trustor, and the amount secured by this Deed of Trust, shall not exceed the Required Infrastructure Secured Amount) as and when due (the foregoing obligations of Trustor, collectively, the “Secured Infrastructure Obligations”).

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

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

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

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

5. INTENTIONALLY OMITTED.

6. EVENTS OF DEFAULT:

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

7. SECURITY AGREEMENT AND FIXTURE FILING:

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

7.2 Debtor's Covenants, Representations, and Warranties.

a) Debtor covenants and agrees with Secured Party that:

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

7.3 Fixture Filing. Certain of the Collateral is or will become "fixtures" (as that term is defined in the Uniform Commercial Code). This Deed of Trust, upon being filed for record in the real estate records of San Francisco County, shall operate also as a financing statement and fixture filing upon such of the Collateral that is or may become fixtures under the Uniform Commercial Code. Debtor's name and type and jurisdiction of entity are set forth in the introductory paragraph hereof. Debtor's address is set forth above. Debtor's EIN Number is 83-2368902. Secured Party's name and mailing address are set forth on the first page of this Deed of Trust.

8. IT IS MUTUALLY AGREED UPON THAT:

8.1. Intentionally Omitted.

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

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

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

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

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

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

8.6. Acceleration; Remedies.

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

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

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

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

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

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

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

8.18. Miscellaneous Provisions.

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

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

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

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

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

[Remainder of page intentionally left blank.]

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

TRUSTOR:

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

By: _____
Name: _____
Title: _____

MAILING ADDRESSES FOR NOTICES:

Trustor:

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

Copy to:

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

[CITY ACKNOWLEDGEMENT AND CONSENT ON FOLLOWING PAGE]

ACKNOWLEDGEMENT AND CONSENT:

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

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Carla Short
Director

APPROVED AS TO FORM:

DAVID CHIU,
City Attorney

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

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

MAILING ADDRESSES FOR NOTICES:

City:

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

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

Attention: Public Works General Counsel
Real Estate/Finance Team

ACKNOWLEDGMENT

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

State of California
County of _____)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

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

State of California
County of _____)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

**ATTACHMENT A
LEGAL DESCRIPTION OF PROPERTY**

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

ALL OF LOTS 01, 03, A, AND B, IN BLOCK 21S, AND ALL OF DEDICATION PARCEL 11 AS SAID LOTS AND DEDICATION PARCEL ARE SHOWN ON THAT CERTAIN MAP ENTITLED "FINAL MAP NO. 10700" FILED FOR RECORD ON _____, 2023 IN BOOK _____ OF FINAL MAPS, AT PAGES _____ - _____ INCLUSIVE, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

BEING ALL OF APNS 7331-256, 7331-258, 7331-260, 7331-261 AND 7331-254.

**ATTACHMENT B
PERMITTED LIENS¹**

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

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

Recording Requested By:

When Recorded Mail To:

[City and County of San
Francisco mailing address]

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

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

RECITALS

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

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

C. The Property is also encumbered by a second priority lien granted pursuant to that certain Deed of Trust, Security Agreement, Assignment of Leases and Fixture Filing, dated as of the date hereof, and being recorded in the Recorder’s Office on the date hereof (the “Junior Lender Deed of Trust”; the Junior Lender Deed of Trust and the Senior Lender Deed of Trust each being referred to herein as a “Lender Deed of Trust”), which Junior Lender Deed of Trust secures that

certain junior loan to Borrower from Junior Lender (the “Junior Loan”; the Junior Loan and the Senior Loan each being referred to herein as a “Loan”).

D. Borrower desires to subdivide the Property as more particularly described in that certain Final Map No. 10700 (the “Final Map”) and the Public Improvement Agreement (as defined below) (such subdivision being referred to herein as “Subdivision Approval”).

E. In satisfaction of certain requirements under the Subdivision Code of the City and County of San Francisco (the “Code”) with the City’s Subdivision Approval, (i) the City and Owner have simultaneously herewith entered into that certain Parkmerced Blocks 21S (“Subphase 1D”) Public Improvement Agreement dated as of the date hereof by and between the City and Borrower (as amended, modified or otherwise supplemented from time to time in accordance with this Agreement, the “Public Improvement Agreement”) and (ii) concurrently with recordation of this Subordination Agreement, the Borrower is causing to be recorded against the Property in the Recorder’s Office a Deed of Trust executed by Borrower in favor of the City (the “City Deed of Trust”). Except as specifically defined herein, capitalized terms shall have the meaning given in the Public Improvement Agreement.

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

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

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

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

AGREEMENT

1. Subordination of the Lender Deed of Trust to the City Deed of Trust; Mortgagee Protections.
 - a. Subordination. Subject only to the mortgagee protections set forth below in Section 1(b) and in the City Deed of Trust, the Lender Deed of Trust, together with all rights and privileges of Lender and Borrower thereunder, are hereby irrevocably and unconditionally made subordinate to and subject to the City Deed of Trust and the City Deed of Trust is and will remain at all times, a lien, claim and charge on the Property prior and superior to the Lender Deed of Trust and to all rights and privileges of Lender and Borrower thereunder, unless and until such City Deed of Trust is repaid, replaced or terminated pursuant to the

terms thereof.

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

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

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

iii. Cure Rights. The City agrees that Mortgagee may, but is under no obligation to, satisfy any obligation or liability of Borrower, including, without limitation, to cure any actual or alleged default or Event of Default under the City

Deed of Trust prior to the exercise of any of the City's rights and remedies with respect thereto, with Mortgagee's cure period including Borrower's notice, grace and/or cure period under the City Deed of Trust and continuing for thirty (30) days beyond Borrower's cure period therefor (and if Borrower does not have any such cure period, thirty (30) days from Mortgagee's receipt of such notice); provided that, with respect to any nonmonetary defaults, such cure period may be extended for such additional time as Mortgagee is diligently endeavoring to effect such cure, which cure period includes the enforcement of its rights and remedies under its Mortgage. For the avoidance of doubt, if an incurable Event of Default occurs, then the City shall afford the Mortgagees such time as any Mortgagee requires to enforce its rights and remedies under its Mortgage; it being agreed that a foreclosure, deed-in-lieu of foreclosure or similar exercise of remedies that results in the taking possession of the Property away from Borrower shall automatically cure such Event of Default.

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

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

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

2. Notices. The City agrees to give to Lender copies of all notices under the City Deed of Trust. All notices given under this Subordination Agreement shall be in writing and sent to the party at its address appearing below (a) by certified or registered U.S. mail, return receipt requested, (b) overnight by a nationally recognized overnight courier such as UPS Overnight or FedEx, or (c) by personal delivery. All notices shall be effective upon receipt (or refusal to accept delivery). These addresses may be changed by any party by written notice to all other parties.

If to the City: [_____]
[_____]

[_____]
[_____]

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

with a copy to:

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

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

and

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

with a copy to:

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

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

with a copy to:

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

and a copy to:

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

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

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

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

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

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

[Signatures on Following Page(s)]

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

BORROWER:

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

By: _____

Name: Robert A. Rosania

Title: President

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

SENIOR LENDER:

PARKMERCED A NOTE LENDER LLC,
a Delaware limited liability company

By: Parkmerced A Note Manager LLC, its manager

By: _____

Name: Issac Hera

Title: Manager and CEO

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

By: _____

Name: Issac Hera

Title: Manager and CEO

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

JUNIOR LENDER:

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

By: _____

Name:

Title:

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

DAVID CHIU
City Attorney

By: _____
Name: _____
Title: Deputy City Attorney

ACKNOWLEDGMENT

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

State of California)
)
County of San Francisco)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

ACKNOWLEDGMENT

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(Seal)

EXHIBIT H

Form of Notice of Termination

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

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

[Subdivider:

Attn: _____]

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

SPACE ABOVE THIS LINE RESERVED FOR

NOTICE OF TERMINATION

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

RECITALS

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

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

SUBDIVIDER:

[_____],
a [_____]

By: _____
Name: _____
Title: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

DAVID CHIU
City Attorney

By: _____
Name: _____
Title: Deputy City Attorney

ACKNOWLEDGMENT

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State of California
County of _____)

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

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

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Signature _____ (Seal)

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Signature _____ (Seal)

EXHIBIT A

PROPERTY

[To be provided if applicable]