Doc # 2024048267

City and County of San Francisco
Joaquin Torres, Assessor – Recorder

6/26/2024	10:40:00 AM	Fees	$0.00
Pages 33	Title 459 ES	Taxes	$0.00
Customer 028		Other	$0.00
		SB2 Fees	$0.00
		Paid	$0.00

RECORDING REQUESTED BY
CLERK OF THE BOARD OF SUPERVISORS
OF THE CITY AND COUNTY OF SAN FRAN

AND WHEN RECORDED MAIL TO:

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

(Exempt from Recording Fees Pursuant to
Government Code Section 27383)
APN 1032-003, 3333 California Street

MEMORANDUM OF MINOR MODIFICATION OF
DEVELOPMENT AGREEMENT (AMENDMENT NO. 1)

This Memorandum of Minor Modification of Development Agreement (Amendment No. 1) (this "**Amendment No. 1**"), dated for reference purposes as of June 5, 2024, is made by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "**City**"), acting by and through its Planning Department, and LAUREL HEIGHTS PARTNERS LLC, a Delaware limited liability company ("**Developer**").

Recitals

A. City and Developer entered into a Development Agreement dated as of September 11, 2020, and recorded in the Official Records against certain property described in Exhibit A (the "**Project Site**") on September 11, 2020, as Document No. 2020015925 (the "**Development Agreement**"). Any capitalized terms used in this Amendment No. 1 that are not defined will have the meanings given to such terms in the Development Agreement.

B. After the Project received its initial Approvals, litigation was filed against the Project (the "**Litigation**"), and Developer and plaintiffs eventually entered into that certain Settlement Agreement, dated November 18, 2020 (the "**Settlement Agreement**"), which required certain changes to the Project.

C. City and Developer (the "**Parties**") now wish to modify the Development Agreement as set forth below, to reflect the extension of the Development Agreement's term as a result of the Litigation and the minor modifications to the Project as a result of the Settlement Agreement. City has determined that this Amendment No. 1 does not constitute a Material Change under the Development Agreement and accordingly may be agreed to by the Planning Director pursuant to Section 11.1 of the Development Agreement.

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows, and effective as of the date of this Amendment No. 1, the Development Agreement is modified as follows:

AGREEMENT

1. Extensions due to Litigation. The Effective Date of the Development Agreement is September 11, 2020. However, as a result of the Litigation, which was resolved through a Settlement Agreement entered into as of November 18, 2020, the Term of the Development Agreement is hereby extended as follows: (i) the fifteen (15) year Term of the Development Agreement shall expire at 5:00 p.m. Pacific time on November 19, 2035; and (ii) the last day of the five (5) year deadline by which Developer must commence construction under Section 11.2 (Early Termination Rights) of the Development Agreement shall be November 18, 2025. The foregoing dates shall be subject to any additional extensions that may be applicable during the Term.

2. Euclid Green. Pursuant to the terms of the Settlement Agreement, the southernmost duplex townhome building in the Laurel Duplexes shall not be constructed, and instead, Euclid Green shall be expanded as shown on Exhibit B to this Amendment No. 1. Accordingly, all descriptions and depictions in the Development Agreement of (i) the Laurel Duplexes as consisting of fourteen (14) townhomes (comprised of seven (7) duplexes) shall be modified to be twelve (12) townhomes (comprised of six (6) duplexes), (ii) Euclid Green as consisting of approximately 18,004 square feet shall be modified to be approximately 21,104 square feet, and (iii) the Publicly Accessible Private Improvements as consisting a total of approximately 125,226 square feet of public useable open area shall be modified to be a total of approximately 128,326 square feet. The existing Exhibits B-1 (Project Site Plan) and C-1 (Open Space Plan) of the Development Agreement are hereby modified to reflect the removal of the duplex townhome and expansion of Euclid Green consistent with this Section 2 and the attached Exhibit B.

3. Pine Street Stairs. Pursuant to the terms of the Settlement Agreement, the Pine Street Steps (described as the "Presidio Steps" in the Settlement Agreement) shall be modified to convert the lowest level landscaped planter areas to at-grade open space areas, subject to final design details and approvals by the City. Accordingly, all references in the Development Agreement to the Pine Street Steps being comprised of stairs with landscaped planters along the edges shall be modified to describe them as being comprised of stairs with landscaped planters and green area along the edges, and all depictions of the Pine Street Steps in the Development Agreement shall be replaced with the depiction of the Pine Street Steps in the attached Exhibit C.

4. Street Trees. The City Approvals described in Exhibit E to the Development Agreement include a Major Encroachment Permit approved by the City's Board of Supervisors under Ordinance 278-19, which included the plan for removing and replacing Street Trees (as defined in San Francisco Public Works Code Section 810A). Pursuant to the terms of the Settlement Agreement, the Developer requested approval from the City's Director of Public Works to modify the Street Tree plan described in the Major Encroachment Permit (the "**Original Street Tree Plan**") by removing nine (9) of the southernmost Street Trees proposed on Laurel Street and thirteen (13) of the westernmost Street Trees proposed on Euclid Avenue. As described in the Encroachment Permit and Maintenance Agreement between City and Developer and recorded in

the Official Records of San Francisco County substantially simultaneously herewith (the "**Encroachment Agreement**"), the Director of Public Works agreed that the approved Original Street Tree Plan could be modified to remove five (5) of the southernmost Street Trees proposed on Laurel Street and eight (8) of the westernmost Street Trees proposed on Euclid Avenue on the conditions specified in the Encroachment Agreement. Accordingly, the general depictions of the potential locations of the new thirteen (13) Significant Trees (as defined in Public Works Code Section 802 as in effect on August 25, 2021) to be planted within the Project Site under the Encroachment Agreement (as replacement for the thirteen (13) Street Trees that are removed from the Original Street Tree Plan) are depicted in Exhibit D to this Amendment No. 1 and Exhibits C-1 and C-3 of the Development Agreement are modified to reflect the removal of the thirteen (13) Street Trees.

5. Revised Public Access Declaration. The Exhibit C-3 (Public Access Declaration) attached to this Amendment No. 1 at Schedule 1, which has been modified to reflect the modifications described in this Amendment No. 1, shall replace the existing Exhibit C-3 to the Development Agreement.

6. Miscellaneous.

a. Incorporation. All of the Recitals to this Amendment No. 1 are true and correct and are hereby incorporated into this Amendment No. 1. This Amendment No. 1 constitutes a part of the Development Agreement and any reference to the Development Agreement shall be deemed to include a reference to the Development Agreement as amended by this Amendment No. 1.

b. Effective Date; Nullification. This Amendment No. 1 shall be effective on the date that it is signed by the Parties and recorded in the Official Records. If the portions of the Project that are modified pursuant to Sections 2, 3 or 4 of this Amendment No. 1 are not completed prior to the expiration or sooner termination of the Term of the Development Agreement and the obligation to complete such portions of the Project does not survive such expiration or termination of the Term, then the modifications set forth in Sections 2, 3 or 4 for such uncompleted portions shall no longer be required, shall be null and void *ab initio*.

c. Ratification. To the extent of any inconsistency between this Amendment No. 1 and the Development Agreement or other Approvals, the provisions contained in this Amendment No. 1 shall control. As amended by this Amendment No. 1, all terms, covenants, conditions, and provisions of the Development Agreement shall remain in full force and effect.

d. Governing Law; Venue. This Amendment No. 1 shall be governed by and construed in accordance with the laws of the State of California.

e. Integration. This Amendment No. 1 contains the entire agreement between the Parties with respect to the subject matter of this Amendment No. 1. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded in total by this Amendment No. 1.

Signatures Appear on Following Page

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 1 as of the day and year first above written.

CITY:	APPROVED AS TO FORM:
CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation	DAVID CHIU, City Attorney
By: _____ Rich Hillis Director of Planning	By: _____ Carol Wong, Deputy City Attorney

[DEVELOPER'S SIGNATURE ON FOLLOWING PAGE]

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 June 18th, 2024 before me, Kwei San, Notary Public
(insert name and title of the officer)

personally appeared Rich Hillis,
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.

KWEI SAN
COMM. #2468857
Notary Public - California
San Francisco County
My Comm. Expires Nov. 26, 2027

Signature _____ **(Seal)**

DEVELOPER:

LAUREL HEIGHTS PARTNERS LLC,
a Delaware limited liability company

By: 3333 California LP,
a Delaware limited partnership,
its Manager

By: PSKS LH LLC,
a Delaware limited liability company,
its General Partner

By: Prado LH LLC,
a California limited liability company,
its Manager

By: TPG MGR LLC,
a California limited liability company,
its Manager

By: _____
Name: Dan Safier
Title: Manager
June 5, 2024

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 June 5, 2024, before me, Andrea D. Hayes, a Notary Public, personally appeared Daniel J. Safier, 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 Andrea D. Hayes

ANDREA D. HAYES
COMM. #2361015
NOTARY PUBLIC-CALIFORNIA
SAN FRANCISCO COUNTY
My Comm. Expires June 13, 2025

PC02 PC02

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 June 5, 2024, before me, Andrea D. Hayes, a Notary Public, personally appeared Daniel J. Safier, 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 Andrea D. Hayes

ANDREA D. HAYES
COMM. #2361015
NOTARY PUBLIC-CALIFORNIA
SAN FRANCISCO COUNTY
My Comm. Expires June 13, 2025
PC02 PC02

Exhibit A

LEGAL DESCRIPTION OF THE PROJECT SITE

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO, IN THE COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

BEGINNING at a point on the Southerly line of California Street, said point being the Easterly extremity of the curve with a 15 foot radius joining the Easterly line of Laurel Street with the Southerly line of California Street, as shown on "Map of Laurel Heights, filed July 28, 1947, in Map Book "P", at Pages 55 and 56, Official Records of the City and County of San Francisco; running thence North 80°54' East 707.375 feet along the Southerly line of California Street to the Southwesterly boundary of the property of the Standard Oil Company of California; thence South 52°36' 29.74 seconds East along said boundary 232.860 feet; thence Southwesterly along the arc of a curve to the right whose tangent deflects 54°14' 30.74 seconds to the right from the preceding course, radius 425 feet, central angle 34°15'59", a distance of 254.176 feet; thence South 35°54' West tangent to the preceding curve 380.066 feet; thence Southwesterly along the arc of a curve to the right, tangent to the preceding course, radius 65 feet, central angle 37°18' a distance of 42.316 feet to tangency with the Northwesterly line of Euclid Avenue; thence South 73°12' West along said line of Euclid Avenue 312.934 feet; thence leaving said line of Euclid Avenue, and running Southwesterly, Westerly, and Northwesterly along the arc of a curve to the right, tangent to the preceding course, radius 20 feet, central angle 100°48' 01.51", a distance of 35.186 feet; thence Northwesterly along the arc of a reverse curve to the left, parallel to and concentric with and radially distant 6 feet Northeasterly from the Northeasterly line of Laurel Street, as shown on said map of Laurel Heights, radius 4033 feet, central angle 5°31' 20.27", a distance of 388.710 feet; thence Northwesterly along the arc of a compound curve to the left, radius 120 feet, central angle 71°12' 55.45", a distance of 149.153 feet; thence Northwesterly along the arc of a reverse curve to the right, radius 60 feet, central angle 73°38' 14.21', a distance of 77.113 feet to tangency with the Easterly line of Laurel Street; thence North 9°06' West along said line of Laurel Street 127.290 feet to the beginning of the above mentioned curve joining the Easterly line of Laurel Street with Southerly line of California Street; thence Northwesterly, Northerly, and Northeasterly along the arc of a curve to the right, radius 15 feet 90°00', a distance of 23.562 feet to tangency with the Southerly line of California Street and the point of beginning.

APN: **Lot 003, Block 1032**

012392.0005 4892-0222-6853.4

Exhibit B

3333 CALIFORNIA STREET SAN FRANCISCO, CA

SKS | JAMES CORNER FIELD OPERATIONS | LA | ARUP | BAR architects | JENSEN | SCB

09.06.2019
PLANNING APPLICATION SUBMITTAL

LANDSCAPE SITE PLAN

L2.00

Exhibit B

012392.0005 4892-0222-6853.4

Exhibit C

3333 CALIFORNIA STREET SAN FRANCISCO, CA

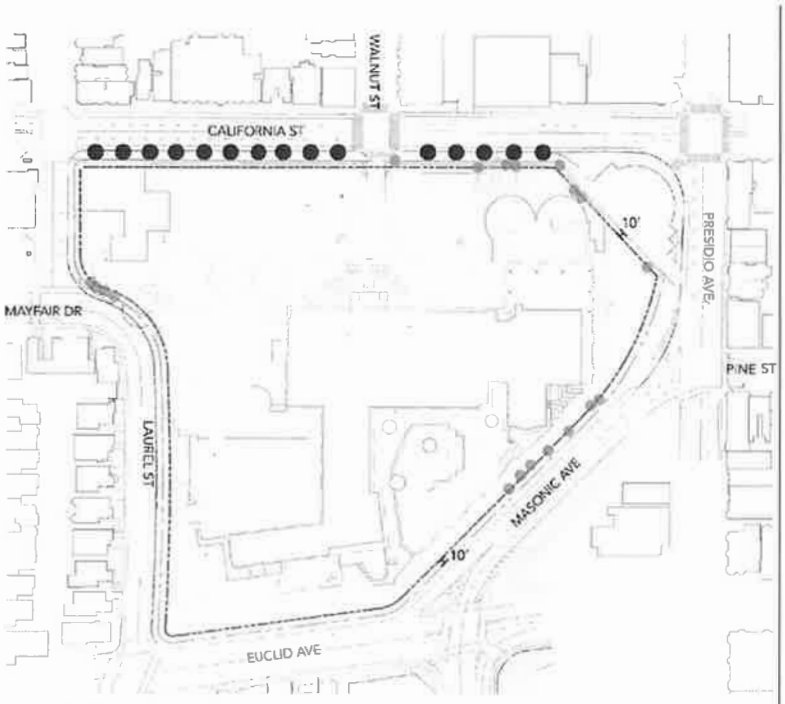
ENLARGED PLAN - PINE STREET STEPS STREETSCAPE IMPROVEMENTS

07.03.2019
PLANNING APPLICATION SUBMITTAL

L2.03

Exhibit C

Exhibit D



EXISTING TREES

EXISTING STREET TREES (15)
*IN FRONT OF THE PROPERTY LINE
TO BE REMOVED

EXISTING SIGNIFICANT TREES
TO BE REMOVED (19)

* SIGNIFICANT TREE DEFINITION:
A TREE:
(1) ON PROPERTY UNDER THE JURISDICTION OF THE DEPARTMENT OF PUBLIC WORKS
OR (2) ON PRIVATELY OWNED-PROPERTY WITH ANY PORTION OF ITS TRUNK WITHIN 10 FEET OF THE PUBLIC RIGHT-OF-WAY
AND (3) THAT SATISFIES AT LEAST ONE OF THE FOLLOWING CRITERIA:
(A) A DIAMETER AT BREAST HEIGHT (DBH) IN EXCESS OF TWELVE (12) INCHES,
(B) A HEIGHT IN EXCESS OF TWENTY (20) FEET,
OR (C) A CANOPY IN EXCESS OF FIFTEEN (15) FEET

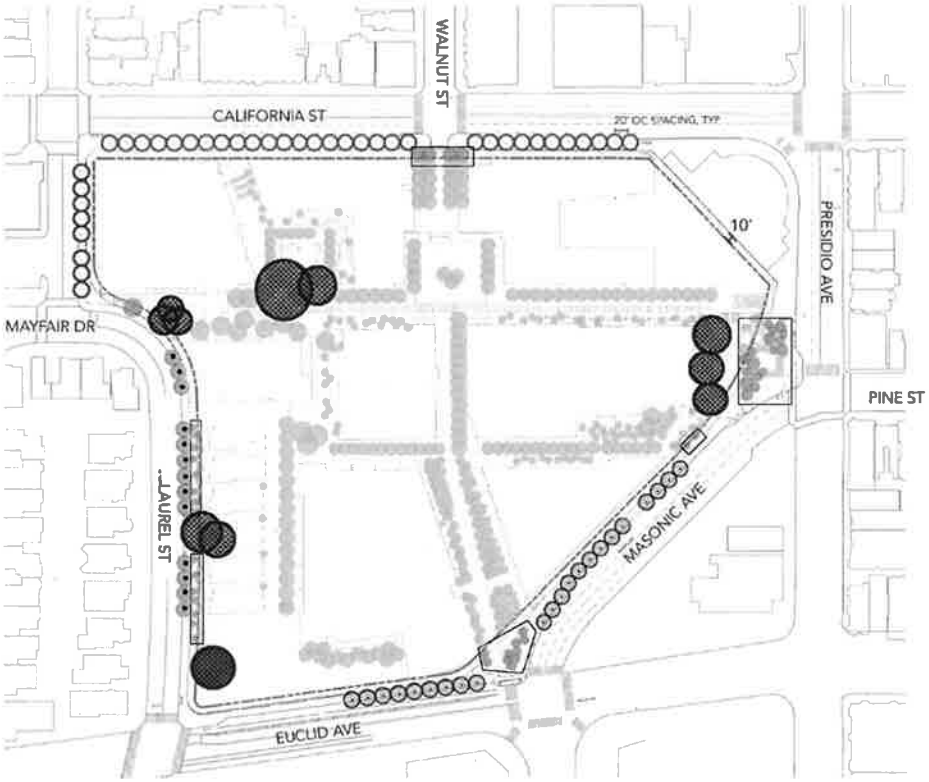
3333 CALIFORNIA STREET SAN FRANCISCO, CA

SITE DIAGRAM - TREES

SKS | LS A ARUP BAR JENSEN

07.09.2018
PLANNING APPLICATION SUBMITTAL

L1.03A



PROPOSED TREES

- PROPOSED STREET TREES AT CALIFORNIA ST (19)
  FRUITLESS OLIVE 'OLEA EUROPAEA SWAN HILL'
- PROPOSED STREET TREES (21)
  GINKGO 'GINKGO BILOBA PRINCETON SENTRY'
- PROPOSED STREET TREES (13)
  AESCULUS CARNEA
- PROPOSED TREES WITHIN 10' OF FEET OF THE PUBLIC RIGHT-OF-WAY (49)
- PROPOSED TREES (64)
- KEY TREES TO BE PRESERVED (11)

3333 CALIFORNIA STREET SAN FRANCISCO, CA

SKS | ARUP BAR | JENSEN

SITE DIAGRAM - TREES

PLANNING APPLICATION

L1.03A

Schedule 1

Revised Exhibit C-3 to the Development Agreement – Public Access Declaration

Exhibit C-3

Public Access Declaration

WHEN RECORDED MAIL TO: Director of Planning San Francisco Planning Department 1650 Mission Street, Suite 400 San Francisco, California 94102 The undersigned hereby declares this instrument to be exempt from Recording Fees (Govt. Code § 27383) and from Documentary Transfer Tax (CA Rev. & Tax. Code § 11922 and SF Bus. and Tax Reg. Code § 1105)	

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

3333 California Street
APN 1032-003

DECLARATION OF PUBLIC ACCESS COVENANTS AND RESTRICTIONS

This Declaration of Public Access Covenants and Restrictions ("**Declaration**") is made as of _____, 202_, by LAUREL HEIGHTS PARTNERS, LLC, a Delaware limited liability company ("**Declarant**"), in favor of the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**").

RECITALS

A. Declarant owns an irregularly-shaped parcel in the City and County of San Francisco comprised of approximately 10.25 acres (approximately 446,468 square feet), generally bounded by California Street, Laurel Street, Euclid Avenue, Masonic Avenue, and Presidio Avenue, and further described in the attached Exhibit A (the "**Project Site**").

B. Declarant intends to redevelop the Project Site as a large mixed-use development that will include residential, retail, commercial, child care, open space, parking, and related uses (the "**Project**"), under a Development Agreement between Declarant and City dated September 11, 2020 (the "**Original Development Agreement**"), approved by the City's Board of Supervisors by Ordinance No. 276-19 on November 19, 2019, as modified by that certain Memorandum of Minor Modification of Development Agreement (Amendment No. 1) ("**Amendment No. 1**" and with the Original Development Agreement, collectively the "**Development Agreement**"), amendments to the City's Planning Code and Zoning Map adopted by the City's Board of Supervisors by Ordinance No. 275-19 on November 19, 2019, a street encroachment permit and associated encroachment permit and maintenance agreement approved by the Board of Supervisors by Ordinance No. 278-19 on November 19, 2019, and a conditional use permit approved by the Planning Commission in Motion 20516 on September 5, 2019.

C. Declarant's proposed Project buildings (each a "**Building**") are described in the attached Exhibit B-1 and depicted in the attached Exhibit B-2. Such descriptions and depictions are approximate. As part of the Project and pursuant to the Development Agreement, if Declarant constructs any Building during the term of the Development Agreement ("**DA Term**"), Declarant will develop certain publicly-accessible open spaces on the Project Site and operate and maintain such open space in accordance on the terms and conditions of this Declaration.

AGREEMENT

Now, therefore, in consideration of the City's approval and execution of the Development Agreement, Declarant declares as follows on behalf of itself and all future owners of the Project Site:

1. Construction.

(a) Timing. If Declarant constructs any Building during the DA Term, Declarant shall build the applicable Publicly Accessible Private Improvements (as defined in the attached Exhibit C) specified in the attached Exhibit C in compliance with the requirements of the Development Agreement, including in compliance with the installation schedule for each of the Publicly Accessible Private Improvements set forth in Section 2 of the attached Exhibit C, which schedule associates certain Publicly Accessible Private Improvements with a certain Building or Buildings.

(b) Conceptual Plans; Changes. If Declarant is obligated to construct Publicly Accessible Private Improvement pursuant to Section 1(a) above, then Declarant shall construct the Publicly Accessible Private Improvement substantially as described in the conceptual plans dated September 6, 2019, and stamped as Exhibit B in the City's Planning Department docket for Case No. 2015-014028CUA, as such plans may be modified pursuant to conditions of approval for the Project adopted by the City's Planning Commission on September 19, 2019 (the "**Conceptual Plans**"). The improvements described in the Conceptual Plans, as may be modified pursuant to this subsection (b), and as constructed pursuant thereto shall constitute the Publicly Accessible Private Improvements. Declarant shall have the right to modify and/or update the Conceptual Plans from time to time as it may determine in its sole business judgment, subject to the provisions of the following paragraph and provided further that any such modifications shall be subject to review and approval by the City acting in its regulatory capacity with respect to permit issuance, if applicable.

If, prior to completion of the Publicly Accessible Private Improvement, Declarant wishes to apply for any permits for improvements to a Publicly Accessible Private Improvement that materially differ from the Conceptual Plans or would materially and adversely impact the public's ability to access or use that Publicly Accessible Private Improvement for the Permitted Public Use (as defined in Section 4) (a "**Construction Modification**"), Declarant shall provide a copy of such plans to the City's Director of Planning (or successor City officer, if applicable) (the "**Planning Director**"). Any proposed Construction Modification shall be subject to the approval of the Planning Director, which may be withheld in his or her reasonable discretion. Declarant agrees it shall be reasonable for the Planning Director to withhold such approval if she or he determines the proposed Construction Modification does not meet the regulatory requirements or standards for the affected area.

(c) Declarant intends to form a master management association ("**Master Association**") for the Project Site for operations management, maintenance and repair of the commonly used areas and improvements, including Publicly Accessible Private Improvements, that are located within master common area parcels owned by the Master Association or within master common easement areas over

Project Site parcels/lots pursuant to easement agreements in which the Master Association is the benefitted party.

(d) Following completion of any Publicly Accessible Private Improvement, Declarant shall have the right to prepare a legal description of the Publicly Accessible Private Improvement and an amendment to this Declaration in which the precise location or boundaries of the particular Publicly Accessible Private Improvement are described in the legal description or shown on a site plan or map, and, subject to the City's review and approval of such amendment, record such amendment in the Official Records of the City and County of San Francisco ("**Official Records**").

2. Maintenance and Modifications. Following the completion of the Publicly Accessible Private Improvement, Declarant shall operate, maintain and repair that Publicly Accessible Private Improvement in a clean, litter-free and good condition for the life of the last remaining Building at the Project Site. If Declarant assigns such obligations for a completed Publicly Accessible Private Improvement to the Master Association in accordance with the requirements in Section 12 below, Declarant shall cause such Publicly Accessible Private Improvement to be so operated, maintained and repaired by the Master Association in accordance with Section 12 below.

Notwithstanding the foregoing paragraph, after the substantial completion of the Publicly Accessible Private Improvement, Declarant shall have the right to modify, renovate, replace and/or update the Publicly Accessible Private Improvement, including any improvements located within the boundaries of any Publicly Accessible Private Improvement (each, "**Change**"), subject to the provisions of this Declaration. Before submitting any permit application for a Change that would or could materially and adversely impact the public's ability to access or use any Publicly Accessible Private Improvement for the Permitted Public Use (each, "**Material Change**"), Declarant shall provide a copy of the plans to be submitted with such permit application to the Planning Director. All Material Changes are subject to the approval of the Planning Director, which approval may be withheld in his or her reasonable discretion. If the Planning Director fails to respond to an initial written request for approval to a proposed Material Change within sixty (60) days of receiving the initial request, Declarant shall send a second notice of the request, with a statement that failure to respond within twenty (20) days to the second notice will result in a deemed approval of the proposed Material Change. The Director's failure to respond to the second notice within twenty (20) days of receiving the second notice shall be deemed a City approval of the Material Change described in the notices.

In addition to the foregoing paragraph, Declarant shall give the Planning Director at least thirty (30) days advance notice of any proposed Change that is not a Material Change if the hard cost of such proposed modification is anticipated to exceed the Threshold Amount (defined as follows), but the Planning Director shall have no consent rights with respect to such modification. The "**Threshold Amount**" means an amount equal to One Hundred Thousand Dollars ($100,000), which shall be increased by three percent (3%) on each anniversary of the recordation of this Declaration in the Official Records of San Francisco County.

3. City Regulatory Approvals. Prior to commencing the construction or maintenance of any Publicly Accessible Private Improvements, Changes, or Material Changes, Declarant shall obtain all City approvals Declarant is required to obtain from City for such activities in its regulatory capacity.

4. Use; Operation. On substantial completion of a Publicly Accessible Private Improvement, Declarant shall, or as applicable, cause the Master Association to, operate, maintain and repair such Publicly Accessible Private Improvement and make that Publicly Accessible Private Improvement available for the use, enjoyment and benefit of the public for open space and recreational purposes (the "**Permitted Public Use**") in accordance with the regulations attached as Exhibit D ("**Regulations**"). If

Declarant or the Master Association, as applicable, closes any Publicly Accessible Private Improvement pursuant to Section 5 of the Regulations, Declarant or the Master Association, as applicable, shall use commercially reasonable efforts to make note of and keep a record of such closure for at least two (2) years and shall provide a copy of such record to the City's Planning Director on request.

5. Notice and Cure Rights. Except as provided in this Section, City shall provide written notice (a "**Default Notice**") to the Declarant of any actual or alleged violation of the covenants or restrictions set forth in this Declaration before taking any enforcement action. Notwithstanding the foregoing, following the assignment of Declarant's obligations under this Declaration (including the use, maintenance and repair obligations) with respect to a completed Publicly Accessible Private Improvement to the Master Association and City's approval of the CC&Rs (as defined in Section 12 below) and budget for that completed Publicly Accessible Private Improvement, all in accordance with Section 12 below, a Default Notice for that completed Publicly Accessible Private Improvement shall be instead given to the Master Association; provided, however, that City shall also send a Default Notice to Declarant as long as Declarant has any obligations under Section 12 hereof.

Declarant or the Master Association, as applicable, shall have (i) a period of five (5) business days after receipt of a Default Notice to cure any violation in making a Publicly Accessible Private Improvement available for the Permitted Public Use as required in this Declaration ("**Public Access Violations**") described in that Default Notice and (ii) a period of thirty (30) days after receipt of a Default Notice to cure any other violation described in that Default Notice, provided that if the violation is not capable of cure within such 30-day period, Declarant or the Master Association, as applicable, shall have such additional time as shall be reasonably required to complete a cure as long as Declarant or the Master Association, as applicable, promptly undertakes action to commence the cure within the 30-day period and thereafter diligently prosecutes the same to completion. The time in which Declarant or the Master Association, as applicable, may cure is herein called the "**Declarant Cure Period**," and except for any Public Access Violations, City shall not exercise any legal or equitable remedies during the Declarant Cure Period (or if applicable, the Lender Cure Period) as long as Declarant (or if applicable, the Master Association or Lender, as defined in Section 6 below) is diligently pursuing such cure. Notwithstanding anything to the contrary herein, in no event shall the Declarant Cure Period exceed six (6) months.

City's rights and remedies in this Section 5 shall be subject to the provisions of Section 12.

Any notices required or permitted to be given under this Declaration shall be in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by U.S. Express Mail or commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows, or such other address as either party may from time to time specify in writing to the other party:

Declarant:	c/o The Prado Group, Inc. 150 Post Street, Suite 320 San Francisco, CA 94108 Attn: Dan Safier
City:	Planning Director City and County of San Francisco 49 South Van Ness Avenue, Suite 1600 San Francisco, CA 94103

with a copy to:	Real Estate Division City and County of San Francisco 25 Van Ness Avenue, Suite 400 San Francisco, CA 94102 Attn: Director of Property
and to:	Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102 Attn: Real Estate/Finance Team
Master Association:	150 Post Street, Suite 320 San Francisco, CA 94108 Attn: Dan Safier

6. Lender Notice and Cure Rights. As long as any deed of trust (other than and excluding deeds of trust, if any, on individual residential condominium units within Project Site parcels) encumbering any portion of the Project Site made in good faith and for value (each, an "**Encumbrance**") shall remain unsatisfied of record, City shall give to the beneficiary of such Encumbrance (each, a "**Lender**") a copy of each Default Notice City gives to Declarant if that Lender has given to the City a written request for Default Notices. Copies of such Default Notices shall be given to any requesting Lender at the address that requesting Lender last furnished to City. Nothing in this Section shall be construed to mean that City must provide a Lender with a copy of any Self-Help Notices (as defined in Section 7 below).

Each Lender shall have the right, but not the obligation, to do any act or thing required of Declarant (or the Master Association, if applicable) hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof; provided, however, that no such action shall constitute an assumption by such Lender of the obligations of Declarant (or the Master Association, if applicable) under this Declaration. In the case of any Default Notice given by the City to Declarant (or the Master Association, if applicable), the Lender shall have the applicable Declarant Cure Period for remedying the default described in that Default Notice or causing it to be remedied and, except in the event of a Public Access Violation, if prior to the expiration of the applicable Declarant Cure Period, a Lender gives City written notice that it intends to undertake the curing of such default or to cause the same to be cured, and then proceeds with all due diligence to do so, Lender shall have, in each case, an additional period of thirty (30) days (or, except for a default relating to the payment of money, such longer period as reasonably necessary as long as Lender commences cure within such thirty (30) day period and diligently proceeds to completion) after the later to occur of (i) the expiration of the applicable Declarant Cure Period, or (ii) the date that the City has served such Default Notice upon Lender, and the City shall accept such performance by or at the instance of the Lender as if the same had been made by Declarant. The time in which Lender may cure is herein called the "**Lender Cure Period**". Notwithstanding anything to the contrary herein, in no event shall the additional Lender Cure Period exceed six (6) months beyond the applicable Declarant Cure Period.

7. Enforcement. Declarant acknowledges that its failure to construct any required Publicly Accessible Private Improvement in a timely manner or to properly maintain or operate them as required in this Declaration will cause irreparable harm to the City and that the City will not have an adequate remedy at law for such breach. Accordingly, City shall be entitled to specific performance or injunctive or other equitable relief by reason of such breach. City may, in its sole discretion, rely on this Declaration to enforce any of the covenants or restrictions hereunder. City, but not the general public, shall have all rights and remedies available at law or in equity in order to enforce the covenants and restrictions set forth

in this Declaration. All rights and remedies available to City under this Declaration or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other available right or remedy. If there is any breach of the covenants or restrictions hereunder, City shall be entitled to recover all attorneys' fees and costs in connection with City's enforcement activities and actions.

If Declarant or, if applicable, the Master Association fails to maintain a Publicly Accessible Private Improvement in the manner required in this Declaration, and Declarant, or, if applicable, the Master Association, fails to timely cure such failure pursuant to Section 5 above, and no Lender cures such failure pursuant to Section 6 above, then City shall further have the right, at its sole option, to remedy such failure at the expense of Declarant (or if applicable, the Master Association) by providing ten (10) days' prior written notice of City's intention to cure such failure (a "**Self-Help Notice**") to the Declarant or, if applicable, to the Master Association. Such action by City shall not be construed as a waiver of such default or any rights or remedies of City, and nothing herein shall imply any duty of City to do any act that Declarant or the Master Association, as applicable, is obligated to perform.

Declarant shall reimburse City for all of its costs and expenses, including without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such failure (collectively, "**City's Costs**"), within thirty (30) days of receiving City's invoice for City's Costs, together with documentation reasonably evidencing City's Costs; provided, however, if Declarant's obligations (including the use, maintenance and repair obligations) for the subject Publicly Accessible Private Improvement were assigned to the Master Association pursuant to Section 12 below, then the Master Association shall reimburse City for City's Costs within thirty (30) days of receiving City's invoice for City's Costs, together with documentation reasonably evidencing City's Costs.

8. Priority of Lien. No violation or breach of any provision of this Declaration shall impair, defeat or invalidate the lien of any Encumbrance, but all provisions hereof shall thereafter be binding upon and effective against any owner whose title is derived through foreclosure of any Encumbrance or acceptance of any deed in lieu of foreclosure.

9. No Waiver. No waiver by City of any violation under this Declaration shall be effective or binding unless and to the extent expressly made in writing by City, and no such waiver may be implied from any failure by City to take action with respect to such violation. No express written waiver of any violation shall constitute a waiver of any subsequent violation in the performance of the same or any other provision of this Declaration.

10. Compliance With Laws. Declarant shall comply with all laws, statutes, ordinances, rules, and regulations of federal, state and local authorities (including, without limitation, City laws of general applicability) having jurisdiction over the Project Site, now in force or hereafter adopted with respect to its use, in the performance of its obligations under this Declaration; provided, however, such compliance obligation as to City laws shall be subject to the terms and conditions of Section 5.6 of the Development Agreement during the DA Term.

11. Litigation Expenses. If any party to this Declaration brings an action or proceeding (including any cross-complaint, counterclaim, or third-party claim) against the other by reason of a default, or otherwise arising out of this Declaration, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including, but not limited to, reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "**Prevailing Party**" shall include, without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action. Attorneys' fees under this Section shall 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 purposes of this Declaration, reasonable fees of attorneys of City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of hours of professional experience in the subject matter area of the law for which City's services were rendered who practice in the City and County of San Francisco, in law firms with approximately the same number of attorneys as employed by the Office of City Attorney.

12. Binding on Successors; CC&Rs; No Merger; Post-Construction Responsibility. This Declaration and the covenants and restrictions set forth herein constitute restrictions and covenants running with the land and shall bind and burden Declarant, in its capacity as owner of the Project Site, and each successor owner and occupier of the Project Site. Declarant may assign, in accordance with applicable laws (including any applicable requirements of the California Department of Real Estate or any successor agency), its obligations for use, operation, maintenance and repair of a completed Publicly Accessible Private Improvement to the Master Association, and effective upon such an assignment and recordation of the applicable CC&Rs for the portion of the Project Site containing that completed Publicly Accessible Private Improvement (or recordation of a declaration of annexation or similar instrument, the effect of which is to cause the previously recorded CC&Rs to apply such portion of the Project Site), and thereupon references in this Declaration to "Declarant" for such completed Publicly Accessible Private Improvement shall mean Master Association. The foregoing right to assign use, operation, maintenance and repair of a completed Publicly Accessible Private Improvement to the Master Association shall not in any way alter the obligations of Declarant (or that of each successor owner and occupier of the Project Site) to initially construct Publicly Accessible Private Improvements on parcels owned by Declarant in the Project Site.

However, in order to ensure that, once constructed, the Publicly Accessible Private Improvements are maintained in a clean, good and workmanlike condition, Declarant shall record, when authorized to so record by the State of California's Department of Real Estate, a declaration of covenants, conditions, and restrictions against the portion of the Project Site on which the Publicly Accessible Private Improvement(s) is(are) or will be located ("**CC&Rs**"), that include a requirement that the Master Association provide all necessary and ongoing maintenance and repairs to the Publicly Accessible Private Improvements, and any required services, at no cost to the City, with appropriate homeowners' assessments to provide for such maintenance and services. The Declarant intends to develop the Project Site in phases, and the CC&Rs therefore may be recorded and/or implemented (such as by means of a declaration of annexation) against portions of the Project Site in phases.

Notwithstanding anything to the contrary above in this Section 12 or contained in any Master Association governing document, if City sends a Default Notice to Declarant pursuant to the second sentence of the first paragraph of Section 5 above, then, following receipt of such notice, Declarant shall use commercially reasonable efforts to cause to be enforced the maintenance and repair obligations of the Master Association during the DA Term. The CC&Rs identified herein shall be subject to reasonable review and approval by the City Attorney, the City's Office of Economic and Workforce Development (or any successor agency) ("**OEWD**"), and the City's Planning Department, regarding the obligations stated in this Section 12, prior to the assignment of Declarant's obligations to the Master Association (as described above in this Section 12) and shall expressly provide the City with a third-party right to enforce the operation, maintenance and repair provisions of the CC&Rs. On or before the recordation of the CC&Rs, OEWD and the Planning Department shall reasonably approve the proposed budget for the on-going maintenance and operations of the Publicly Accessible Private Improvements covered by such CC&Rs, based on a third-party consultant study verifying the commercial reasonableness of an initial and 20-30 year "build-out" budget.

13. Severability. Should any provision or portion hereof be declared invalid or in conflict with any law, the validity of all remaining provisions shall remain unaffected an in full force and effect.

14. Time. Time is of the essence of this Declaration and each and every part hereof.

15. Term; Amendment. This Declaration shall be effective on the date it is recorded in the Official Records, shall continue as to each Publicly Accessible Private Improvement for the life of each Building to which it is specifically associated as set forth in Exhibit C; provided, however, that if this Declaration terminates as to only a portion of Walnut Walk North or Walnut Walk South or a portion of Mayfair Walk, the then owner of the legal parcel to the Building to which such portion had been associated shall provide a reasonable connection across such legal parcel to provide for continued public pedestrian access between the remaining portions of Walnut Walk North and Walnut Walk South or the remaining portions of Mayfair Walk, as applicable, all as more specifically set forth in Section 4 (Alternative Pedestrian Access) of Exhibit C (Completion Schedule) to this Declaration. Notwithstanding anything to the contrary in the foregoing sentence, if Declarant does not build any Building at the Project Site during the DA Term, this Declaration shall automatically terminate on the expiration of the DA Term. This Declaration may be amended or otherwise modified only in a writing signed and acknowledged by Declarant or the Master Association, as applicable, (or any of their respective successors in interest to any fee interest of the Project Site) and City.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

17. Recordation. Declarant shall record this Declaration in the Official Records prior to the issuance of the First Construction Document (as defined in San Francisco Building Code Section 107A.13.1(a)(8) for the Project.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, Declarant and City have executed this Declaration as of the date first written above.

DECLARANT: LAUREL HEIGHTS PARTNERS LLC,
a Delaware limited liability company

By: 3333 California LP,
a Delaware limited partnership,
its Manager

By: PSKS LH LLC,
a Delaware limited liability company,
its General Partner

By: Prado LH LLC,
a California limited liability company,
its Manager

By: _____
Name: Dan Safier
Title: Manager

CITY: CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Rich Hillis, Director of Planning

APPROVED AS TO FORM:

DENNIS J. HERRERA,
City Attorney

By: _____
Carol Wong
Deputy City Attorney

EXHIBIT A

Legal Description of Project Site

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO, IN THE COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

BEGINNING at a point on the Southerly line of California Street, said point being the Easterly extremity of the curve with a 15 foot radius joining the Easterly line of Laurel Street with the Southerly line of California Street, as shown on "Map of Laurel Heights, filed July 28, 1947, in Map Book "P", at Pages 55 and 56, Official Records of the City and County of San Francisco; running thence North 80°54' East 707.375 feet along the Southerly line of California Street to the Southwesterly boundary of the property of the Standard Oil Company of California; thence South 52°36' 29.74 seconds East along said boundary 232.860 feet; thence Southwesterly along the arc of a curve to the right whose tangent deflects 54°14' 30.74 seconds to the right from the preceding course, radius 425 feet, central angle 34°15'59", a distance of 254.176 feet; thence South 35°54' West tangent to the preceding curve 380.066 feet; thence Southwesterly along the arc of a curve to the right, tangent to the preceding course, radius 65 feet, central angle 37°18' a distance of 42.316 feet to tangency with the Northwesterly line of Euclid Avenue; thence South 73°12' West along said line of Euclid Avenue 312.934 feet; thence leaving said line of Euclid Avenue, and running Southwesterly, Westerly, and Northwesterly along the arc of a curve to the right, tangent to the preceding course, radius 20 feet, central angle 100°48' 01.51", a distance of 35.186 feet; thence Northwesterly along the arc of a reverse curve to the left, parallel to and concentric with and radially distant 6 feet Northeasterly from the Northeasterly line of Laurel Street, as shown on said map of Laurel Heights, radius 4033 feet, central angle 5°31' 20.27", a distance of 388.710 feet; thence Northwesterly along the arc of a compound curve to the left, radius 120 feet, central angle 71°12' 55.45", a distance of 149.153 feet; thence Northwesterly along the arc of a reverse curve to the right, radius 60 feet, central angle 73°38' 14.21', a distance of 77.113 feet to tangency with the Easterly line of Laurel Street; thence North 9°06' West along said line of Laurel Street 127.290 feet to the beginning of the above mentioned curve joining the Easterly line of Laurel Street with Southerly line of California Street; thence Northwesterly, Northerly, and Northeasterly along the arc of a curve to the right, radius 15 feet 90°00', a distance of 23.562 feet to tangency with the Southerly line of California Street and the point of beginning.

APN: **Lot 003, Block 1032**

EXHIBIT B-1

Description of Buildings

Plaza A and B:
These buildings are located on the northwest corner of the site along California Street between Laurel Street and the Project entrance aligned with Walnut Street to the north. Plaza A is 67 residential units and 14,816 GSF of retail space. Plaza B is 61 residential units and 11,180 GSF of retail space. Both buildings sit atop the California Street Garage which contains its required residential and retail parking and associated building accessory and utility spaces. The California Street Garage also sits below the Walnut Residential Building (see description below). The California Street Garage includes some of the required parking and associated building accessory and utility spaces for the Center A and B buildings (see their description below).

Walnut Building:
This building is located on the northeast corner of the site along California Street between the Project entrance aligned with Walnut Street to the north and the Firemen's Credit Union (triangular lot at the corner of California Street and Presidio Avenue which is not part of the Project or site). The Walnut Building includes 185 affordable senior units and one manager's unit, 8,500 GSF for retail space and a 14,665 GSF child care use. As described above, this building sits atop the California Street Garage which contains its required residential, retail and childcare parking and associated building accessory and utility spaces.

Center A and B:
Center A and B are located in the existing office building. This existing building will be partially demolished and reused for residential use. The building is located approximately in the middle of the site with frontages on Presidio and Masonic Avenue. Center A includes 51 residential units and Center B includes 139 residential units. There is a bridge located on the fourth floor that connects the two buildings. There is a small existing garage below Center B that includes a portion of its required residential parking. The remaining Center B parking is located within the California Street Garage. The required residential parking for Center A is located within the Masonic Garage. The California Street and Masonic Garages will also include associated building accessory and utility spaces for these two buildings.

Masonic and Euclid Buildings:
These buildings are located on the south side of the site along Masonic and Euclid Avenues, Masonic to the east and Euclid to the west. Masonic is 57 residential units and Euclid is 139 residential units. Both buildings sit atop the Masonic Garage which contains their required residential parking and associated building accessory and utility spaces. The Masonic Garage includes some of the required parking and associated building accessory and utility spaces for the Center A and B Buildings (see their description above).

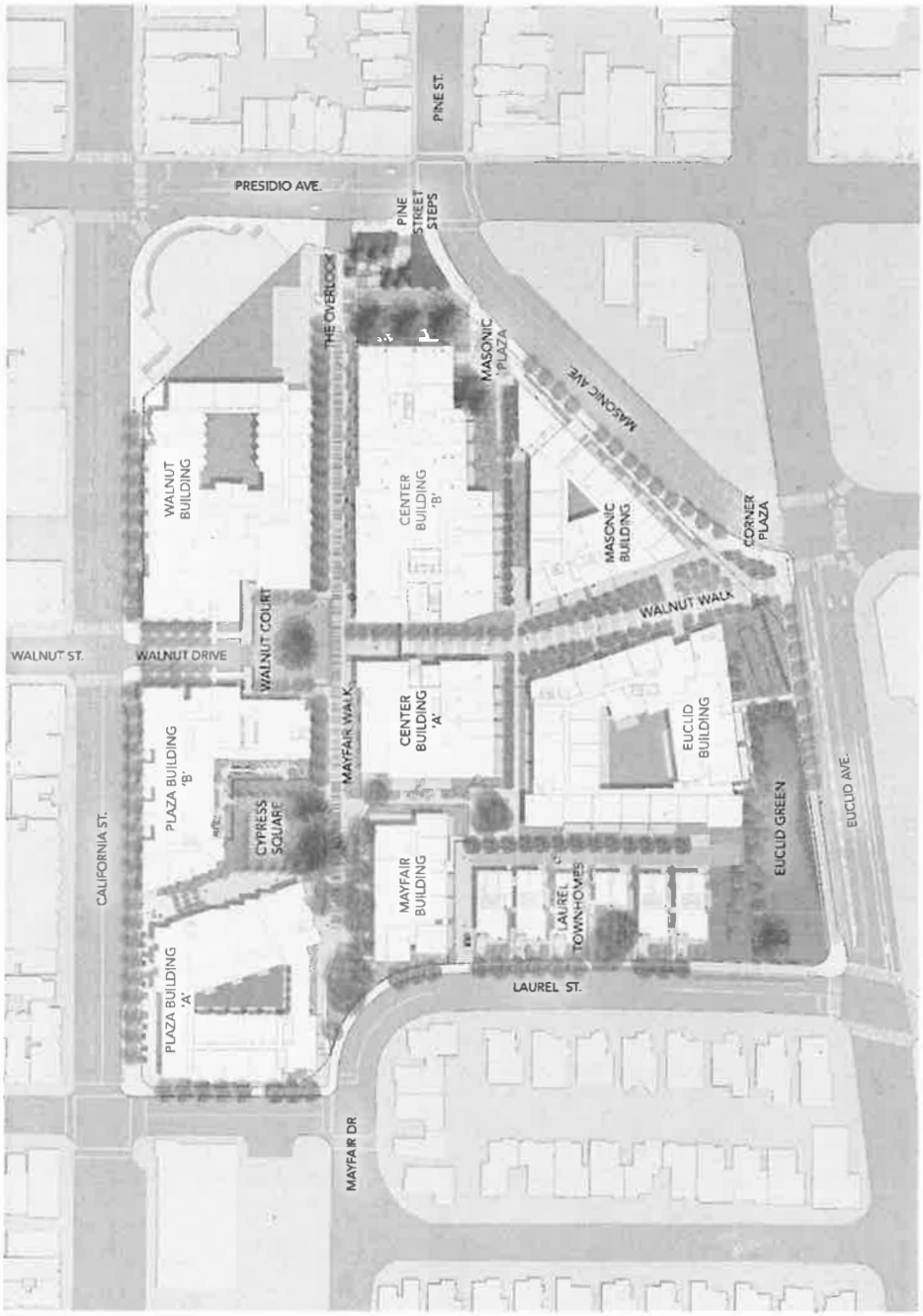
Mayfair Building:
The Mayfair Building is located on the west side of the site along Laurel Street between Plaza A and the Laurel Duplexes. It contains 30 residential units and sits atop its own garage containing its parking, accessory and utility spaces. Mayfair shares a common driveway off Laurel Street with the Laurel Duplexes.

Laurel Duplexes:
The Laurel Duplexes are comprised of six independent structures each housing two residential units for a total of 12 residential units. All six buildings face Laurel Street on the west side of the site between the

Mayfair Building and Euclid Green. The parking for these buildings is located at their lowest level and accessed off a shared driveway with the Mayfair Building.

EXHIBIT B-2

Depiction of Buildings and Publicly Accessible Private Improvements



LANDSCAPE SITE PLAN

L2.00

09.06.2019 PLANNING APPLICATION SUBMITTAL

3333 CALIFORNIA STREET SAN FRANCISCO, CA

SKS | JAMES CORNER FIELD OPERATIONS | LA | ARUP | BAR architects | JENSEN | SCB

EXHIBIT C

Completion Schedule

Declarant's obligation to construct a Publicly Accessible Private Improvement (as defined below) shall be as follows:

1. Description of Publicly Accessible Private Improvements. Each of the following shall be a "**Publicly Accessible Private Improvement**" and shall collectively be the "**Publicly Accessible Private Improvements**":

a. California Plaza: An approximately 4,290 square foot plaza adjacent to California Street, located in the general area depicted in the attached Exhibit B-2. The improvements will consist of a combination of quality hardscape, planters and seating elements that are adjacent to the abutting public sidewalk and designed to comply with the City's Better Streets policies.

b. Cypress Square: An approximately 12,052 square foot south-facing plaza that will connect to Cypress Stairs and Mayfair Walk, located in the general area depicted in the attached Exhibit B-2. The improvements will consist of the existing mature and healthy Cypress trees identified on Sheet L.201 of the Conceptual Plans (the "**Landscape Plan**"), hardscaped walkways, and a central, paved open plaza area with wood decking, seating and landscaping.

c. Cypress Stairs: An approximately 1,255 square foot pedestrian walkway that will connect pedestrians from California Street to Cypress Square, located in the general area depicted in the attached Exhibit B-2. The improvements will consist of stairs with landscaped planters along the edges.

d. Euclid Green: An approximately 21,104 square foot open space with direct access to the sidewalks on Euclid Avenue and Laurel Street, located in the general area depicted in the attached Exhibit B-2. The improvements will consist of a large, naturally sloping lawn with plantings.

e. Mayfair Walk: An approximately 30,605 square foot east-west pedestrian connector that will connect to Mayfair Drive/Laurel Street to the west and the ADA-accessible Pine Street Stairs to Presidio Avenue to the east, located in the general area depicted in the attached Exhibit B-2. The improvements will consist of an approximately twenty foot (20') wide hardscape pathway with landscaped borders and access to ground floor residential units, seating, stairs, landscaping, and the retained mature and healthy oak trees and new trees identified in the Landscape Plan.

f. Presidio Overlook: An approximately 10,450 square foot open space atop Pine Street Stairs that will be an interconnection and scenic area between the east portion of the Mayfair Walk and the Pine Street Stairs, located in the general area depicted in the attached Exhibit B-2. The improvements will consist of a terrace with trees, planters, and seating.

g. Pine Street Steps: An approximately 7,015 square foot pedestrian walkway that will connect the Presidio Overlook to Pine Street and Masonic Avenue, located in the general area depicted in the attached Exhibit B-2. The improvements will consist of stairs with landscaped planters and green areas along the edges.

h. Walnut Drive and Walnut Court: Approximately 17,825 square feet of open space that will provide direct access to California Street, Mayfair Walk and Walnut Walk, located in the general area depicted in the attached Exhibit B-2. The Walnut Drive improvements will consist of a hardscaped roadway with tree-lined hardscape pedestrian walkways on either side of the paved area, and the Walnut

Court improvements will consist of a tree-lined hardscaped vehicular turnaround plaza with a tree feature at the center.

i. Walnut Walk North: Approximately 6,880 square feet of open space that will run through the center of the Project Site from Walnut Court to the southern boundary of the future legal parcels created for Plaza Building A and Plaza Building B, located in the general area depicted in the attached Exhibit B-2. The improvements will consist of an approximately twenty foot (20') wide hardscaped pedestrian pathway with a network of landscaped open spaces and seating. Once Walnut Walk North and Walnut Walk South are completed, they will collectively create the main north-south public pedestrian connection through the Project Site between Masonic and Euclid Avenue to Walnut Court.

j. Walnut Walk South: Approximately 16,850 square feet of open space that will run through the center of the Project Site from the southern boundary of the future legal parcels created for Plaza Building A and Plaza Building B and the intersection at Masonic Avenue and Euclid Avenue, located in the general area depicted in the attached Exhibit B-2. The improvements will consist of an approximately twenty foot (20') wide hardscaped pedestrian pathway with a network of landscaped open spaces and seating. Once Walnut Walk North and Walnut Walk South are completed, they will collectively create the main north-south public pedestrian connection through the Project Site between Masonic and Euclid Avenue to Walnut Court.

k. Alternative Pedestrian Access Paths: Any path constructed under Section 4 below.

2. Installation Schedule. An "**Occupancy Certificate**" means a certificate of occupancy, including any temporary certificate of occupancy. Subject to Section 3 below, Declarant shall complete the construction of the Publicly Accessible Private Improvements as follows:

a. California Plaza. Declarant shall complete construction of California Plaza before the issuance of an Occupancy Certificate for any non-retail portion of the Plaza A Building, which is described on the attached Exhibit B-1 and depicted on the attached Exhibit B-2. Once completed, California Plaza shall be associated with the Plaza A Building.

b. Cypress Square. Declarant shall complete construction of Cypress Square before the issuance of an Occupancy Certificate for any non-retail portion of the Plaza B Building, which is described on the attached Exhibit B-1 and depicted on the attached Exhibit B-2. Once completed, Cypress Square shall be associated with the Plaza B Building.

c. Cypress Stairs. Declarant shall complete construction of the Cypress Stairs before the issuance of an Occupancy Certificate for any non-retail portion of the later of the Plaza A Building or the Plaza B Building. Once completed, Cypress Stairs shall be associated with the Plaza A Building and the Plaza B Building.

d. Euclid Green. Declarant shall complete construction of Euclid Green before the issuance of an Occupancy Certificate for the Project's final Building; provided, however, that if the Declarant receives an Occupancy Certificate for any Building without completing all proposed Buildings during the DA Term, then Euclid Green shall be completed by the end of the DA Term. Once completed, Euclid Green shall be associated with the Euclid Building or, if the Euclid Building has not been constructed, it shall be associated with the legal parcel of the constructed multi-unit Building (excluding the Mayfair Building and the Townhomes) that is closest to Euclid Green on the expiration of the DA Term.

e. Mayfair Walk. Declarant shall complete construction of Mayfair Walk in the following segments:

i. The segment adjacent to the Mayfair Building (described on the attached Exhibit B-1 and depicted on the attached Exhibit B-2) and the Plaza A Building must be completed before the issuance of an Occupancy Certificate for any non-retail portion of the later of Mayfair Building or the Plaza A Building. Once completed, such segment shall be associated with the Mayfair Building and the Plaza A Building.

ii. The segment adjacent to the Mayfair Building and the Plaza A Building must be completed before the issuance of an Occupancy Certificate for any non-retail portion of the later of Mayfair Building or Plaza A Building. Once completed, such segment shall be associated with the Mayfair Building and the Plaza A Building.

iii. The segment adjacent to the Plaza B Building and the Center A Building (described on the attached Exhibit B-1 and depicted on the attached Exhibit B-2) must be completed before the issuance of an the Occupancy Certificate for any non-retail portion of the later of the Plaza B Building or the Center A Building, and the completion of the Center B Building, as applicable. Once completed, such segment shall be associated with the Plaza B Building and the Center A Building.

f. Pine Street Steps. Declarant shall complete construction of the Pine Street Steps before the issuance of an Occupancy Certificate for any non-retail portion of the Center Building B. Once completed, the Pine Street Steps shall be associated with Center Building B.

g. Presidio Overlook. Declarant shall complete construction of the Presidio Overlook before the issuance of an Occupancy Certificate for any non-retail portion of the Center Building B. Once completed, Presidio Overlook shall be associated with Center Building B.

h. Walnut Drive and Walnut Court. Declarant shall complete construction of Walnut Drive and Walnut Court before the later to occur of the issuance of an Occupancy Certificate for any non-retail portion of the Plaza B Building or the Walnut Affordable Housing Building (described on the attached Exhibit B-1 and depicted on the attached Exhibit B-2). Once completed, Walnut Drive and Walnut Court shall be associated with the Plaza B Building and the Walnut Affordable Housing Building.

i. Walnut Walk North. Declarant shall complete construction of Walnut Walk North before the later to occur of the issuance of an Occupancy Certificate for any non-retail portion of the Center A Building or the Center B Building. Once completed, Walnut Walk North shall be associated with the Center A Building and the Center B Building

j. Walnut Walk South. Declarant shall complete construction of Walnut Walk South before the later to occur of the issuance of an Occupancy Certificate for any non-retail portion of the Euclid Building (described on the attached Exhibit B-1 and depicted on the attached Exhibit B-2) or the Masonic Building (described on the attached Exhibit B-1 and depicted on the attached Exhibit B-2). Once completed, Walnut Walk South shall be associated with the Euclid Building and the Masonic Building.

3. Delayed Completion. Notwithstanding anything to the contrary in Section 2 above, if Declarant wishes to receive the first Occupancy Certificate for the non-retail portion of any of the buildings described in Section 2 above before completing its associated Publicly Accessible Private Improvement, Declarant may complete that associated Publicly Accessible Private Improvement at a later time by providing to the City, prior to issuance of the first Occupancy Certificate for any non-retail portion of that building, a surety performance bond or other security in form acceptable to the City and in an amount

equal to 100% of the reasonably estimated cost to complete that Publicly Accessible Private Improvement as required in this Declaration, and shall diligently and continuously pursue that Publicly Accessible Private Improvement to completion following which such bond will be released.

4. Alternative Pedestrian Access. If Declarant receives an Occupancy Certificate for any Building without completing all proposed Buildings during the DA Term that would otherwise require the completion of Walnut Walk North, Walnut Walk South, and Mayfair Walk as described above, then Declarant, in conjunction with the Planning Department, shall design an alternative plan for pedestrian access that seeks to achieve similar pedestrian access and widths as Walnut Walk North, Walnut Walk South, and Mayfair Walk, but takes into account then then-current on-site conditions, including locations of improvements and the Project Site's topography, and the Declarant shall construct such alternative plan improvements prior to the end of the DA Term. On their substantial completion, such alternative plan improvements shall be a Publicly Accessible Private Improvement and the portion of the Project Site improved with such alternative plan improvements shall be a Publicly Accessible Private Improvement.

EXHIBIT D

Regulations Regarding Access and Maintenance of Publicly Accessible Private Improvements

These Regulations Regarding Access and Maintenance of Publicly Accessible Private Improvements (these "Regulations") shall govern the use, maintenance, and operation of each completed Publicly Accessible Private Improvement as defined in the attached Exhibit C.

1. Permitted Uses. Upon completion of a Publicly Accessible Private Improvement in accordance with this Declaration, Declarant shall make that Publicly Accessible Private Improvement available for the use, enjoyment and benefit of the public for open space and recreational purposes in accordance with these Regulations, including, without limitation, (i) quiet contemplation and rest without the use of audible electronic devices (although headphones are permitted), (ii) pedestrian access through the Project Site from one Project Site boundary to the others (bicycles, scooters, skateboards and the like to be walked, not ridden on site for safety reasons), and (iii) short term use of designated seating areas (excluding planter walls and/or landscaped areas). These Regulations do not require Declarant to make its Publicly Accessible Private Improvement available to the public for more than open space and recreational purposes.

2. Prohibited Use. The following shall be prohibited in any Publicly Accessible Private Improvement, (i) smoking of any form, including cigarettes, cigars, pipes, e-cigarettes and smokeless cigarettes (including tobacco or other controlled substances), (ii) consumption or possession of open alcoholic beverages (unless permitted by special permit), (iii) camping or sleeping, (iv) climbing or affixing items to trees, other landscaping, furniture or infrastructure, (v) disorderly conduct, as defined in Article 4 of the City's Park Code, as amended from time to time, (vi) building fires or cooking (unless permitted by special permit), (vii) peddling or vending merchandise (unless permitted by special permit), (viii) temporary structures or installations (unless permitted by special permit), (ix) littering or dumping of waste, (x) removal of plants, soil, furniture, or other facilities of the open space, (xi) graffiti or the damage or destruction of property, and (xii) amplified sound. Declarant may limit off-leash animals to designated areas but shall permit leashed animals, including leashed service animals, in the Publicly Accessible Private Improvements. Organized sporting events are not permitted in the Publicly Accessible Private Improvements due to their slope and limited size. However, active recreation (e.g., kicking a soccer ball or throwing a football) among groups of up to four (4) people shall be permitted on Euclid Green provided it does not endanger other users of Euclid Green. Declarant may use a completed Publicly Accessible Private Improvement for temporary construction staging related to adjacent development on the Project Site (during which time the subject Publicly Accessible Private Improvement shall not be used by the public) to the extent that such construction is contemplated under, and performed in accordance with, the Development Agreement, the Approvals (as defined in the Development Agreement), and any Later Approvals (as defined in the Development Agreement).

3. No Discrimination. Declarant shall not discriminate against or segregate any person, or group of persons, on account of the basis of fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or acquired immune deficiency syndrome, HIV status, weight, height, medical condition, or association with members of any of the foregoing classes, in the use, occupancy, tenure, or enjoyment of a Publicly Accessible Private Improvement.

4. Maintenance Standard. Each Publicly Accessible Private Improvement shall be operated, managed, and maintained in a clean and safe condition in accordance with the anticipated and foreseeable use thereof.

5. Temporary Closure. Declarant shall have the right, without obtaining the prior consent of the City or any other person or entity, to temporarily close a Publicly Accessible Private Improvement to the public from time to time for one of the following two reasons. In each instance, such temporary closure shall continue for as long as Declarant reasonably deems necessary to address either of the circumstances below:

   a. Emergency; Public Safety. In the event of an emergency or danger to the public health or safety created from whatever cause (including, but not limited to, flood, storm, fire, earthquake, explosion, accident, criminal activity, riot, civil disturbances, civil unrest, unlawful assembly, or loitering). Declarant may temporarily close a Publicly Accessible Private Improvement (or affected portions thereof) in any manner deemed necessary or desirable to promote public safety, security, and the protection of persons and property.

   b. Maintenance and Repairs. Declarant may temporarily close a Publicly Accessible Private Improvement (or affected portions thereof) in order to make any repairs or perform any maintenance as Declarant, in its reasonable discretion, deems necessary or desirable to repair, maintain, or operate that Publicly Accessible Private Improvement; provided such closure may not impede emergency vehicle access.

6. Operation of the Publicly Accessible Private Improvement. Each Publicly Accessible Private Improvement shall be open and accessible to the public seven (7) days per week during the daylight hours (or 30 minutes prior to sunset) (the "Operating Hours"), unless reduced hours are (i) approved in writing by the City, (ii) otherwise expressly provided for in this Declaration (including, without limitation, Paragraphs 4 and 5(b) of these Regulations), or (iii) reasonably imposed by Declarant, with the City's reasonable consent, to address security concerns. None of the Publicly Accessible Private Improvements shall be closed to the public during Operating Hours for special events. No person shall enter, remain, stay, or loiter in a Publicly Accessible Private Improvement when it is closed to the public, except persons authorized in conjunction with a temporary closure, authorized service and maintenance personnel, or an authorized resident, guest or employee of the project.

7. Signs. Declarant shall post signs at the major public entrances to each Publicly Accessible Private Improvement, indicating that it is a privately-owned public open space in accordance with all laws and signage requirements. The signs, at a minimum, shall indicate the public right to use the space in accordance with these Regulations, setting forth the applicable regulations imposed by these Regulations, hours of operation, and a telephone number to call regarding security, management or other inquiries.

8. Permissive Use. Declarant may post at each entrance to each Publicly Accessible Private Improvement, or at intervals of not more than 200 feet along the boundary, signs reading substantially as follows: "Right to pass by permission, and subject to control of owner: Section 1008, Civil Code." Notwithstanding the posting of any such sign, no use by the public nor any person of any portion of the Publicly Accessible Private Improvement for any purpose or period of time shall be construed, interpreted, or deemed to create any rights or interests to or in the Publicly Accessible Private Improvement other than the rights and interests expressly granted in this Declaration. The right of the public or any person to make any use whatsoever of a Publicly

Accessible Private Improvement or any portion thereof is not meant to be an implied dedication for the benefit of, or to create any rights or interests in, any third parties.

9. Arrest or Removal of Persons. Declarant shall have the right (but not the obligation) to use all lawful means to effect the removal of any person or persons who creates a public nuisance or causes safety concerns for the occupants or neighbors of the Project, or who otherwise violates the applicable rules and regulations, or who commits any crime including, without limitation, infractions or misdemeanors, in or around a Publicly Accessible Private Improvements. To the extent permitted by law, Declarant may prohibit members of the public who have repeatedly broken the Regulations in any material respect from entering the Publicly Accessible Private Improvements, and if such person enters a Publicly Accessible Private Improvement, may ask such person to leave the Publicly Accessible Private Improvement. Declarant shall have the right to exercise its power and authority as owner consistent with other publicly accessible but privately-owned areas in the City, such as other privately owned public open space.

10. Project Security During Period of Non-Access. Declarant shall have the right to block entrances to install and operate security devices and to maintain security personnel in and around the Publicly Accessible Private Improvements to prevent the entry of persons or vehicles during the time periods when public access to a Publicly Accessible Private Improvement or any portion thereof is restricted or not permitted. Subject to the access requirements for City's emergency vehicles, as described in the Subdivision Map, and Declarant's obligations under Applicable Law, Declarant shall have a right to install permanent architectural features that serve as security devices such as gates, fences and bollards, and close such devices during non-operating hours or during periods of closure as identified in these Regulations. Design of such devices shall be subject to approval by the San Francisco Planning Department which shall not be unreasonably withheld and subject to any permits required under Applicable Law. Such design review by the San Francisco Planning Department shall not be construed as a change in entitlement and shall not be subject to a planning application or require a separate entitlement. It shall not be unreasonable for the Planning Department to withhold its consent if any such devices would impede emergency access that may be required under Applicable Law or in the Approvals. Nothing shall restrict Declarant's right to install security cameras and monitoring devices anywhere on the Project.

11. Removal of Obstructions. Declarant shall have the right to remove and dispose of, in any lawful manner it deems appropriate, any object or thing left or deposited on a Publicly Accessible Private Improvement deemed to be an obstruction, interference, or restriction of use of that Publicly Accessible Private Improvement for the purposes set forth in this Declaration, including, but not limited to, personal belongings or equipment in a Publicly Accessible Private Improvement during hours when public access is not allowed pursuant to these Regulations.

12. Temporary Structures. Subject to Declarant's right to use a Publicly Accessible Private Improvement for temporary construction staging related to adjacent development as set forth in Paragraph 1 of these Regulations, no trailer, tent, shack, or other outbuilding, or structure of a temporary character, shall be used on any portion of the Publicly Accessible Private Improvements at any time during Operating Hours, either temporarily or permanently.