

Order No.: 0227021502

20199K81214700040  
San Francisco Assessor-Recorder  
Carmen Chu, Assessor-Recorder  
DOC 2019-K812147-00  
Acct 9001-Old Republic Title Company- SF, CA  
Monday, AUG 05, 2019 07:14:29  
Ttl Pd \$0.00 Nbr-0006050002  
oes/RE/1-40

RECORDING REQUESTED  
AND WHEN RECORDED MAIL TO:

Housing Authority of the City and County of San Francisco  
1815 Egbert Ave.  
San Francisco, CA 94124  
Attn: Barbara T. Smith, Acting Executive Director

Lot: 011 Block: 6311, formerly a portion  
of Block 6311, Lot 001 and Block 6312, Lot 001  
The undersigned declares this instrument to be exempt from recording fees (Govt. Code §  
27383) and Documentary Transfer Tax (Rev. & Tax. Code § 11922).

### EASEMENT AGREEMENT

(Access and Utilities)

**THIS EASEMENT AGREEMENT** (the "Agreement" or "Easement") is entered into as of August 1, 2019 (the "Effective Date"), by and between the HOUSING AUTHORITY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body corporate and politic ("Housing Authority") and SUNNYDALE INFRASTRUCTURE LLC, a California limited liability company ("Developer") (collectively, the "Parties" or, independently, "Party").

**THE PARTIES ENTER INTO THIS AGREEMENT** on the basis of the following facts, intentions and understandings:

A. Housing Authority is the owner of certain real property in the City and County of San Francisco, State of California, described as Lot D on the Final Map (to be recorded contemporaneously with this Agreement) attached hereto as Exhibit A (the "Housing Authority Parcel").

B. In accordance with that certain Development Agreement ("DA") among the Housing Authority, Sunnydale Development Co. LLC (the "Master Developer") and the City and County of San Francisco (the "City"), and the Master Development Agreement ("MDA") among the Housing Authority, the City and the Master Developer, with respect to the Sunnydale HOPE SF Project (the "Project"); Developer plans to construct the infrastructure improvements necessary for the affordable housing development(s) to be constructed on certain real property located in the vicinity of the Housing Authority Parcel.

C. In connection with the Project, Housing Authority desires to grant Developer certain temporary easements on, over, under, and across portions of the Housing Authority Parcel for the purposes of constructing, operating and maintaining a privately-maintained road

accessible by the public, and constructing, operating and maintaining utilities, each as further described herein and on the terms and conditions set forth herein.

D. Any capitalized term used herein which is not defined shall have the meaning given such term as set forth in the MDA or the DA.

**NOW, THEREFORE, IN CONSIDERATION** of the recital above, the mutual covenants set forth herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto agree as follows:

1. **Grant of Public Access and Utility Easements by Housing Authority.**

Housing Authority hereby grants to Developer and its Permittees: (a) a non-exclusive easement appurtenant to the Housing Authority Parcel on, over, under and across a portion of the Housing Authority Parcel legally described on and depicted (as "**Temporary Sunrise Way**") on **Exhibit B** attached hereto (the "**Easement Area**") (i) for the installation, construction, operation, maintenance, and repair of a road and (ii) following construction of such road, the ingress, egress and access by the general public (including motorized and non-motorized vehicles); and (b) a non-exclusive easement appurtenant to the Housing Authority Parcel for the installation, construction, operation, maintenance, and repair of sewer, street light, water, backflow preventer, and other utilities, including but not limited to the installation of lines, pipes, poles, bracings, footings, and other equipment and fixtures related thereto, on, over, under, and across the Easement Area and access over the Easement Area to permit the foregoing grant of rights (collectively, the "**Easement Permitted Work**"). The "**Permittees**" of Developer mean such Developer's agents, contractors, lessees, licensees and invitees and their respective agents, contractors, lessees, licensees and invitees.

2. **General Conditions Precedent for Easement Permitted Work.**

2.1 The requirements set forth in this **Section 2** are conditions precedent to the Developer's commencement of the Easement Permitted Work in the Easement Area. The conditions set forth in this **Section 2** are solely for the benefit of the Housing Authority and may only be waived by the Housing Authority pursuant to **Section 19(b)**. Upon the satisfaction of the conditions set forth in this **Section 2**, the Developer may commence the Easement Permitted Work.

2.2 **Applicable Permits.** The Developer shall have submitted to the Housing Authority evidence that the Developer has obtained Approval from the San Francisco Public Utilities Commission and all necessary permits for, or any other applicable DA Approvals necessary for the performance of, the Easement Permitted Work, if applicable.

2.3 **Insurance.** The Developer shall have submitted to the Housing Authority evidence that the Developer has complied with all of the requirements of **Section 10** that are to be complied with prior to the commencement of the Easement Permitted Work.

2.4 **No Default under the MDA.** No Event of Default by the Developer shall exist under the MDA.

2.5 Compliance with MDA. All applicable conditions precedent to the performance of the Easement Permitted Work, set forth in the MDA, have been completed or otherwise satisfied by the Developer.

2.6 Performance and Payment Bonds. The Developer shall name the Housing Authority as an additional obligee under the performance and payment bonds (the "Security") that the Developer is required to provide to the City pursuant to that certain Loan Agreement dated February 9, 2018, and amended February 7, 2019 and May 20, 2019 between the City and the Developer (collectively, the "Loan Agreement"). The Housing Authority's right to enforce such Security shall be limited to the Easement Permitted Work.

3. No Representations or Warranties: Developer Release of the Housing Authority.

3.1 The Developer acknowledges that, by this Agreement, the Housing Authority makes no representation, warranty, or covenant of any kind whatsoever to the Developer with respect to the condition of the Easement Area. The Developer acknowledges that the grant of the Easement Area is provided in an "as-is" condition including all faults, or defects, or hazardous conditions known or unknown (if any). The Housing Authority shall not be liable to the Developer, its Affiliates, its general contractor and its subcontractors, its architect, engineers, other consultants and subconsultants, and all of the respective employees and agents of all of them (collectively, the "Developer Parties") (or any of the Developer Parties) for, and the Developer, on behalf of itself and any and all of the Developer Parties, hereby waives and releases the Housing Authority and its commissioners, directors, employees and agents (the "Authority Parties") from any and all liability, whether in contract, tort or on any other basis, for any injury, damage, or loss resulting from or attributable to an occurrence on the Easement Area, or the condition of the Easement Area pursuant to this Agreement, except, in any case, to the extent caused, contributed to or exacerbated by any Authority Party or attributable to Existing Hazardous Materials (as defined below) or Hazardous Materials (as defined below) migrating to the Easement Area at any time from an off-site source ("Third Party Contamination"). The Developer on behalf of itself and any and all of the Developer Parties hereby waives and agrees not to commence any action, legal proceeding, cause of action or suit in law or equity, of whatever kind and nature, directly or indirectly against the Housing Authority in connection with the Developer's ownership of the Easement Area under, or the easements provided to the Developer pursuant to, this Agreement, except as otherwise excluded from the foregoing release of liability and expressly waives the provisions of Section 1542 of the California Civil Code, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

Developer's Initials: LD

As applicable to the Parties, the Developer waives the protections provided in the following provisions:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE DEVELOPER PARTIES OR RELEASING PARTIES DO NOT KNOW OR SUSPECT TO EXIST IN THE DEVELOPER PARTIES' FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY THE DEVELOPER PARTIES WOULD HAVE MATERIALLY AFFECTED THE DEVELOPER PARTIES SETTLEMENT WITH THE AUTHORITY PARTIES OR RELEASED PARTIES.**

**Developer's Initials:** RD

4. Term: Termination of Agreement. The term of this Agreement shall extend from the date of this Agreement and shall expire upon the execution of the later of (i) the City's termination of the Easement Agreement to be entered into between the City and the Developer concerning the Easement Permitted Uses or (ii) the Ground Lease between the Developer and the Housing Authority with respect to the Easement Area (currently contemplated for Phase 4 of the Project), which will include the easements contemplated by this Agreement (the "Term").

5. Compliance with Laws and the MDA. In carrying out the Easement Permitted Work, the Developer shall comply with, and shall cause all Contractors (as defined below) to comply with: (i) all applicable federal, state, and local laws, ordinances, rules, regulations, and orders, including all applicable building permit requirements and all applicable mitigation requirements; and (ii) all applicable requirements of the MDA.

6. Equal Opportunity. Residents Hiring.

6.1 Non-Discrimination. During the performance of the Easement Permitted Work, the Developer shall not discriminate on the basis of race, color, creed, religion, sex, sexual orientation, gender identity status, age, disability, marital status, condition of Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related complex, national origin or ancestry in the hiring, firing, promoting or demoting of any person engaged in the performance of the Easement Permitted Work.

6.2 Workforce MOU. The Developer shall comply with, and shall cause all Contractors (as defined below), to comply with all applicable requirements of the Workforce MOU, a copy of which is attached hereto as Exhibit C.

7. Prevailing Wages. To the extent required by Sections 1770 *et seq.* of the California Labor Code and regulations issued pursuant thereto, and by HUD, the Developer shall pay, or cause to be paid, state prevailing rates of wages and/or federal Davis-Bacon wages for the Easement Permitted Work. The Developer shall require its contractors and their subcontractors performing the Easement Permitted Work to maintain certified payrolls, and to submit copies of such certified payrolls to the Housing Authority, upon request, in order to verify compliance with these requirements.

8. Mechanics Liens. Stop Notices. and Notices of Completion.

8.1 If any claim of lien is filed against the Easement Area (or any portion thereof), or a stop notice is served on the Housing Authority, in connection with the Easement Permitted Work, then the Developer shall, within thirty (30) calendar days after such filing or

service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the Housing Authority a surety bond in sufficient form and amount, or provide the Housing Authority with other assurance reasonably satisfactory to the Housing Authority that the claim of lien or stop notice will be paid or discharged.

8.2 If the Developer fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section 8, then in addition to any other right or remedy, the Housing Authority may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at the Developer's expense. Alternately, the Housing Authority may require the Developer to promptly deposit with the Housing Authority the amount necessary to satisfy such lien or claim pending resolution thereof. The Housing Authority may use such deposit to satisfy any claim or lien that is adversely determined against the Developer.

8.3 The Developer shall record a valid notice of cessation or notice of completion upon cessation of the Easement Permitted Work for a continuous period of thirty (30) calendar days or more, and shall take all other reasonable steps to forestall the assertion of claims of lien against the Easement Area in connection with the Easement Permitted Work. The Developer authorizes the Housing Authority, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that the Housing Authority deems necessary or desirable to protect its interest in the Easement Area, including the posting and recording of a notice of non-responsibility pursuant to Section 8444 of the California Civil Code.

9. Hazardous Materials.

9.1 Definitions. The following definitions shall apply for the purposes of this Section 9:

9.1.1 "**Hazardous Materials**" shall mean:

(a) any "hazardous substance" as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act ("**CERCLA**") (42 U.S.C. Section 9601(14)) or Section 25281(d) or Section 25316 of the California Health and Safety Code at such time;

(b) any "hazardous waste," "infectious waste" or "hazardous material" as defined in Sections 25117, 25117.5 or 25501(j) of the California Health and Safety Code at such time; and

(c) any other waste, substance or material, classified, considered, designated or regulated in any way as "toxic" or "hazardous" under the Resource Conservation and Recovery Act ("**RCRA**") (42 U.S.C. Section 6901 et seq.), **CERCLA**, Water Act (33 U.S.C. Section 1521 et seq.), Safe Drinking Water Act (42 U.S.C. Section 3000(f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clear Air Act (42 U.S.C. Section 7401 et seq.), California Health and Safety Code (Section 25100 et seq., Section 3900 et seq.), or California Water Code (Section 1300 et seq.) at such time; and

(d) any additional wastes, substances or material that at such time are classified, considered or regulated as hazardous or toxic under any environmental or similar laws relating to the Easement Area.

9.1.2 "**Hazardous Materials Laws**" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Easement Area or any portion thereof.

9.2 Certain Covenants and Agreements.

9.2.1 The Developer shall not knowingly permit the Easement Area or any portion of the Easement Area to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence of Hazardous Materials in, on or under the Easement Area in violation of any applicable law; provided however that, for the purposes of this Section 9.2 only, Hazardous Materials shall not include: materials located in, on or under the Easement Area as of the Effective Date, materials in reasonable quantities for lawful use in the Easement Work; reasonable quantities of gardening materials, household products, office supply products or janitorial supply products of the type customarily used in the construction, maintenance, demolition, or associated the uses set forth in Section 1 of this Agreement, so long as used in a lawful manner; certain substances which may contain chemicals listed by the State of California pursuant to Sections 25249.8 *et seq.* of the Health and Safety Code, which substances are commonly used in reasonable quantities and in a lawful manner by a significant portion of the population living within the region of the Project. Notwithstanding the foregoing, the Housing Authority hereby acknowledges and agrees that in connection with the Easement Permitted Work, the Developer may be required to transport Hazardous Materials from the Easement Area and provided the foregoing is conducted in compliance with all applicable Hazardous Materials Laws, such activities shall not constitute a breach or Event of Default by the Developer.

9.2.2 The Developer shall not cause the Easement Area to be in violation of any Hazardous Materials Laws;

9.2.3 Promptly following the Developer obtaining actual knowledge of any of the following, the Developer shall notify the Housing Authority in writing of:

(1) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened in writing against the Developer in connection with the Easement Permitted Work pursuant to any applicable Hazardous Materials Laws;

(2) any and all claims made or threatened in writing by any third party against the Developer relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials on or from the Permitted Area (the matters set forth in the foregoing clause (1) and this clause (2) are hereinafter referred to as "**Hazardous Materials Claims**"); and

(3) the presence of any Hazardous Materials in, on or under the Easement Area in such quantities which require reporting to a government agency.

(4) any restrictions on the ownership, occupancy, transferability or use of the Easement Area under any Hazardous Materials Laws resulting from any occurrence or condition on any real property adjoining or in the vicinity of the Easement Area.

9.2.4 Without the Housing Authority's prior written consent, the Developer shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the Easement Area (other than in emergency situations or as required by governmental agencies having jurisdiction), nor enter into any settlement agreement, consent decree, or other compromise in respect of any Hazardous Materials Claims.

9.2.5 The Developer shall deliver to the Housing Authority copies of all environment reports and studies related to Hazardous Materials with respect to the Easement Area obtained by the Developer during the Term, provided that the Developer makes no representation or warranty with respect to such reports and studies, and the Developer shall have no responsibility or liability for any lack of accuracy or completeness of any such reports and studies.

9.3 Developer's Indemnity. In addition to the indemnification obligations set forth in Section 12, except to the extent caused, contributed to or exacerbated by any Authority Party, the Developer hereby agrees to indemnify, defend (with counsel reasonably acceptable to the Housing Authority) and hold harmless the Authority Parties from and against any and all Losses (as defined below) arising from the failure of any of the Developer Parties to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal, of such Hazardous Materials into, on, under or from the Easement Area at any time during the Term. In no event shall this Agreement give rise to any obligation of the Developer Parties to remediate any Hazardous Materials existing on the Easement Area prior to the date of this Agreement (collectively, the "Existing Hazardous Materials") or any Third Party Contamination.

9.4 Housing Authority Indemnity for Existing Hazardous Materials. The Housing Authority agrees to indemnify, protect, hold harmless and defend the Developer, its partners, shareholders, officers, directors, employees, insurers, sureties, attorneys, agents and contractors, from and against any and all third-party claims, demands, losses, damages, liabilities, fines, penalties, charges, causes of action, administrative and judicial proceedings and orders, settlements, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorneys' fees, expert witness fees and costs), arising out of the presence of any Existing Hazardous Materials or Third Party Contamination, regardless of whether or not such Hazardous Materials or Third Party Contamination are disclosed in the Hazardous Material Reports described in the MDA.

9.5 Prohibition on HUD Assets. Notwithstanding Section 9.4, in no event shall the Housing Authority's obligation in this Section 9 require the Housing Authority to violate any applicable law, rule, regulation or requirement of HUD regarding the use of the assets of any public housing project or any funds received under the Annual Contributions Contract, as amended from time to time, between the Housing Authority and HUD (the "ACC"). Public housing operating or capital subsidies, or other receipts generated by any public housing project, or certain other restricted funds or assets governed by HUD, may not be used to pay or satisfy any financial obligation of the Housing Authority (if any) under Section 9.4, and, there shall be no legal right of recourse under this Agreement against:

9.5.1 any public housing project of the Housing Authority (as the term "project" is defined in the ACC);

9.5.2 any operating receipts of the Housing Authority (as the term "operating receipts" is defined in the ACC); or

9.5.3 any public housing operating reserve of the Housing Authority reflected in the Lessor's annual operating budget and required under the ACC.

9.5.4 In the event of any conflict between the terms of this Section 9.4 and any other provision of this Agreement, the terms of this Section 9.4 shall control.

9.6 Limitation on Housing Authority Indemnity. Notwithstanding the foregoing, the Developer, on behalf of itself and any Developer Party agrees and acknowledges that in no event shall the Housing Authority's indemnity obligation set forth above require the Housing Authority to reimburse the Developer for costs incurred by, or on behalf of, such Party, in connection with: (i) remediation or abatement of Hazardous Materials contemplated by the applicable construction plans; (ii) remediation or abatement of Hazardous Materials that is funded by any City Subsidy, other funds received under a City Loan Agreement, or otherwise funded by the City; or (iii) remediation or abatement of Hazardous Materials that is otherwise financed by a funding source set forth in, or contemplated by, a Financing Plan. As between the Housing Authority and the Developer, the performance of any work related to, or necessary for, the abatement or remediation of any Hazardous Materials, including, but not limited to any Existing Hazardous Materials, shall be performed by the Developer (to the extent applicable such abatement or remediation is contemplated under the Easement Permitted Work); provided that sufficient City Subsidy or other resources are made available for such purpose.

9.7 Survival. This Section 9 shall survive the expiration or earlier termination of this Agreement.

10. Required Insurance Coverage. Prior to possession of the Easement Area, the Developer shall provide to the Housing Authority evidence of the following and thereafter the Developer shall maintain and keep in force, or in the alternative, shall require its Contractor (as defined below) to carry, insurance of the following types, if applicable:

10.1.1 Workers' Compensation insurance to the extent required by law, including Employer's Liability coverage, with limits of not less than One Million Dollars (\$1,000,000) each accident.



10.1.2 Commercial General Liability insurance with limits of not less than Five Million Dollars (\$5,000,000) per occurrence and in the aggregate for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations. This insurance may be provided with a combination of primary and excess insurance.

10.1.3 Commercial Automobile Liability insurance with limits of not less than One Million Dollars (\$1,000,000) each occurrence with combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable.

10.1.4 Contractors Pollution Liability insurance with limits of not less than Three Million Dollars (\$3,000,000) aggregate per policy period of one (1) year. If the Easement Permitted Work involves lead-based paint or asbestos identification/remediation, then such insurance shall not contain lead-based paint or asbestos exclusions. Such insurance shall be maintained for the duration of the Easement Permitted Work.

10.1.5 The required insurance shall be provided under an occurrence form, with the exception of the Contractors Pollution Liability insurance, which may be provided on a claims-made basis, and the Developer (or its Contractor) shall maintain such insurance until this Agreement is terminated, except as otherwise specified above.

10.1.6 Commercial General Liability, Commercial Automobile Liability, and Contractors Pollution Liability insurance policies shall be endorsed to name as an additional insured the Authority Parties.

10.1.7 All policies shall be endorsed to provide thirty (30) calendar days prior written notice of cancellation, reduction in coverage, or intent not to renew to the address established for notices to the Housing Authority, provided such notification is permitted by the carrier, and, in the event such notification is not permitted, the Developer shall provide written notice to the Housing Authority within five (5) calendar days following the Developer's receipt of notification from the insurance carrier of notice of cancellation, reduction in coverage or intent not to renew.

10.1.8 Each policy shall be underwritten and issued by companies authorized to do business in California, with Best's Rating of at least A:VII or better. The Developer shall provide the Housing Authority with certificates of insurance evidencing the limits and coverages required by this Section 10.

10.1.9 All proofs of insurance shall be delivered to the following:

Housing Authority of the City and County of San Francisco  
Housing Development and Modernization Department  
1815 Egbert Street, Suite 300  
San Francisco, California 94124  
Attn: Jasmine Kuo, Project Manager  
Phone: (415) 715-5950  
Email: kuo@sfha.org

10.1.10 For purposes of this Section 10, "**Contractor**" means any general contractor under a direct contract with the Developer for performing any portion of the Easement Permitted Work.

10.1.11 This Section 10 shall survive the expiration or earlier termination of this Agreement.

11. **Grants of Other Rights.** Nothing in this Agreement shall limit the right of Housing Authority to grant other easements to, from, over and across the portion of the Easement Area to others, provided that any such grant shall not interfere with or restrict access to or use of the Easement Area for the purposes contemplated by this Agreement. Developer may, subject to the terms and conditions of the MDA and DA, grant an easement or license in the Easement Area to the City and County of San Francisco to permit the City to perform any of the activities in the Easement Area that are permitted under Section 1.

12. **Maintenance, Repair and Operation.** Developer shall, at its sole expense, maintain and operate the road, equipment, fixtures and other improvements installed by Developer in the Easement Area pursuant to this Agreement in a reasonably safe and good condition and repair. For the avoidance of doubt, Developer shall have no obligation to maintain, repair, replace or manage any improvements located on the Housing Authority Parcel outside of the Easement Area, except as provided in the DA, the MDA or as may be expressly agreed to by the Parties.

13. **Indemnification.** Each party (the "**Indemnitor**") shall indemnify, hold harmless and defend the other (the "**Indemnitee**"), its members, partners, shareholders, affiliates officers, directors, employees, agents, tenants and licensees (each, an "**Indemnified Party**"), against any and all claims, damages (other than consequential damages or punitive damages), losses, costs, charges, expenses, causes of actions (whether in tort or contract, law or equity, or otherwise), judgments, assessments and liabilities (including reasonable attorneys', experts' and arbitrators' fees and disbursements and court costs as and when incurred) arising out of or related to bodily injury, death or property damage (collectively, "**Indemnified Losses and Claims**") that may be asserted against or incurred by any Indemnified Party arising out, or as a result, of (i) any work done, or supplies or materials provided in respect thereof, by or at the direction of the Indemnitor, or its affiliates, contractors, agents or employees (collectively, the "**Indemnitor's Parties**"), on the property of the Indemnitee or in the Easement Area, or (ii) any negligent acts or omissions or willful misconduct of the Indemnitor's Parties or any of them in connection with the use or occupancy of the Easement Area or any part thereof, except, as to the Indemnified Parties, to the extent such Indemnified Loss and Claim is due to the negligent acts or omissions, willful misconduct or noncompliance with applicable law of any Indemnified Party.

14. **Remedies.** Upon the occurrence and during the continuance of an Event of Default (defined below), the non-Defaulting Party (defined below) may take whatever action at law or in equity as may appear reasonably necessary to enforce this Agreement, including: (i) by terminating this Agreement by delivery of notice thereof to the Defaulting Party (defined below), (ii) by commencing an action against the Defaulting Party for damages, or (iii) by commencing an action against the Defaulting Party for specific performance or injunctive relief. The

remedies available to the non-Defaulting Party shall be cumulative, and no remedy expressly provided for in this Section 14 shall be deemed to exclude any other remedy available at law or in equity.

15. **Notice of Default and Opportunity to Cure.** A Party shall be deemed to be a "Defaulting Party" and an "Event of Default" shall have been deemed to have occurred if such Party breaches this Agreement and such Party fails to cure such breach within (i) fifteen (15) Business Days after receipt of notice from the non-Defaulting Party of such breach, if the breach is monetary in nature and (ii) thirty (30) calendar days after receipt of notice from the non-Defaulting Party of such breach, if the breach is not monetary in nature. However, if any such non-monetary breach is susceptible of cure but not within the above-specified cure period, the period of time for cure shall be extended as is reasonably necessary to permit cure, but in no event to a date later than ninety (90) calendar days after the breaching Party is notified of the breach, and only so long as the breaching Party is diligently pursuing the cure to completion at all times during that period. Notwithstanding the foregoing, prior to the Housing Authority's terminating this Agreement due to an Event of Default by Developer, the Housing Authority shall notify the City of the Event of Default and permit the City to cure such Event of Default within 30 calendar days of such notice.

16. **HUD Requirements.** The Parties acknowledge and agree that this Agreement is subject to the review and approval of the United States Department of Housing and Urban Development ("HUD").

16.1 **Conflict Clause.** To the extent that any of the foregoing is in conflict with the requirements of the United States Housing Act of 1937 (1937 Act), as amended, federal regulations, and the Annual Contributions Contract ("ACC"), as amended, and other HUD requirements, the HUD requirements shall control and govern in such instances of conflict.

16.2 **Indemnification Clause.** It is acknowledged and agreed that the Housing Authority (Owner) has no authority to provide guarantees, indemnifications, rights of set off, or other pledges involving the assets of any Public Housing Project (as the term 'Project' is defined in the ACC between Housing Authority and HUD (the "Public Housing Project") or other assets of the Housing Authority, including and Housing Choice Voucher ("HCV") related assets of the Housing Authority. Accordingly, except as approved by HUD in writing, it is acknowledged that there is no legal right of recourse against: (1) any Public Housing Project of Housing Authority; (2) any operating receipts (as the term "operating receipts" is defined in ACC), HCV receipts or Capital or Operating Funds of Housing Authority; (3) any public housing operating reserve of Housing Authority reflected Housing Authority's annual operating budget and required under the ACC, or (4) any other asset of the Housing Authority related to the 1937 Act. Should any assets of the Housing Authority be identified at a later date as meeting the criteria set forth above, any guarantees, indemnifications, right of set off, or other pledges involving those assets will be deemed null, void, and unenforceable.

16.3 **Termination Clause.** If HUD approves the termination of the ACC at the public housing project and/or release of the DOT/DORC (e.g., through a disposition under Section 18 of the 1937 Act, the Rental Assistance Demonstration ("RAD") program or any other removal action of the SAC), the Housing Authority may terminate this agreement. In addition, if

HUD determines that the agreement does not comply with federal public housing requirements, the Housing Authority may terminate this Easement.

16.4 HUD is not a Guarantor. HUD is not a Guarantor of the Housing Authority and is not liable for the actions of the Housing Authority under this Easement.

16.5 No Assignment Rights or Rights of Mortgage or Security Interests. The agreement does not include any assignment rights or rights of mortgage or security interests unless HUD approval under section 30 of the 1937 Act has been obtained.

17. Binding Effect. The provisions of this Agreement shall be binding upon the successors, grantees and assigns of the parties hereto, shall be deemed to run with the land, and shall bind and benefit, as the case may be, all persons and entities hereafter acquiring or owning any interest in the burdened property.

18. Notices. All notices, demands or other communications required or permitted to be given hereunder shall be in writing, signed by the Party giving such notice, demand or other communication, and shall be delivered by one of the methods of delivery hereinafter provided. All such notices, demands, and communications shall be deemed to have been properly given when either delivered personally, delivered to a reputable overnight delivery service providing a receipt, or at such other address as may have theretofore been designed in writing. The effective date of any notice, demand or other communication given as aforesaid shall be the date of actual receipt or, if such receipt or confirmation is refused, shall be the date delivery is first attempted. For purposes hereof, the addresses are as follows:

If to Housing Authority:	Housing Authority of the City and County of San Francisco 1815 Egbert Street, Suite 300 San Francisco, California 94124 Attn: Barbara T. Smith, Acting Executive Director
with a copy to:	Goldfarb & Lipman LLP 1300 Clay Street, 11 <sup>th</sup> Floor City Center Plaza Oakland, California 94612 Attn: Dianne Jackson McLean, Esq.
If to Developer:	Sunnydale Infrastructure., LLC c/o Mercy Housing California 1256 Market Street San Francisco, CA 94102 Attn: Ramie Dare
with copies to:	c/o The Related Companies of California, LLC 44 Montgomery Street Suite 1300

San Francisco CA, 94104  
Attn: Ann Silverberg

And

Farella Braun + Martel LLP  
235 Montgomery Street  
San Francisco, CA 94104  
Attn: CJ Higley

or to such other address(es) or such other or additional person(s) as any party shall designate to the other for such purpose in the manner hereinabove set forth. Any such notices, demands or other communications given by Housing Authority or Developer may be given on behalf of such party by its respective counsel, in accordance with the terms of this Section 18.

19. **Recording.** This Agreement shall be recorded in the Official Records of the City and County of San Francisco, California (the "**Official Records**").

20. **Miscellaneous.**

(a) **Additional Actions and Documents.** The Parties shall take such additional actions and to execute such additional documents as may be necessary or proper to carry out the transactions contemplated by this Agreement and effect the purposes of this Agreement.

(b) **Amendments.** Except as otherwise provided herein, this Agreement may be amended at any time only by the recordation of a written instrument among the Official Records signed by the Parties or their respective successors or assignees.

(c) **Relationship of Parties.** Nothing in this Agreement shall be deemed or construed to create or establish any relationship of partnership, joint venture, agency, or any similar relationship between the Parties.

(d) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(e) **Entire Agreement.** The terms of this Agreement are intended by the Parties as the final expression of their agreement with respect to such terms as are included in this Agreement and may not be contradicted by evidence of any prior or contemporaneous agreement.

(f) **Captions and Gender.** The captions contained in this Agreement are for convenience only, are not a part of this Agreement, and are not intended in any way to limit or enlarge the terms and provisions of this Agreement. Whenever the context so requires, the use of any gender shall include all genders, and the singular shall include the plural.

(g) **Enforceability.** If any provision of this Agreement shall be invalid, illegal, or unenforceable, it shall not affect or impair the validity, legality, or enforceability of any other provision of this Agreement, and there shall be substituted for the affected provision a valid and enforceable provision as similar as possible to the affected provision.

(h) **Incorporation of Recitals and Exhibits.** The recitals set forth above are made a part of this Agreement. Each writing or plat referred to herein as being attached hereto as an exhibit or otherwise designated herein as an exhibit hereto is hereby made a part hereof.

(i) **Estoppels.** Each Party shall execute and deliver to the other and any person(s) designated by the requesting Party within thirty (30) days following demand an estoppel certificate confirming that this Agreement is unmodified and remains in full force and effect and setting forth whether or not there are any defaults or payment obligations hereunder which remain uncured or unpaid and, if so, specifying same. The estoppel certificate shall contain such other information as the requesting party may reasonably request. The failure of an Party to deliver an estoppel certificate within thirty (30) days after delivery of a request therefor shall be a conclusive admission that, as of the date of the request of such statement: (a) this Agreement is unmodified and is in full force and effect and (b) there are no uncured defaults of any party hereunder.

(j) **No Third Party Beneficiaries.** Neither the declaration and grant of any easement, nor the use and enjoyment pursuant to the provisions of this Agreement, shall be deemed in any way to create or confer in or on any other person, any member of the public, or any public authority any right to use or enjoy the same, or any estate therein, other than the Parties and their respective Permittees.

(k) **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which, when assembled, shall constitute but one and the same original document. This Agreement shall be binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the Parties reflected on this Agreement as the signatories.

(l) **Further Assurances.** Housing Authority and Developer shall each execute, acknowledge and deliver in recordable form and upon demand of the other, any other instruments or agreements reasonably required in order to carry out the provisions of this Agreement or to effectuate the intent and purposes hereof, provided that no such instrument or agreement shall increase the obligations or diminish the rights (other than in a de minimis respect) of either party hereto beyond those set forth herein.

(m) **Merger.** The doctrine of merger shall not operate to extinguish any easement and the rights of access and use granted under this Agreement if the easement and the servient property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the easement and the rights granted under this Agreement then, Housing Authority and Developer shall execute, acknowledge and record in the Official Records a replacement easement containing the same provisions.

(n) **Attorneys' Fees.** In the event any action is brought by Housing Authority or Developer against the other to enforce this Agreement, obligations hereunder or any indemnity rights herein contained, or to seek a clarification of the terms herein contained, or for the breach of any of the terms, covenants or conditions contained in this Agreement, including any action or proceeding in a bankruptcy case, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorneys' fees and costs, which shall include fees and costs of any appeal, all as fixed by the court.

[Signature pages follow.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

HOUSING AUTHORITY:

THE HOUSING AUTHORITY OF THE CITY AND COUNTY OF SAN FRANCISCO

By: Barbara T. Smith  
Name: Barbara T. Smith  
Title: Acting Executive Director

CERTIFICATE OF ACKNOWLEDGEMENT

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.

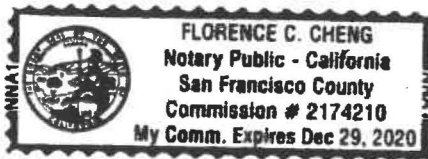
State of California  
County of San Francisco

On August 1, 2019 before me, Florence C Cheng,  
Notary Public, personally appeared Barbara T Smith,  
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]  
Signature of Notary Public



(Notary Seal)



DEVELOPER:

SUNNYDALE INFRASTRUCTURE LLC,  
a California limited liability company

By: Ramie Dars  
Name: RAMIE DARS  
Title: V.P.

CERTIFICATE OF ACKNOWLEDGEMENT

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 AUGUST 1, 2019 before me, CLAUDIA FLORES  
Notary Public, personally appeared RAMIE DARS  
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.

Claudia Flores  
Signature of Notary Public

(Notary Seal)

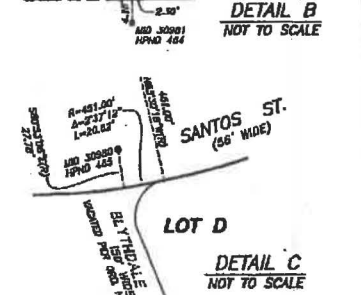
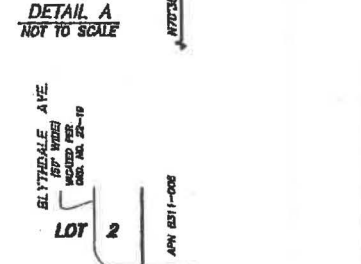
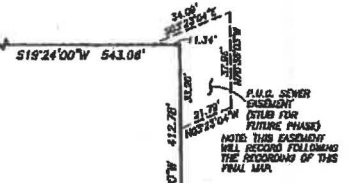
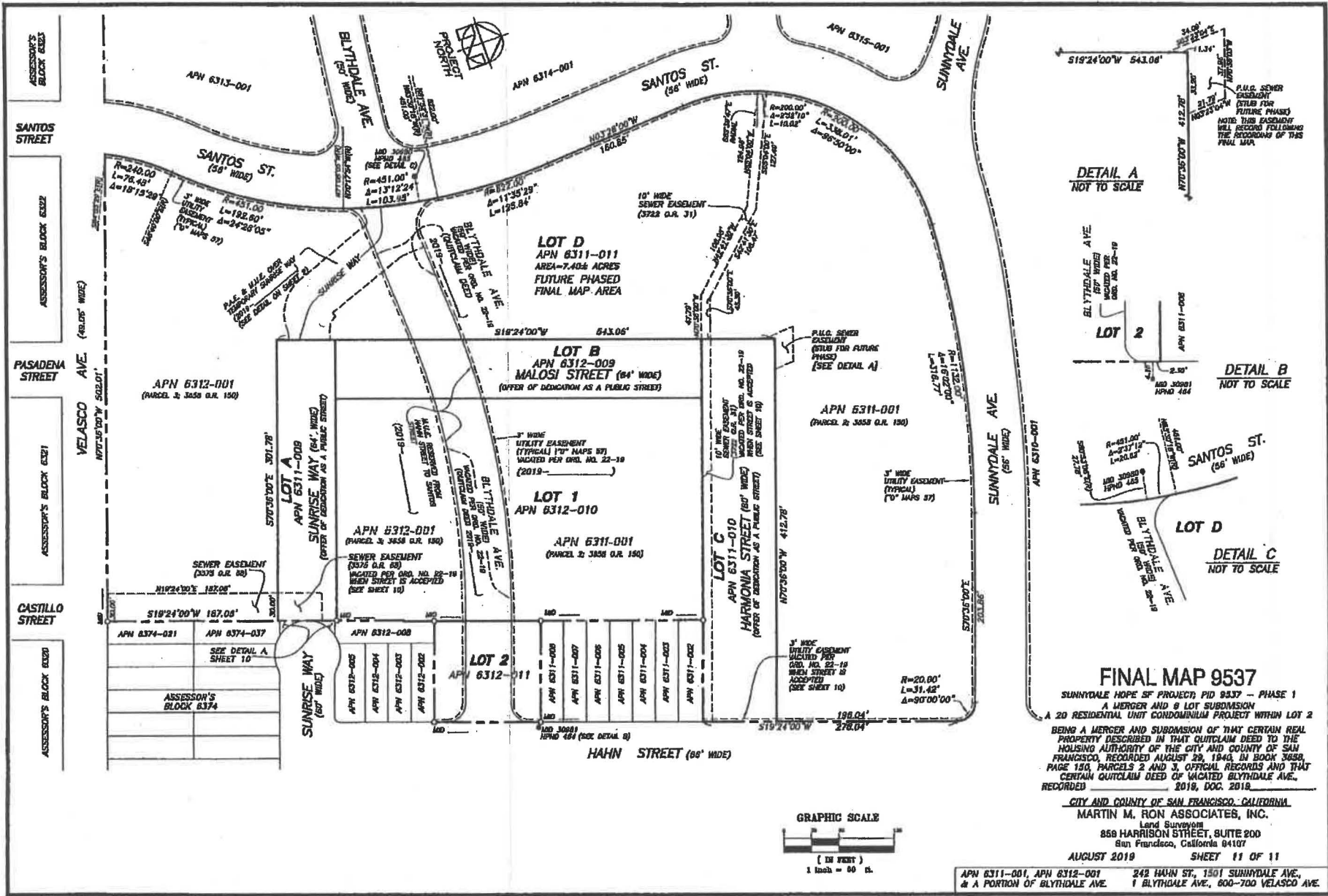


**EXHIBIT A**

HOUSING AUTHORITY PARCEL AS SHOWN ON FINAL MAP

(See attached)

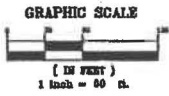
Exhibit A



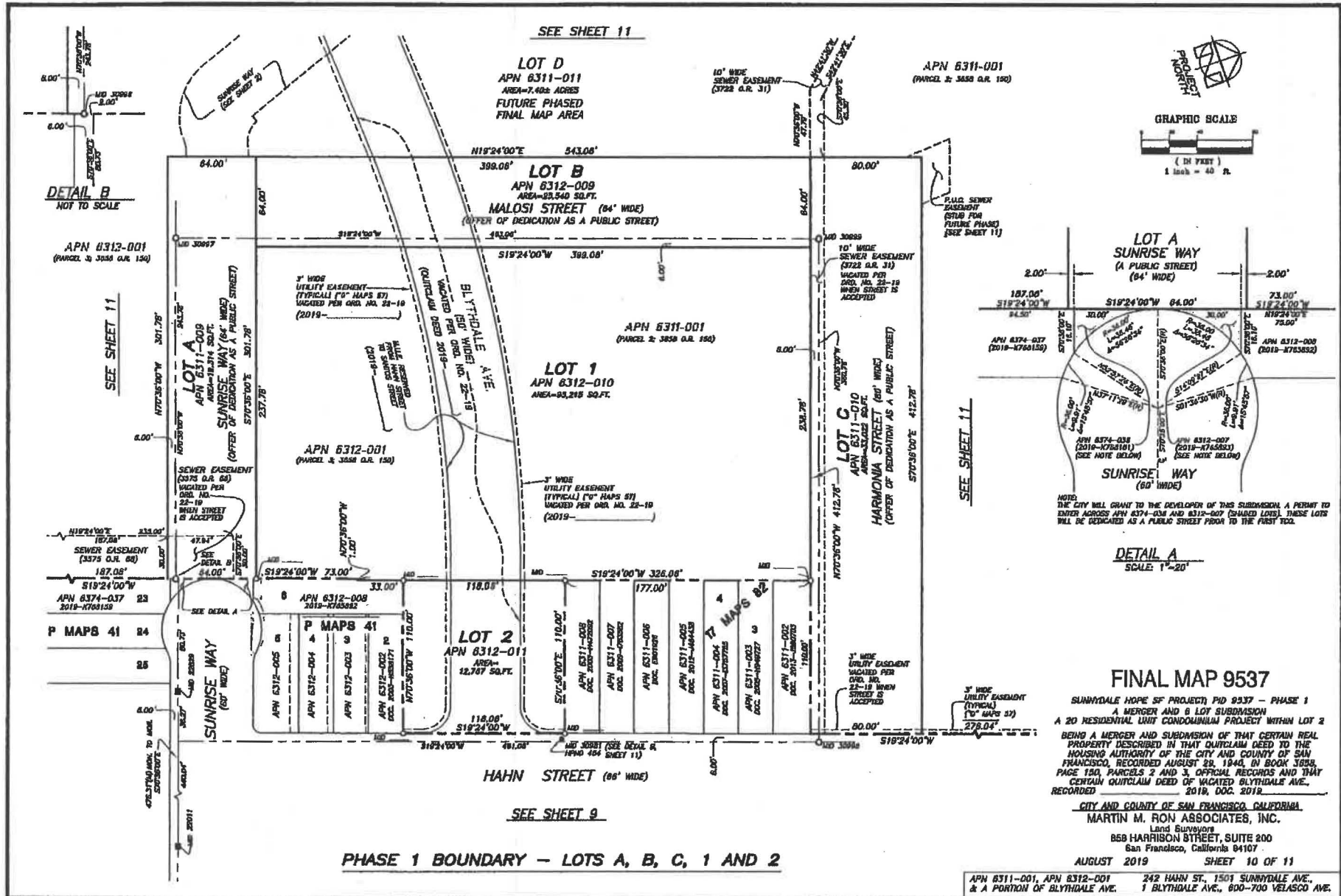
**FINAL MAP 9537**

SUNNYDALE HOPE SF PROJECT, PID 9537 - PHASE 1  
 A MERGER AND 9 LOT SUBDIVISION  
 A 20 RESIDENTIAL UNIT CONDOMINIUM PROJECT WITHIN LOT 2  
 BEING A MERGER AND SUBDIVISION OF THAT CERTAIN REAL  
 PROPERTY DESCRIBED IN THAT QUITCLAIM DEED TO THE  
 HOUSING AUTHORITY OF THE CITY AND COUNTY OF SAN  
 FRANCISCO, RECORDED AUGUST 29, 1946, IN BOOK 3689,  
 PAGE 150, PARCELS 2 AND 3, OFFICIAL RECORDS AND THAT  
 CERTAIN QUITCLAIM DEED OF VACATED BLYTHDALE AVE.,  
 RECORDED 2018, DOC. 2018.

CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA  
 MARTIN M. RON ASSOCIATES, INC.  
 Land Surveyor  
 859 HARRISON STREET, SUITE 200  
 San Francisco, California 94107  
 AUGUST 2019 SHEET 11 OF 11



APN 6311-001, APN 6312-001 348 HAHN ST., 1501 SUNNYDALE AVE.  
 & A PORTION OF BLYTHDALE AVE. 1 BLYTHDALE AVE., 600-700 VELASCO AVE.



**EXHIBIT B**

**DEPICTION OF EASEMENT AREA**

(See attached)

LEGAL DESCRIPTION

PUBLIC ACCESS EASEMENT & MUNICIPAL UTILITY EASEMENT  
OVER TEMPORARY SUNRISE WAY

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING A PORTION OF LOT D, AS SAID LOT IS SHOWN ON FINAL MAP 9537, TO BE RECORDED, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY LINE OF LOT A, AS SAID LOT IS SHOWN ON SAID FINAL MAP 9537, DISTANT THEREON N19°24'00"E 13.52 FEET FROM THE SOUTHERLY LINE OF SAID LOT A; THENCE ALONG SAID WESTERLY LINE OF LOT A N19°24'00"E 44.98 FEET; THENCE N70°36'00"W 11.77 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 17.50 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 50°37'57", AN ARC LENGTH OF 15.46 FEET; THENCE S70°01'56"W 5.00 FEET; THENCE N19°58'04"W 94.64 FEET; THENCE N11°41'35"W 4.03 FEET; THENCE N03°25'06"W 24.66 FEET; THENCE S87°00'00"W 14.13 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 29.00 FEET; THENCE WESTERLY AND NORTHERLY ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 101°07'29", AN ARC LENGTH OF 51.18 FEET TO THE BEGINNING OF A NON-TANGENT CURVE WHOSE RADIUS POINT BEARS N83°30'18"W 451.00 FEET, SAID CURVE BEING ON THE EASTERLY LINE OF SANTOS STREET (56.00 FEET WIDE), AS SAID STREET IS SHOWN ON SAID FINAL MAP 9537; THENCE SOUTHERLY ALONG SAID CURVE TO THE RIGHT, SAID CURVE BEING ON SAID EASTERLY LINE OF SANTOS STREET, THROUGH A CENTRAL ANGLE OF 10°49'37", AN ARC LENGTH OF 85.22 FEET; THENCE N80°46'00"E 13.05 FEET TO THE BEGINNING OF A NON-TANGENT CURVE WHOSE RADIUS POINT BEARS S06°20'24"E 6.08 FEET; THENCE EASTERLY AND SOUTHERLY ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 76°22'20", AN ARC LENGTH OF 8.11 FEET; THENCE S19°58'04"E 91.25 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 48.00 FEET; THENCE SOUTHERLY AND EASTERLY ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 72°06'54", AN ARC LENGTH OF 60.41 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 17.00 FEET; THENCE EASTERLY ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 21°27'36", AN ARC LENGTH OF 6.37 FEET; THENCE S70°36'00"E 4.72 FEET TO THE POINT OF BEGINNING.

BEING 9,813 SQUARE FEET, MORE OR LESS

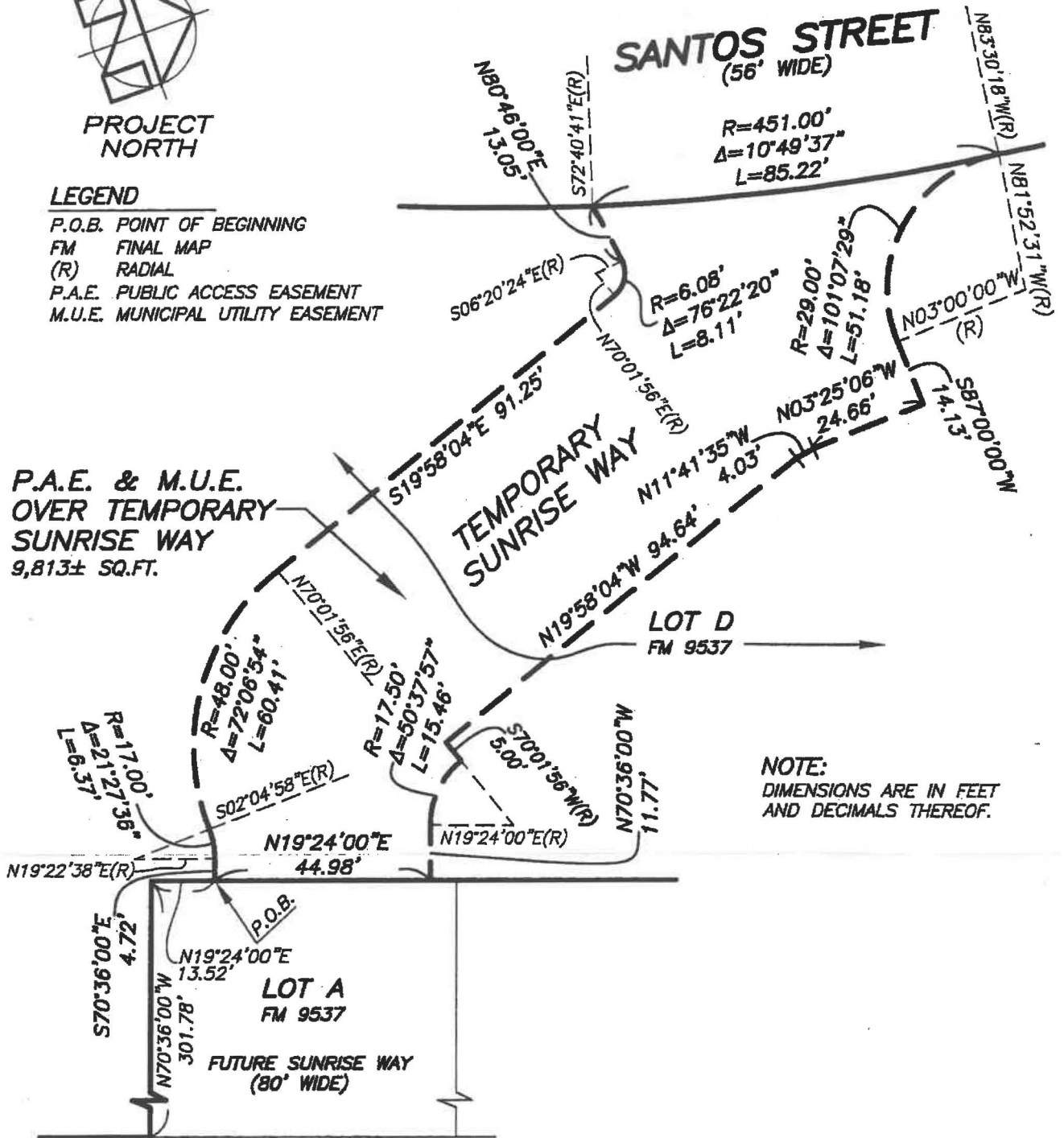


PROJECT  
NORTH

**LEGEND**

- P.O.B. POINT OF BEGINNING
- FM FINAL MAP
- (R) RADIAL
- P.A.E. PUBLIC ACCESS EASEMENT
- M.U.E. MUNICIPAL UTILITY EASEMENT

P.A.E. & M.U.E.  
OVER TEMPORARY  
SUNRISE WAY  
9,813± SQ.FT.



**NOTE:**  
DIMENSIONS ARE IN FEET  
AND DECIMALS THEREOF.

**EASEMENT PLAT**

SAN FRANCISCO,  
CALIFORNIA

BY JP CHKD. BR DATE 7-31-19 SCALE 1"=30' SHEET 1 OF 1 JOB NO. S-8996

MARTIN M. RON ASSOCIATES, INC.  
LAND SURVEYORS

859 HARRISON STREET  
SAN FRANCISCO, CA. 94107  
(415) 543-4500  
S-8996-FM9537 ESMT PLATS.DWG

**EXHIBIT C**

**WORKFORCE AGREEMENT MOU**

(See attached)



**INTERAGENCY MEMORANDUM OF UNDERSTANDING  
AMONG  
THE HOUSING AUTHORITY OF THE CITY AND COUNTY OF SAN FRANCISCO,  
THE MAYOR'S OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT,  
THE CONTRACT MONITORING DIVISION  
AND  
THE OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT  
FOR THE  
SUNNYDALE-VELASCO PROJECT  
(Workforce Compliance, Development and Training)**

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**INTERAGENCY MEMORANDUM OF UNDERSTANDING  
(SUNNYDALE/VELASCO REVITALIZATION PROJECT)**

This INTERAGENCY MEMORANDUM OF UNDERSTANDING (SUNNYDALE/VELASCO REVITALIZATION PROJECT) (as amended from time to time in accordance with the terms hereof, this "MOU"), is entered into as of March 3, 2017 (the "Effective Date"), is by and among the Housing Authority of the City and County of San Francisco, a public body, corporate and politic ("SFHA" or "Authority"), the City and County of San Francisco, a municipal corporation (the "City"), represented by and through the Mayor's Office of Housing and Community Development ("MOHCD"), its Office of Economic and Workforce Development ("OEWD") and its Contract Monitoring Division ("CMD"). The SFHA, MOHCD, OEWD and CMD are sometimes referred to herein, individually, as a "Party" and, collectively, as the "Parties".

**RECITALS**

A. SFHA, MOHCD and the Developer (as defined below) are parties to that certain Master Development Agreement (the "MDA") which sets forth the intentions of the parties to construct and develop on the former public housing projects of Sunnydale Public Housing and Velasco Public Housing Projects (the "Sites"), and major revitalization efforts which will consist of (the "Project"): (i) the demolition of the existing buildings, including, without limitation, ninety-four (94) two-story residential buildings comprised of seven hundred seventy-five (775) public housing dwelling units, on the Sites; (ii) the construction of up to one thousand seven hundred seventy (1,770) new dwelling units, including one-for-one replacement of the existing public housing units, affordable rental units, and market-rate and affordable for-sale units; (iii) the construction of up to sixteen thousand two hundred (16,200) square feet of neighborhood-servicing retail space; (iv) the construction of up to forty-six thousand three hundred (46,300) square feet of community service, recreational and educational facilities and space; (v) the development of approximately nine and one-half (9.50) acres of new parks and open spaces, including a community garden, a farmer's market pavilion and secure outdoor courtyards within residential buildings; and (vi) the development of approximately twelve and two-tenths (12.2) acres of a new and reconfigured street network, all of which is intended to be constructed to Leadership in Energy Efficient Design ("LEED") Neighborhood Development standards on the property.

B. Sunnydale Development Co., LLC, a California limited liability company (the "Developer"), whose members include Mercy Housing California, a California nonprofit public benefit corporation, and The Related Companies of California, LLC, a California limited liability company and SFHA entered in that certain Second Amended and Restated Exclusive Negotiating Rights Agreement dated October 22, 2015, as amended, providing, among other things, the Developer with the exclusive rights to negotiate with the SFHA for the redevelopment of the Sunnyvale and Velasco Public Housing Development.

C. Under the MDA, the Developer is responsible for the master development of the Sites, by undertaking certain work necessary to permit construction of new housing developments and other improvements within the Sites, all as more particularly described

therein. Such work includes creating separate legal parcels, grading and soil compacting such parcels, and constructing necessary supporting infrastructure, including parks and open space. The Developer intends to assign its rights under the MDA to the Affordable Housing Development Owners, for the construction of the affordable housing units on the Affordable Housing Development Sites, to Affiliates for the construction of Public Infrastructure and Community Improvements, and to the Market Rate Housing Development Owners for the construction of the market rate housing units on the Market Rate Housing Development Sites.

D. The proposed revitalization and transformation of the Sites is part of the "HOPE SF" initiative sponsored by the City, through MOHCD, and the Authority. HOPE SF is the nation's first large scale public housing transformation collaborative-aimed at disrupting intergenerational poverty, reducing social isolation, and creating vibrant mixed-income-communities without mass displacement of current residents. The City, through its various departments, will oversee the entitlement process and will provide construction, contracting and other regulatory oversight of the Project. On or about the date of this Agreement, the City, the Developer and the Authority are entering into a Development Agreement pursuant to the authority of authority of Section 65864 et seq. of the California Government Code and Chapter 56 of the Administrative Code.

E. Under Resolution No. 4967 adopted by the SFHA Board of Commissioners on February 22, 2001 ("**Resolution 4967**"), SFHA established, among other matters, a goal that contractors, in conjunction with their subcontractors, hire SFHA residents such that SFHA residents constitute a minimum of twenty five percent (25%) of the total workforce (calculated by person-hours) on all contracts covered by Resolution 4967.

F. The Developer is required to comply with certain City policies, including the City's Chapter 83; First Source Hiring Program ("**FSHP**") that sets forth a goal that fifty percent (50%) of new hire construction and entry-level permanent workforce positions through OEWD workforce system with priority given to qualified Sunnydale/Velasco public housing residents ("**SV Residents**"). As set forth herein, the Developer, its contractors and subcontractors, and its applicable commercial lessees will be required to use good faith efforts to reach the fifty percent (50%) new hire goals of its construction and entry-level permanent workforce in the following order of priority: (1) by qualified SV Residents; (2) District 10 residents of the 94134, 94124 and 94107 zip code areas; and (3) then San Francisco Residents.

G. The primary purpose of this MOU is to clarify and define the roles, responsibilities, goals and procedures of each of the Parties in relation to the "community and public benefit" program of the City for the development commonly known as Sunnydale-Velasco. Such "community benefit" program is designed to institute the mechanisms by which the Developer shall demonstrate the requisite good faith efforts necessary to achieve the specified workforce compliance, development and training goals for the Project.

H. The specific programs to be enforced and/or executed are:

1. MOHCD's Small Business Enterprise Program ("**SBE**");

2. First Source Hiring Program/San Francisco Municipal Code Chapter 83 ("First Source");

3. Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. §§ 1701u, et seq.), and the implementing regulations at 24 CFR Part 135, et seq. ("Section 3 Requirements"); and

4. Housing Authority of the City and County of San Francisco Resolution Number 4967 ("SFHA Reso. No. 4967").

These programs are amended through this MOU to incorporate specific goals of SFHA and define how the Developer, the Affiliates, the Affordable Housing Development Owners and their contractors and/or subcontractors may demonstrate good faith efforts to achieve the goals of such programs.

I. Capitalized terms used in this Agreement which are not defined, shall have the same meaning as such terms are given in the MDA.

#### **SECTION I** **AGREEMENTS AMONG PARTICIPATING PARTIES.**

The Parties each respectively agree as follows:

**A. Developer Compliance.**

The workforce programs described in this MOU are all of the Parties' workforce program applicable to the Project. Accordingly, compliance with all requirements contained in this MOU shall relieve the Developer, Affiliates, the Affordable Housing Development Owners, the Market Rate Housing Development Owners or any assignee of the foregoing of all the workforce requirements, programs and/or policies of each of the Parties. The Parties acknowledge and agree that the workforce hiring priorities as provided in this MOU satisfy the FSHP, Resolution 4967 and if applicable, the Section 3 Requirements.

**B. Construction Workforce.**

1. Developer, Affiliates and Affordable Housing Development Owners.

- a) The rules of MOHCD's SBE Program governs construction small business procurement.
- b) CMD will monitor and enforce the SBE Program.
- c) OEWD and its CityBuild Program ("City Build") will monitor and enforce the construction workforce hiring for the Project.

- d) All Parties shall have access to the electronic small business/local hiring/certified payroll system (e.g., Elations/LBEUTS)
- e) OEWD/CityBuild, in cooperation with SFHA, will serve as the lead and initial point of contact between the Sunnydale community and construction (sub)contractors for construction worker placement with a residency modification to accommodate provisions of the Section 3 Requirements and Resolution 4967. These modifications are detailed in Section II of this MOU.
- f) Contractor and/or subcontractors will also submit to Parties copies of all correspondences to/from CMD, MOHCD, OEWD/CityBuild and/or trade unions requesting resident workers and will attach these documents to their Certified Payroll Reports.

2. Market Rate Housing Development Owners .

- a) OEWD/CityBuild, in cooperation with SFHA will serve as the lead and initial point of contact between the Sunnydale community and construction (sub)contractors for construction worker placement.
- b) Contractor and/or subcontractors will also submit to Parties copies of all correspondences to/from CMD, MOHCD, OEWD/CityBuild and/or trade unions requesting resident workers and will attach these documents to their Certified Payroll Reports.

C. Professional Services.

1. Developer, Affiliates and Affordable Housing Development Owners.

- a) The rules and procedures of the OEWD/ FSHP, govern professional services (sub) consultant placement, with a residency modification to accommodate provisions of the Section 3 Requirements and Resolution 4967. These modifications are detailed in Section II of this MOU.
- b) CMD will monitor and enforce the SBE Program.
- c) OEWD in cooperation with SFHA, will serve as the lead and initial point of contact between the Sunnydale community and professional services (sub)consultants for placement.

2. Market Rate Housing Development Owners.

The rules and procedures of the FSHP, govern professional services (sub)consultant placement, and will be monitored and enforced by OEWD.

D. Permanent Workforce.

1. Developer, Affiliates and Affordable Housing Development Owners.
  - a) The rules of the FSHP governs permanent workforce hiring and placement, with a residency modification to accommodate provisions of the Section 3 Requirements and Resolution 4967. These modifications are detailed in Section II of this MOU.
  - b) CMD will monitor and enforce the SBE Program.
  - c) OEWD/CityBuild will monitor and enforce the permanent workforce hiring.
  - d) OEWD/CityBuild will serve as the lead and initial point of contact between the Sunnydale community and the Developer, Affiliates and Affordable Housing Developer Owners for permanent workforce placement.
  - e) For permanent workforce tracking, the Developer, Affiliates, and the Affordable Housing Development Owners and/or applicable retail tenants will submit a permanent workforce report to OEWD. The Developer, the Affordable Housing Development Owners, and/or applicable retail tenants will submit to Parties copies of all correspondence to/from SFHA, CMD or OEWD requesting assistance to ensure that permanent employment placement occurs according to the Section II priority
  
2. Market Rate Housing Development Owners
  - a) The rules of the FSHP governs permanent workforce hiring and placement, and compliance will be monitored and enforced by OEWD/CityBuild.
  - b) OEWD/CityBuild, will serve as the lead and initial point of contact between the Sunnydale community and the Market Rate Housing Development Owners for permanent workforce placement.
  - c) For permanent workforce tracking, the Market Rate Housing Development Owners and/or their retail tenants will submit a permanent workforce report to OEWD. The Market Rate Housing Development Owners and/or applicable retail tenants will submit to Parties copies of all correspondence to/from SFHA, CMD or OEWD requesting assistance to ensure that permanent employment placement occurs according to the Section II priority

**SECTION II.**  
**SFHA REQUIREMENTS; WORKFORCE DEVELOPMENT MODIFICATIONS**

**A. Construction Workforce Hiring Goals.**

1. SFHA- Goal: at least 25 percent of all construction workforce hours shall be for Public Housing Residents pursuant to the requirements of SFHA Resolution No. 4967 (the "SFHA Hiring Goal") . The SFHA Hiring Goal can be included in the FSHP goal as provided below. The provisions of SFHA Reso. No. 4967 are applicable to any License Agreement entered into between SFHA and the Developer, Affiliates or an assignee or the Affordable Housing Development Owners, but not any Market Rate Housing Development Owners.

2. First Source Hiring Goal: Good faith effort of 50 percent of new hires through OWED/CityBuild workforce system. (the "FSHP Goal").

**B. Permanent Workforce Hiring Goals.**

1. The Developer, Affiliates and Affordable Housing Development Owners requirements are outlined below.

2. The rules of the FSHP shall govern permanent workforce hiring and placement, with a public housing residency modification to meet the SFHA Hiring Goal. These modifications are detailed in this Section II of this MOU.

3. In accordance with the requirements of Section 3, at least thirty percent (30%) of newly hired permanent, full-time employees hired should be Section 3 residents. After a Section 3 employee has been employed for three (3) years, such employee may no longer be counted as a Section 3 employee for purposes of the thirty percent (30%) Section 3 threshold requirement. Accordingly, recipients should continue to use good faith efforts to hire Section 3 residents when employment opportunities become available.

**C. Section 3 Requirements**

The Parties acknowledge and agree that the Section 3 Requirements are only applicable to the extent required by Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. §§ 1701u, et seq.), and the implementing regulations at 24 CFR Part 135, et seq. If Section 3 Requirements are applicable, CMD will monitor and enforce compliance with the Section 3 Requirements and OEWD/CityBuild will monitor and enforce compliance with the Section 3 workforce hiring goals.

**D. Employment Placement Priority.**

Residents will be placed in employment opportunities in the following order of preference, using good faith efforts:

1. Sunnydale (HOPE SF) Public Housing residents (named on lease);
2. SFHA residents within 94134



3. SFHA residents in 94124 and 94107;
4. SFHA residents in other zip codes; All other San Francisco residents.

E. **Market Rate Housing Development Owners.**

The Parties acknowledge and agree that the provisions of SFHA Reso. No 4967; and provided no federal funds are provided to the Market Rate Housing Development Sites, the provisions of the Section 3 requirements, are not applicable to the Market Rate Housing Development Owners. The provisions of SFHA Reso. No 4967 are applicable to any License Agreement entered into between SFHA and the Developer, Affiliates or an assignee.

**SECTION III.**  
**ROLES AND RESPONSIBILITIES**

A. **Contract Monitoring Division:** will serve as the primary agency to collect and share SBE data with Parties. In addition, CMD will be responsible for enforcement of the SBE Program.

B. **SFHA:** upon request, SFHA will verify if participants are public housing residents. OEWD/CityBuild shall provide SFHA with notice and the projected schedules regarding training and employment opportunities available under the Project. SFHA will assist with neighborhood outreach efforts and recruiting public housing residents to apply for the training and employment opportunities. SFHA will also provide resident data to CMD to track resident employment.

C. **Office of Economic & Workforce Development:** The OEWD/CityBuild is responsible for workforce construction data collection and enforcement of the FSHP. Furthermore, OEWD is the primary agency for developing and executing job-training program(s) specifically targeting residents to meet the goals and requirements outlined earlier. OEWD will also serve as the lead for referrals and placements.

1. To ensure an efficient work referral system, OEWD is the single point of contact and to work with the Developer, Affiliates, applicable retail tenants and Sunnydale and community residents for placement of San Francisco residents for permanent employment opportunities.

2. To ensure an efficient work referral system, the OEWD/CityBuild") will be the lead and initial point of contact between the Developer, its contractor/subcontractors and the Sunnydale and community residents for placement of San Francisco residents for construction work.

3. OEWD/CityBuild shall provide written reports to SFHA and MOHCD on a monthly basis on the progress that it has made in complying and implementing the provisions of this MOU.

**SECTION IV.**  
**DEVELOPER ACKNOWLEDGEMENT**

By its signature below, the Developer acknowledges this MOU. The Developer is an intended third party beneficiary of this MOU. The Parties shall not amend or terminate this MOU in any manner that will adversely affect the Developer without the written consent of the Developer.

**SECTION V.**  
**PREVAILING WAGE REQUIREMENTS**

All contractors are required to pay not less than the prevailing wage rate as determined by the General Prevailing Wage Determination made by the Director of the California Department of Industrial Relations. To the extent permitted by law, the provisions of this Section V shall not be applicable to the Market Rate Housing Development Owners.

**SECTION VI.**  
**COUNTERPARTS; FACSIMILE COPIES.**

This MOU shall be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. This MOU shall be effective upon transmission by any party to the other parties of a fully-executed facsimile copy of this MOU, so long as a copy of this MOU signed by the transmitting party is delivered to the other parties within five (5) business days thereafter.


[SIGNATURE PAGES FOLLOW]

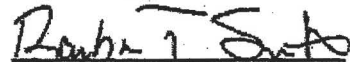
IN WITNESS WHEREOF, the parties hereto have caused this MOU to be duly executed as of the Effective Date.

**SFHA:**

Approved as to Form:

HOUSING AUTHORITY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic, of the State of California

By:   
Dianne Jackson McLean  
Goldfarb & Lipman LLP  
Special Legal Counsel

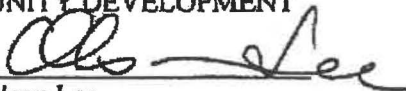
By:   
Name: Barbara T. Smith  
Title: Acting Executive Director

**MOHCD:**

DENNIS J. HERRERA,  
City Attorney,  
as counsel to the Agency

CITY AND COUNTY OF SAN FRANCISCO, a charter city of the State of California, acting by and through its MAYOR'S OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT

By: \_\_\_\_\_  
Heidi J. Gewertz  
Deputy City Attorney

By:   
Name: Olson Lee  
Title: Director

**OEWD:**

DENNIS J. HERRERA,  
City Attorney,  
as counsel to the Agency

CITY AND COUNTY OF SAN FRANCISCO, a charter city of the State of California, acting by and through its OFFICE OF WORKFORCE AND ECONOMIC DEVELOPMENT

By: \_\_\_\_\_  
Heidi J. Gewertz  
Deputy City Attorney

By: \_\_\_\_\_  
Name: Todd Rufo  
Title: Director

**CMD:**

DENNIS J. HERRERA,  
City Attorney,  
as counsel to the Agency

CITY AND COUNTY OF SAN FRANCISCO, a charter city of the State of California, acting by and through its GENERAL SERVICES AGENCY, CONTRACT MONITORING DIVISION

By: \_\_\_\_\_  
Heidi J. Gewertz  
Deputy City Attorney

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Director



IN WITNESS WHEREOF, the parties hereto have caused this MOU to be duly executed as of the Effective Date.

**SFHA:**

Approved as to Form:

HOUSING AUTHORITY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic, of the State of California

By: \_\_\_\_\_  
Dianne Jackson McLean  
Goldfarb & Lipman LLP  
Special Legal Counsel

By: \_\_\_\_\_  
Name: Barbara T. Smith  
Title: Acting Executive Director

**MOHCD:**

DENNIS J. HERRERA,  
City Attorney,  
as counsel to the Agency

CITY AND COUNTY OF SAN FRANCISCO, a charter city of the State of California, acting by and through its MAYOR'S OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT

By: \_\_\_\_\_  
Heidi J. Gewertz  
Deputy City Attorney

By: \_\_\_\_\_  
Name: Olson Lee  
Title: Director

**OEWD:**

DENNIS J. HERRERA,  
City Attorney,  
as counsel to the Agency

CITY AND COUNTY OF SAN FRANCISCO, a charter city of the State of California, acting by and through its OFFICE OF WORKFORCE AND ECONOMIC DEVELOPMENT

By: \_\_\_\_\_  
Heidi J. Gewertz  
Deputy City Attorney

By: \_\_\_\_\_  
Name: Todd Ruff  
Title: Director

**CMD:**

DENNIS J. HERRERA,  
City Attorney,  
as counsel to the Agency

CITY AND COUNTY OF SAN FRANCISCO, a charter city of the State of California, acting by and through its GENERAL SERVICES AGENCY, CONTRACT MONITORING DIVISION

By: \_\_\_\_\_  
Heidi J. Gewertz  
Deputy City Attorney

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Director

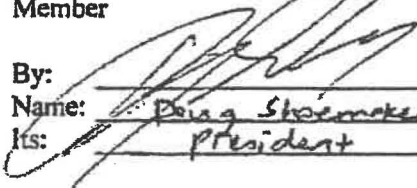
**Signatures continues on following page**

ACKNOWLEDGED AND AGREED:

**DEVELOPER:**

**SUNNYDALE DEVELOPMENT CO., LLC**  
A California limited liability company

By: Mercy Housing Corporation,  
a California nonprofit public benefit  
Its: Member

By:   
Name: Doug Stoemaker  
Its: President

By: The Related Companies of California, LLC  
a California limited liability company  
Its: Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**ACKNOWLEDGED AND AGREED:**

**DEVELOPER:**

**SUNNYDALE DEVELOPMENT CO., LLC**  
A California limited liability company

By: Mercy Housing Corporation,  
a California nonprofit public benefit  
Its: Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: The Related Companies of California, LLC  
a California limited liability company  
Its: Member

By: Frank Cardone  
Name: Frank Cardone  
Its: President