File No.	190845	Committee Item No.	5
•		Board Item No.	

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee:	Land Use and Transportation Committee Date October 21, 2019			
Board of Su	pervisors Meeting Date			
Cmte Board				
	Motion			
	Resolution			
	Ordinance			
	Legislative Digest			
	Budget and Legislative Analyst Report			
	Youth Commission Report			
	Introduction Form			
	Department/Agency Cover Letter and/or Report			
	MOU			
	Grant Information Form			
	Grant Budget			
	Subcontract Budget			
	Contract/Agreement			
	Form 126 – Ethics Commission			
	Award Letter			
	Application			
	Public Correspondence			
OTHER	(Use back side if additional space is needed)			
	DRAFT Dev Agrmt			
	Referral PC 080519			
	Referral FYI 080519			
	Referral FYI 091119			
	Referral PC 091119			
	PC Transmittal 091219			
	Hearing Notice 102119			
	Updated Dev Agmt 101619			
	OEWD MOU 072417			
	Updated Dev Agmt 101719			
Completed by: <u>Erica Major</u> <u>Date October 18, 2019</u>				
Completed I	ov: Erica Maior Date			

-	1	

3

4

5

6 7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23 24

25

Development Agreement - Laurel Heights Partn	iers, LLC - 3333 Cali	tornia S	Street Project -
California Street at Presidio Avenue]			-

Ordinance approving a Development Agreement between the City and County of San Francisco and Laurel Heights Partners, LLC, a Delaware limited liability company, for the development of an approximately 10.25-acre site located at California Street at Presidio Avenue (3333 California Street), with various public benefits, including 25% affordable housing, a child care center comprised of approximately 14,665 square feet, and approximately 2.87 acres of privately owned, publicly accessible open space; making findings under the California Environmental Quality Act, and findings of conformity with the General Plan, and the eight priority policies of Planning Code, Section 101.1(b); approving certain development impact fees for the project, and waiving certain Planning Code fees and requirements; confirming compliance with or waiving certain provisions of Administrative Code, Chapter 56; ratifying certain actions taken in connection with the Development Agreement, as described herein; and authorizing certain actions to be taken under the Development Agreement, as described herein.

> **Unchanged Code text and uncodified text** are in plain Arial font. **Additions to Codes** are in *single-underline italics Times New Roman font*. **Deletions to Codes** are in *strikethrough italics Times New Roman font*. Board amendment additions are in double-underlined Arial font. Board amendment deletions are in strikethrough Arial font. Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Project Findings.

The Board of Supervisors makes the following findings:

California Government Code Sections 65864 et seg. authorizes any city, county, (a)

NOTE:

or city and county to enter into an agreement for the development of real property within the jurisdiction of the city, county, or city and county.

- (b) Chapter 56 of the Administrative Code ("Chapter 56") sets forth certain procedures for the processing and approval of development agreements in the City and County of San Francisco (the "City").
- (c) Laurel Heights Partners, LLC, a Delaware limited liability company (the "Developer"), owns and operates an approximately 10.25-acre site bounded by California Street to the north, Presidio Avenue to the east, Masonic Avenue to the southeast, Euclid Avenue to the south, and Laurel Street and Mayfair Drive to the west, currently comprised of an approximately 455,000 gross square foot office building, an approximately 14,000 gross square foot annex building, surface and subsurface parking areas, and approximately 165,200 square feet of landscaping or landscaped open space (the "Project Site").
- (d) On August 9, 2019, the Developer filed an application with the Planning Department for approval of a development agreement relating to the Project Site (the "Development Agreement") under Chapter 56. A copy of the Development Agreement is on file with the Clerk of the Board of Supervisors in File No. 190845.
- (e) The Developer proposes a mixed use development that will include residential, non-residential, open space, child care, and related uses (the "Project"). Specifically, the Project includes (1) approximately 744 residential units, including not less than 185 on-site affordable senior residential units, (2) approximately 34,496 square feet of retail/restaurant/commercial use in buildings along California Street, (3) 10 below-grade parking garages with approximately 847 parking spaces, (4) an approximately 14,665 gross square foot space for child care use, and (5) 125,226 square feet of privately owned, publicly accessible open space and 86,570 square feet of other open space, including private open space for residents, all as more particularly described in the Development Agreement.

25

- (f) While the Development Agreement is between the City, acting primarily through the Planning Department, and the Developer, other City agencies retain a role in reviewing and issuing certain later approvals for the Project, including approval of final maps and street improvement permits. As a result, affected City agencies have consented to the Development Agreement.
- (g)The Project is anticipated to generate an annual average of approximately 675 construction jobs, and on completion, an approximate \$10 million annual increase in property taxes and approximately \$15 million in development impact fees (including transportation. housing linkages, and school fees). In addition to the significant housing, jobs, urban revitalization, and economic benefits to the City from the Project, the Office of Economic and Workforce Development has determined that development of the Project under the Development Agreement will provide additional benefits to the public that could not be obtained through application of existing City ordinances, regulations, and policies. Additional public benefits to the City from the Project include (1) on-site affordable housing that exceeds the amount otherwise required and will equal 25% of the total number of proposed housing units for the Project; (2) workforce obligations, including significant training, employment, and economic development opportunities as part of the development and operation of the Project; (3) construction and maintenance of the privately owned, publicly accessible open space, totaling approximately 2.87 acres; (4) street improvements, some of which will be maintained by the Developer at no cost to the City; (5) an approximately 14,665 square foot child care center, including an outdoor activity area, capable of accommodating at least 175 children, with 10% of the maximum number of permitted slots to be provided to children in low-income households; (6) a Transportation Demand Plan under Planning Code Section 169.3(e)(2) that implements 75% of applicable target points rather than the 50% standard otherwise required for the Project; and (7) a \$1,055,000 payment towards an auxiliary water supply system that

will service the Project (the "AWSS Community Benefit Fee").

(h) Concurrently with this ordinance, the Board is taking a number of actions in furtherance of the Project, as generally described in the Development Agreement, including Exhibit E to the Development Agreement.

Section 2. CEQA Findings.

On September 5, 2019, by Motion No. 20512, the Planning Commission certified as adequate, accurate, and complete the Final Environmental Impact Report ("FEIR") for the Project pursuant to the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) ("CEQA"). A copy of Planning Commission Motion No. 20512 is on file with the Clerk of the Board of Supervisors in File No. 190947. Also on September 5, 2019, by Motion No. 20513, the Planning Commission adopted findings, including a rejection of alternatives and a statement of overriding considerations (the "CEQA Findings") and a Mitigation Monitoring and Reporting Program ("MMRP"). These Motions are on file with the Clerk of the Board of Supervisors in File No. 190947. In accordance with the actions contemplated in this ordinance, the Board of Supervisors has reviewed the FEIR and related documents, and adopts as its own and incorporates by reference as though fully set forth herein the CEQA Findings, including the statement of overriding considerations, and the MMRP.

Section 3. General Plan and Planning Code Section 101.1(b) Findings.

- (a) The Board of Supervisors finds that the Development Agreement will serve the public necessity, convenience, and general welfare for the reasons set forth in Planning Commission Resolution No. 20515 and incorporates those reasons herein by reference.
- (b) The Board of Supervisors finds that the Development Agreement is in conformity with the General Plan and the eight priority policies of Planning Code Section 101.1 for the reasons set forth in Planning Commission Resolution No. 20515. The Board hereby adopts

the findings set forth in Planning Commission Resolution No. 20515 and incorporates those findings herein by reference.

Section 4. Development Agreement.

- (a) The Board of Supervisors approves all of the terms and conditions of the Development Agreement in substantially the form on file with the Clerk of the Board of Supervisors in File No. 190845.
- (b) The Board of Supervisors approves and authorizes the execution, delivery, and performance by the City of the Development Agreement as follows: (1) the Director of Planning and (other City officials listed thereon) are authorized to execute and deliver the Development Agreement and consents thereto, and (2) the Director of Planning and other applicable City officials are authorized to take all actions reasonably necessary or prudent to perform the City's obligations under the Development Agreement in accordance with the terms of the Development Agreement. The Director of Planning, at his or her discretion and in consultation with the City Attorney, is authorized to enter into any additions, amendments, or other modifications to the Development Agreement that the Director of Planning determines are in the best interests of the City and that do not materially increase the obligations or liabilities of the City or materially decrease the benefits to the City as provided in the Development Agreement.
- (c) The Board of Supervisors authorizes the Controller to accept any payments made by the Developer under the Development Agreement.
 - Section 5. Development Impact Fees and Planning Code Conformity.
- (a) For the Project, the Board of Supervisors approves the development impact fees as set forth in the Development Agreement and waives any inconsistent provision in Planning Code Article 4.

(b) For the Project, the Board of Supervisors approves the child care facility and affordable housing requirements as set forth in the Development Agreement and waives the requirements of Planning Code Sections 414A, 415.5, 415.6(e), 415.6(f), and 415.7.

Section 6. Administrative Code Conformity.

The Development Agreement shall prevail if there is any conflict between the Development Agreement and Chapter 56, and without limiting the generality of the foregoing clause, for purposes of the Development Agreement only, the provisions of Chapter 56 are waived or its provisions deemed satisfied as follows:

- (a) Laurel Heights Partners, LLC shall constitute a permitted "Applicant/Developer" for purposes of Chapter 56, Section 56.3(b).
- (b) The Project comprises approximately 10.25 acres and is the type of large multiphase and/or mixed-use development contemplated by the Administrative Code and therefore it satisfies the provisions of Chapter 56, Section 56.3(g).
- (c) The provisions of the Development Agreement, including its attached Workforce Agreement, apply and satisfy the requirements of Administrative Code Chapter 14B, Section 14B.20, and Chapter 56, Section 56.7(c).
- (d) The provisions of the Development Agreement regarding any amendment or termination, including those relating to "Material Change," shall apply in lieu of the provisions of Chapter 56, Section 56.15.
- (e) The provisions of Chapter 56, Section 56.20 have been satisfied by the Memorandum of Understanding between the Developer and the Office of Economic and Workforce Development for the reimbursement of City costs, a copy of which is on file with the Clerk of the Board of Supervisors in File No. 190845.
 - Section 7. Chapter 56 Waiver; Ratification.

- (a) In connection with the Development Agreement, the Board of Supervisors finds that the requirements of Chapter 56, as modified hereby, have been substantially complied with and waives any procedural or other requirements of Chapter 56 if and to the extent to which they have not been strictly complied.
- (b) All actions taken by City officials in preparing and submitting the Development Agreement to the Board of Supervisors for review and consideration are hereby ratified and confirmed, and the Board of Supervisors hereby authorizes all subsequent action to be taken by City officials consistent with this ordinance.

Section 8. Effective and Operative Date.

- (a) This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.
- (b) This ordinance shall become operative only on (and no rights or duties are affected until) the later of (1) its effective date, as stated in subsection (a), or (b) the date that Ordinance _____, and Ordinance _____, have become effective. Copies of said ordinances are on file with the Clerk of the Board of Supervisors in File No.190947 and File No.190844.

APPROVED AS TO FORM: DENNIS J. HERRERA, City Attorney

Carol Wong
Deputy City Attorney

n:\legana\as2019\2000037\01389290.docx

Supervisor Stefani

BOARD OF SUPERVISORS

REVISED LEGISLATIVE DIGEST

(Substituted, 9/3/2019)

[Development Agreement Amendment - Laurel Heights Partners, LLC - 3333 California Street Project - California Street at Presidio Avenue]

Ordinance approving a Development Agreement between the City and County of San Francisco and Laurel Heights Partners, LLC, a Delaware limited liability company, for the development of an approximately 10.25-acre site located at California Street at Presidio Avenue, with various public benefits, including 25% affordable housing, a child care center comprised of approximately 14,665 square feet, and approximately 2.87 acres of privately owned, publicly accessible open space; making findings under the California Environmental Quality Act, and findings of conformity with the General Plan and the eight priority policies of Planning Code, Section 101.1(b); approving certain development impact fees for the project, and waiving certain Planning Code fees and requirements; and confirming compliance with or waiving certain provisions of Administrative Code, Chapter 56; ratifying certain actions taken in connection with the Development Agreement, as described herein; and authorizing certain actions to be taken under the Development Agreement, as described herein.

Background Information

California Government Code sections 65864 et seq. (the "Development Agreement Statute") and San Francisco Administrative Code Chapter 56 ("Chapter 56") authorize the City to enter into a development agreement regarding the development of real property. There are no amendments to existing law. This is a substitute ordinance (original ordinance introduced on July 30, 2019) that updates the amount of privately owned, publicly accessible open space and other private open space for residents and the number of proposed parking spaces on the site.

Proposed Amendment

Laurel Heights Partners, LLC, a Delaware limited liability company ("Developer"), has proposed a mixed-use development project ("Project") for the approximately 10.25-acre site bounded by California Street to the north, Presidio Avenue to the east, Masonic Avenue to the southeast, Euclid Avenue to the south, and Laurel Street and Mayfair Drive to the west. The Project includes converting an existing office building into two residential buildings, constructing 13 new buildings, and developing open space to result in approximately 774 residential units, including 185 on site affordable senior residential units, approximately 34,496 square feet for retail/restaurant/commercial use, 10 below-grade parking garages with approximately 847 parking spaces, an approximately 14,665 gross square foot space for child care use, approximately 125,226 square feet of privately owned, publicly accessible open space that will include public pathways through the site and an existing open space at Euclid

Avenue, and approximately 86,570 square feet of other open space, including private open space for residents.

City staff has negotiated a development agreement with Developer for a term of 15 years. Under the development agreement, Developer will attain the vested right to develop the Project in return for specified community benefits, including the affordable housing, public open space, child care facility, transportation, street improvements, an auxiliary water supply system contribution, and workforce commitments made by Developer. Approval of the ordinance would adopt certain environmental findings, allow City staff to enter into the development agreement, and waive specified provisions of the Administrative Code and Planning Code for the Project.

By separate legislation, the Board is considering a number of other actions in furtherance of the Project, including the creation of a special use district and amendments to the City's Planning Code, Height Map and Zoning Map, and approving a major encroachment permit.

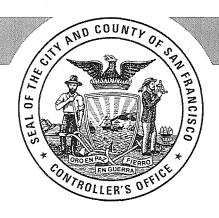
n:\legana\as2019\2000037\01389571.docx

FORM SFEC-126 NOTIFICATION OF CONTRACT APPROVAL (S.F. Campaign and Government Conduct Code § 1.126)

City Elective Officer Information (Please print clearly)	mient conduct code § 1.120)
Name of City elective officer(s): Members, San Francisco Board of Supervisors	City elective office(s) held: Members, San Francisco Board of Supervisors
Contractor Information (Please print clearly)	
Name of Contractor:	
 Use additional pages as necessary. Board of Directors: N/A this is an LLC Dan Safier is President, Secretary and Treasurer Persons with 20% or more ownership in the confidence 	to has an ownership of 20 percent of more in the contractor; is political committee sponsored or controlled by the contractor. Tractor: 3333 California LP, a Delaware Limited Partnership is in the limited partnership have an ownership of 20% or
	, , , , , , , ,
Date that contract was approved: Describe the nature of the contract that was approved: 3333 California Development Agreement	Amount of contract:
Comments: N/A	
This contract was approved by (check applicable)	
The City elective officer(s) identified on this form	
A board on which the City elective officer(s) serves	San Francisco Board of Supervisors
☐ The board of a state agency (Health Authority, Housing A Board, Parking Authority, Redevelopment Agency Comm Development Authority) on which an appointee of the Ci	nission, Relocation Appeals Board, Treasure Island
Print Nar	ne of Board
Filer Information (Please print clearly)	
Name of filer: Clerk of the San Francisco Board of Supervisors	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Franc	isco, CA 94102 E-mail: BOS.Legislation@sfgov.org
Signature of the Elective Officer (if submitted by City elective	officer) Date Signed
Signature of Board Secretary or Clerk (if Submitted by Board	Secretary or Clerk) Date Signed

3333 California Street Development Agreement

Economic Impact Report



CITY & COUNTY OF SAN FRANCISCO

Office of the Controller

Office of Economic Analysis Items # 190844 and 190845

10.16.2019

- On July 30, 2019, supervisor Stefani introduced ordinance (#190844) to create the 3333 California Street Special Use District (SUD) and also introduced ordinance (#190845) approving the Development Agreement (DA) between the City and the Laurel Heights Partners LLC for the development of about 10.25 acres site.
- The project site is currently used by the University of California, San Francisco (UCSF) Laurel Height Campus.
- The proposed SUD legislation would change allowable heights on a portion of the project parcel. The height changes will affect 6 acres of the total of 10.25 acres area.
- The proposed ordinance would also revoke a 1952 Planning Commission Resolution which prohibits retail uses and limits the overall residential density on the project site.
- The Office of Economic Analysis has prepared this report after determining that the proposed ordinances could have a material economic impact on the city's economy.

Existing Uses at the Project Site

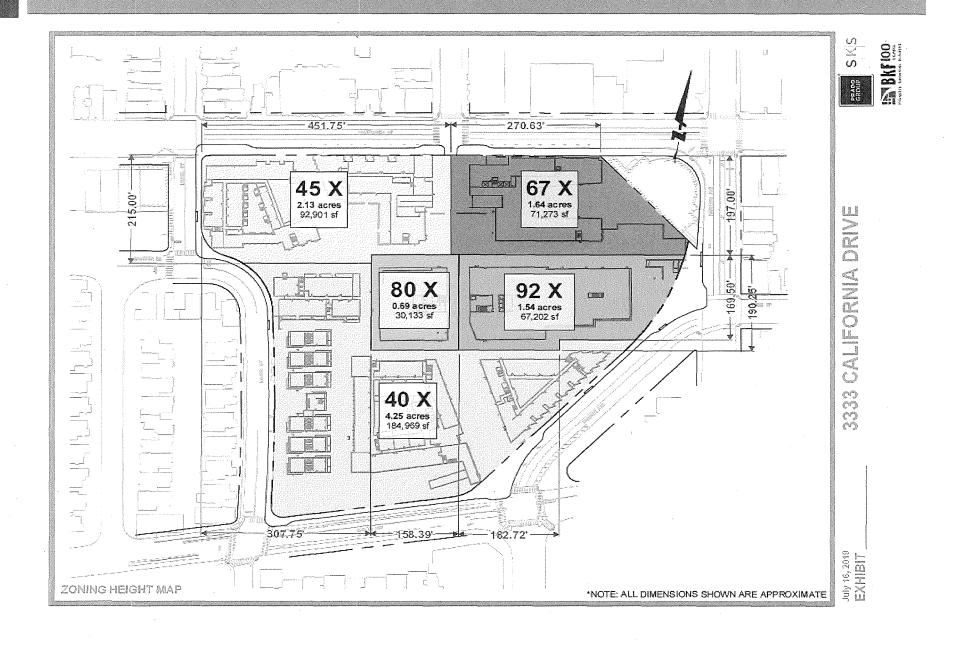
- The project site currently serves as the University of California, San Francisco (UCSF) Laurel Height Campus. Current uses on the site are office, research, laboratory, childcare and parking.
- The campus contains a four-story, 455,000 sq. ft. office building as well as a one-story, 14,000 sq. ft. annex building (serving building facilities and plant operation functions) at the corner of California and Laurel Street.
- The campus has a 11,500 sq. ft. daycare facility as well.
- The site also has three surface parking lots as well as a 93,000 sq. ft. three-level, partially below-grade parking garage.
- The existing building's office usage and its 55.5 feet height are both considered legal-nonconforming under the existing RM-1 zoning.
- The aerial map of the existing building is presented on the next slide.

Existing Project Site: Aerial View



Proposed SUD Height and Bulk Changes

Property Description	Block/Lot P	arcel Area (Acre) (Ho	Existing eight and Bulk) (Heig	Proposed ht and Bulk)
Northwestern portion from California Street south and Laurel Street east.	1032/003	2.13	40-X	45-X
Northeastern portion from California Street south and northeastern most corner along the California Street frontage.	1032/003	1.64	40-X	67-X
Area centrally located within south of California Street.	1032/003	0.69	40-X	80-X
Area centrally located on the eastern side of south of California Street.	1032/003	1.54	40-X	92-X
Total		6.00		



Description and Overview of the Project

- The proposed project at 3333 California Street as outlined under the Development Agreement (DA) is a mixed-use project consisting of 744 housing units, including 588 market-rate units and 25% on-site affordable senior housing units (185 units + 1 manger unit).
- The project would also include 34,496 sq. ft. of retail space as well as 14,000 sq. ft. of child care center for approximately 175 seats, serving the community living in those residential units.
- Over 2 acers of publicly accessible open space as well as 857 off-street parking spaces will also be provided as part of the project.
- The proposed project will reuse portion of the existing office building, divided into two separate buildings adapted for residential use. Thirteen new will buildings would also be constructed throughout the site for residential as well as nonresidential uses.
- Under the DA, the project is entitled for 15 years, after which the developer loses the right to build the project and would have to reapply to the city for the new entitlement.

Site's Maximum Potential under the Existing Zoning

- The project site is considered underutilized and is predominantly occupied by surface parking lots, driveways, open space, and a large noncomplying and nonconforming office building.
- Although the office use is not permitted under the existing RM-1 zoning, the current office use is considered legal and can continue to exist as such on the site.
- In the absence of any SUD changes and the development agreement (DA), the site will most likely be built to its maximum capacity, while preserving the existing office space (which can be considered as its highest and the best use given current office market conditions in the city).
- Under this likely scenario, the site will maximize the residential potential on the remaining underutilized portion of the 10.25 acres.
- The OEA estimates that the site can potentially add 361 residential units in addition to the exiting office space, when underutilized land's potential is fully maximized.
- The next slide compares the difference in the development capacity at build-out between what is being proposed under the DA/SUD changes and what the OEA estimates as the site's maximum potential under the existing zoning.

Difference in Development Capacity at Build-out

Usage	Proposed Project under the SUD and the DA	Current Site (Existing Zoning)	Difference
Office (Sq. Ft.)	0	338,000	-338,000
Retail	34,496	0	34,496
Total Non-residential Use (Sq. Ft.)	34,496	338,000	-303,504
Residential Use			
Residential Space (Sq. Ft.)	978,611	475,425	503,186
New Housing Units	744	361	383
Affordable Units	186	65	121

Economic Impact Factors

- The proposed development is expected to affect the local economy in three major ways:
 - 1. The re-zoning will increase the number of housing units on the site. This will put downward pressure on prices and rents for residential real estate across the city, making city housing prices modestly more affordable.
 - 2. Under the proposed project there will be a loss of office space in the city, which will put an upward pressure on office rents.
 - 3. The demolition and construction activity following the rezoning and development agreement will generate additional construction activity.
- The OEA analyzed and modeled the difference in development potential of the site under the proposed rezoning and the DA and compared its full potential under the exiting zoning (as explained on slides 8 and 9).

- All else constant, an increase in the housing supply will reduce residential rents and home prices in the city.
- The OEA estimates that these additional 383 units have the potential to reduce housing prices by 0.15%, not taking into account any changes in employment or population as a result of the proposed development.
- When accounting for employment and population changes resulting from this development, we estimate a net reduction of housing prices of 0.05% (see slide 15).

Impact of Affordable Housing Subsidy

- Low-income households generally experience a higher housing burden than higher-income households. An increase in the number of affordable units will decrease the housing burden for low-income households who can qualify for and occupy those units.
- Under the development agreement, the project would provide 25% of the on-site housing as affordable (compared to an existing 18% requirement to provide on-site affordable units or pay the city in-lieu affordable housing fee).
- This would create a potential to build an additional 121 units as shown on slide 9.
- The OEA further estimates that at build-out these additional affordable units would reduce low-income housing payments by \$0.84 million annually to the households who would occupy these units or \$6,906 per household.

Impact on Office Space

- As proposed, the project will adaptively reuse portions of the existing office building and convert it for residential use.
- There would be a net decrease in the commercial office space on the project site but those office uses will likely move to other suitable office spaces in the city.
- But the loss of office space due to the proposed project would likely result in higher office rents because of competition for the limited office space in the city.
- The OEA estimates that the citywide office rent could rise by 0.5% (see Appendix). This would likely result in \$32.4 million higher rents annually in the office market across the city.

■ The OEA uses the REMI model to simulate the impact of the proposed re-zoning and the development agreement potential difference (as shown on slide 8) on the city's economy. The simulation inputs are presented below.

Inputs	Value
Housing Price Change	-0.15%
Affordable Housing Subsidy Value (\$ million)	\$0.8
Value of Residential Investment (\$ million)	\$553.5
Value of Non-Residential Investment (\$ million)	\$8.9
Change in Rent for Office Space (\$ million)	\$32.4

Economic Impact Assessment

The project is assumed to develop over a fifteen-year period, from 2020-2034. The average city-wide impacts at buildout are shown in the table below.

Citywide Impacts	REMI Simulation Results
Employment Change	187
Population Change	248
GDP Change (\$2018, million)	\$31.4
Housing Price Change	-0.05%

- The proposed rezoning and the associated project under the development agreement will expand the city's economy.
- Employment, population, and GDP are all expected to rise as a result of the proposed project under the associated zoning, land use and development agreement changes.
- The OEA estimates that, on average, over the forecast horizon, the differential potential of the project would add 187 jobs or \$31.4 million annually to the local GDP.
- The REMI simulation results further show that citywide housing prices are expected to decline by 0.05 percent as a result of additional project housing supply, after taking into account any associated population and employment changes.

Calculation of Impact on the Office Rents

Total office space in the city (sq. ft.) = 107,174,222

Loss of office space under the development agreement (sq. ft.) = -338,000

Decrease in office space (%) = -338,000 / 107,174,222 = -0.32%

Elasticity of demand for office (Ed) = -0.62

Elasticity of supply for office (Es) = 0.02

Impact on office rents = Decrease in office space / (Es - Ed)

Impact on office rents = -0.32 / (0.02 + 0.62) = -0.32 / 0.64 = -0.5%

Asim Khan, Ph.D. Senior Economist asim.khan@sfgov.org RECORDING REQUESTED BY CLERK OF THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO

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)

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND LAUREL HEIGHTS PARTNERS, LLC

FOR PROPERTY LOCATED AT 3333 CALIFORNIA STREET

Block 1032 Lot 003

TABLE OF CONTENTS

			<u>Page</u>
1.	DEFI	NITIONS	4
2.	EFFF	CTIVE DATE; TERM	13
2.	2.1	Effective Date	
	2.2	Term	
3.		ERAL RIGHTS AND OBLIGATIONS	
	3.1	Development of the Project	
	3.2	Workforce	14
4.	PUBI	LIC BENEFITS; DEVELOPER OBLIGATIONS AND CONDITIONS TO	
		ELOPER'S PERFORMANCE	14
	4.1	Community Benefits Exceed Those Required by Existing Ordinances and	1.4
	4.0	Regulations	
	4.2 4.3	Conditions to Performance of Community Benefits	13
	4.5	Discretionary Approvals	16
	4.4	Nondiscrimination	
	4.5	City Cost Recovery	
	4.6	Prevailing Wages	
	4.7	Indemnification of City	
5.	VEST	TING AND CITY OBLIGATIONS	20
٠.	5.1	Vested Rights	
	5.2	Existing Standards	
	5.3	Criteria for Later Approvals.	
	5.4	Strict Building Code Compliance	
	5.5	Denial of a Later Approval	
	5.6	New City Laws	
	5.7	Fees and Exactions	
	5.8	Changes in Federal or State Laws	26
	5.9	No Action to Impede Approvals	28
	5.10	Estoppel Certificates	28
	5.11	Existing, Continuing Uses and Interim Uses	28
	5.12	Taxes	28
6.	NO D	DEVELOPMENT OBLIGATION	29
7.	MUT	UAL OBLIGATIONS	30
	7.1	Notice of Completion, Revocation or Termination	
	7.2	General Cooperation; Agreement to Cooperate	
	7.3	Third-Party Challenge	
	7.4	Good Faith and Fair Dealing	
	75	Other Necessary Acts	31

8.	PERI	ODIC REVIEW OF DEVELOPER'S COMPLIANCE	31	
	8.1	Annual Review	31	
	8.2	Review Procedure	32	
9.	ENFO	DRCEMENT OF AGREEMENT; DEFAULT; REMEDIES	33	
	9.1	Enforcement		
	9.2	Meet and Confer Process		
	9.3	Default	33	
	9.4	Remedies	34	
	9.5	Time Limits; Waiver; Remedies Cumulative	36	
	9.6	Attorneys' Fees	36	
10.	FINA	NCING; RIGHTS OF MORTGAGEES	37	
	10.1	Developer's Right to Mortgage	37	
	10.2	Mortgagee Not Obligated to Construct	37	
	10.3	Copy of Notice of Default and Notice of Failure to Cure to Mortgagee	37	
	10.4	Mortgagee's Option to Cure Defaults	38	
	10.5	Mortgagee's Obligations with Respect to the Property	39	
	10.6	No Impairment of Mortgage	39	
	10.7	Cured Defaults	39	
11.	AMENDMENT; TERMINATION; EXTENSION OF TERM			
	11.1	Amendment or Termination		
	11.2	Early Termination Rights	40	
	11.3	Termination and Vesting.	40	
	11.4	Amendment Exemptions	40	
	11.5	Extension Due to Legal Action or Referendum; Excusable Delay	41	
12.	TRA	NSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE	42	
	12.1	Permitted Transfer of this Agreement	42	
	12.2	Notice of Transfer	43	
	12.3	Release of Liability	43	
	12.4	Responsibility for Performance	44	
	12.5	Constructive Notice	44	
	12.6	Rights of Developer	44	
13.	DEV.	ELOPER REPRESENTATIONS AND WARRANTIES	45	
	13.1	Interest of Developer; Due Organization and Standing	45	
	13.2	No Inability to Perform; Valid Execution	45	
	13.3	Conflict of Interest	45	
	13.4	Notification of Limitations on Contributions	45	
	13.5	Other Documents	46	
	13.6	No Bankruptcy	47	
14.	MISO	CELLANEOUS PROVISIONS	47	
	14.1	Entire Agreement	47	
	14.2	Incorporation of Exhibits		

14.3	Binding Covenants; Run With the Land	47
14.4	Applicable Law and Venue	47
14.5	Construction of Agreement	48
14.6	Project Is a Private Undertaking; No Joint Venture or Partnership	48
14.7	Recordation	48
14.8	Obligations Not Dischargeable in Bankruptcy	48
14.9	Survival	
14.10	Signature in Counterparts	
14.11	Notices	
14.12	Limitations on Actions	
14.13	Severability	50
14.14	MacBride Principles.	50
	Tropical Hardwood and Virgin Redwood	
	Sunshine	
14.17	Non-Liability of City Officials and Others	51
	Non-Liability of Developer Officers and Others	
	No Third Party Beneficiaries	

EXHIBITS AND SCHEDULES

Exhibits

A	Project Site Legal Description
В	Project Description
B-1	Site Plan
C	Project Open Space
C-1	Open Space Plan
C-2	Regulations Regarding Access and Maintenance of Publicly Accessible Private
	Improvements
C-3	Public Access Declaration
D	Affordable Housing Program
D-1	Depiction of Walnut Land
D-2	Baseball Arbitration Appraisal Process
D-3	Form of Grant Deed
D-4	Accepted Conditions of Title
D-5	Form of Deed of Trust
E	List of Approvals
F	MMRP
G	Notice of Completion and Termination
H	Form of Assignment and Assumption Agreement
I	Workforce Agreement
J	Transportation Exhibit
K	Schedule Template for Later Approvals
Γ .	Child Care Program
M	SUD Ordinance and Conditional Use/Planned Unit Development Exceptions
N	Notice of Special Restrictions – AB900 Determination Compliance

Schedules

- Community Benefits Linkages and Impact Fees Schedule AWSS Community Benefit Fee 1
- 2

DEVELOPMENT AGREEMENT BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO AND LAUREL HEIGHTS PARTNERS, LLC

THIS DEVELOPMENT AGREEMENT dated for reference purposes only as of this ____ day of _____, 2019, is 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"), pursuant to the authority of Section 65864 *et seq.* of the California Government Code and Chapter 56 of the Administrative Code. The City and Developer are also sometimes referred to individually as a "Party" and together as the "Parties". Capitalized terms not defined when introduced shall have the meanings given in Article 1.

RECITALS

This Agreement is made with reference to the following facts:

- A. Developer is the owner of an irregularly-shaped parcel 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 on Exhibit A (the "Project Site"). The Project Site is improved with (i) a four-story, approximately 455,000 gross square foot office building with a three-level, partially below-grade garage that has 212 parking spaces and approximately 12,500 gross square feet of storage space, (ii) a one-story, approximately 14,000 gross square foot annex building with building facilities and plant operations, office space for physical plant engineers, and unused laboratory space, (iii) 2 circular garage ramp structures, (iv) 3 surface parking lots that collectively have 331 parking spaces, and (v) approximately 165,200 square feet of landscaping or landscaped open space.
- B. The Developer proposes a mixed use development that will include on-site affordable units and that will include residential, retail, open space, parking, child care and related uses (the "**Project**"). Specifically, the Project includes (i) up to approximately 744 residential units consisting of a mix of market rate and on-site BMR Units, including 185 on-site senior affordable housing units (plus one (1) manager's unit), (ii) approximately 34,496 square feet for retail/restaurant/commercial use, (iii) 10 below-grade parking garages with approximately 857

parking spaces (including approximately ten car share spaces), (iv) an approximately 14,665 square foot space for child care use, and (v) approximately 236,000 square feet of landscaped or open space, which includes approximately 125,226 square feet of privately owned, public open space, more than 71,000 square feet of which is in excess of the open space requirements under the Code, all as more particularly described on Exhibit B.

- C. The Project is anticipated to generate an annual average of approximately 675 construction jobs during construction and, upon completion, approximately 200 net new permanent on-site jobs, an approximate \$10 million annual increase in property taxes, and approximately \$15 million in development impact fees (including transportation, housing linkages, and school fees).
- D. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 *et seq.* (the "Development Agreement Statute"), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property regarding the development of such property. Pursuant to Government Code Section 65865, the City adopted Chapter 56 of the Administrative Code ("Chapter 56") establishing procedures and requirements for entering into a development agreement pursuant to the Development Agreement Statute. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56.
- E. In addition to the significant housing, jobs, and economic benefits to the City from the Project, the City has determined that as a result of the development of the Project in accordance with this Agreement and the Special Use District and the Planned Unit Development approvals attached at Exhibit M, additional clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies. Major additional public benefits to the City from the Project include: (i) an increase in affordable housing that exceeds amounts otherwise required and will equal approximately twenty-five percent (25%) of the total number of housing units for the Project, serving senior households with incomes below 80% of MOHCD AMI with an overall average of not more than 59% of MOCHD AMI; (ii) construction and maintenance of the Publicly Accessible Private Improvements (as defined in Section 1) for a total of approximately 125,226 square feet of public useable open area; (iii) transportation demand management measures that exceed the level otherwise required; (iv) the Child Care Program (as

defined in <u>Section 1</u>); (v) workforce obligations; and (vi) the Streetscape Improvements (as defined in <u>Section 1</u>).

- F. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in a way as to fully comply with the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.; "CEQA"), the CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 et seq.); "CEQA Guidelines"), the Development Agreement Statute, Chapter 56, the Planning Code, the Enacting Ordinances and all other applicable Laws in effect as of the Effective Date. This Agreement does not limit the City's obligation to comply with applicable environmental Laws, including CEQA, before taking any discretionary action regarding the Project, or the Developer's obligation to comply with all applicable Laws in connection with the development of the Project.
- G. Developer submitted its application and initial supporting materials for certification into the Environmental Leadership Development Project Program on August 23, 2018 (the "AB900 Application"), and, on January 30, 2019, the State of California Air Resources Board ("CARB") issued its Executive Order G-18-101 (the "CARB Executive Order") in which it determined, based on the CARB Staff Evaluation of AB 900 Application for 3333 California Street Mixed Use Project ("CARB Staff Evaluation"), dated January 30, 2019, and the AB900 Application that, pursuant California Public Resources Code section 21183(c), the Project would not result in any net additional GHG emissions (the "CARB Executive Order").
- H. On June 7, 2019, the Governor's Office, with the concurrence of the Joint Legislative Budget Committee on July 8, 2019 (the "JLBC Letter"), determined that the Project is an eligible project under the Jobs and Economic Improvement Through Environmental Leadership Act of 2011, Public Resources Code sections 21178 et seq. (the "Determination").
- I. The Final Environmental Impact Report ("FEIR") prepared for the Project and certified by the Planning Commission on ________, 2019, together with the CEQA findings (the "CEQA Findings") and the Mitigation Measures adopted concurrently therewith and set forth in the MMRP, comply with CEQA, the CEQA Guidelines, and Chapter 31 of the Administrative Code. The FEIR thoroughly analyzes the Project and the Mitigation Measures were designed to mitigate significant impacts to the extent they are susceptible to feasible mitigation. On _______, 20 ___, the Board of Supervisors, in Motion No. [________], affirmed the decisions

of the Planning Commission to certify the FEIR. The information in the FEIR and the CEQA Findings were considered by the City in connection with approval of this Agreement. On _____, 20__, the Planning Commission held a public hearing on this J. Agreement and the Project, duly noticed and conducted under the Development Agreement Statute and Chapter 56. Following the public hearing, the Planning Commission adopted the CEQA findings and determined among other things that the FEIR thoroughly analyzes the Project and the Mitigation Measures are designed to mitigate significant impacts to the extent they are susceptible to a feasible mitigation, and further determined that the Project and this Agreement will, as a whole, and taken in their entirety, continue to be consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended, and the policies set forth in Section 101.1 of the Planning Code (together the "General Plan Consistency Findings"). The information in the FEIR and the CEQA Findings has been considered by the City in connection with this Agreement. K. the Board of Supervisors, having received the Planning Commission's recommendations, held a public hearing on this Agreement pursuant to the Development Agreement Statute and Chapter 56. Following the public hearing, the Board made the CEQA Findings required by CEQA, incorporating by reference the General Plan Consistency Findings. On ______, the Board adopted Ordinance No. [_____], amending L. the Planning Code, the Zoning Map, and the Height Map, Ordinance No. [_____], approving this Agreement (File No. []), and authorizing the Planning Director to execute this Agreement on behalf of the City, and Ordinance No. _____, approving a street encroachment permit and associated encroachment permit and maintenance agreement for the Project (collectively, the "Enacting Ordinances"). The Enacting Ordinances took effect on Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **DEFINITIONS**

In addition to the definitions set forth in the above preamble paragraph, Recitals and elsewhere in this Agreement, the following definitions shall apply to this Agreement:

- 1.1 "Administrative Code" means the San Francisco Administrative Code.
- 1.2 "Agreement" means this Development Agreement, the Exhibits and Schedules that have been expressly incorporated herein, and any amendments thereto.
- 1.3 "AMI" means the unadjusted median income levels derived from the U.S. Department of Housing and Urban Development on an annual basis for the San Francisco area, adjusted solely for household size, but not high housing cost area.
 - 1.4 "Annual Review Date" has the meaning set forth in Section 8.1.
- 1.5 "Applicable Laws" has the meaning set forth in <u>Section 5.2</u> (where not capitalized, "applicable Law" has its plain meaning and refers to Laws as otherwise defined herein).
- 1.6 "Approvals" means the City approvals, entitlements, and permits listed on Exhibit E, including any Later Approvals at the time and to the extent they are included pursuant to Section 5.1.
- 1.7 "Assignment and Assumption Agreement" has the meaning set forth in Section 12.2.
 - 1.8 "Associated Community Benefit" is defined in Section 4.1.
 - 1.9 "AWSS Community Benefit Fee" is defined in <u>Schedule 2</u>.
 - 1.10 "BMR Units" has the meaning set forth in the Housing Program.
- 1.11 "Board of Supervisors" or "Board" means the Board of Supervisors of the City and County of San Francisco.
- 1.12 "Building" or "Buildings" means each of the existing, modified and new buildings on the Project Site, as described in the Project description attached as Exhibit B.
 - 1.13 "California Plaza" is described in Section 1.a of Exhibit C.
 - 1.14 "CEQA" has the meaning set forth in Recital F.
 - 1.15 "CEQA Findings" has the meaning set forth in Recital I.
 - 1.16 "CEQA Guidelines" has the meaning set forth in Recital F.
 - 1.17 "Chapter 56" has the meaning set forth in Recital D.
- 1.18 "Child Care Program" means the child care facility program attached as Exhibit L.
- 1.19 "City" means the City as defined in the opening paragraph of this Agreement. Unless the context or text specifically provides otherwise, references to the City

means the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors.

- 1.20 "City Agency" or "City Agencies" means the City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement, or are controlled by persons or commissions that have executed or consented to this Agreement, that have subdivision or other permit, entitlement or approval authority or jurisdiction over development of the Project or any improvement located on or off the Project Site, including, without limitation, the City Administrator, Planning Department, MOHCD, OEWD, SFMTA, PW, DBI, together with any successor City agency, department, board, or commission. Nothing in this Agreement shall affect the jurisdiction under the City's Charter of a City department that has not approved or consented to this Agreement in connection with the issuance of a Later Approval. The City actions and proceedings subject to this Agreement shall be through the Planning Department, as well as affected City Agencies (and when required by applicable Law, the Board of Supervisors).
- 1.21 "City Attorney's Office" means the Office of the City Attorney of the City and County of San Francisco.
- 1.22 "City Costs" means the actual and reasonable costs incurred by a City Agency in preparing, adopting or amending this Agreement, in performing its obligations or defending its actions under this Agreement or otherwise contemplated by this Agreement, as determined on a time and materials basis, including reasonable attorneys' fees and costs but excluding work, hearings, costs or other activities contemplated or covered by Processing Fees; provided, however, City Costs shall not include any costs incurred by a City Agency in connection with a City Default or which are payable by the City under Section 9.6 when Developer is the prevailing party.
 - 1.23 "City Parties" has the meaning set forth in Section 4.7.
 - 1.24 "City Report" has the meaning set forth in Section 8.2.2.
- 1.25 "City-Wide" means all real property within the territorial limits of the City and County of San Francisco, not including any property owned or controlled by the United States or by the State of California and therefore not subject to City regulation.
 - 1.26 "CMA" is defined in Section 12.1.
- 1.27 "Commence Construction", "Commenced Construction" or "Commencement of Construction" means groundbreaking in connection with the

commencement of physical construction of the applicable Building foundation, but specifically excluding the demolition or partial demolition of existing structures.

- 1.28 "Community Benefits" has the meaning set forth in Section 4.1.
- 1.29 "Community Benefits Linkages and Impact Fees Schedule" means the schedule attached to this Agreement as Schedule 1.
- 1.30 "Community Benefits Program" has the meaning set forth in Section 4.1.1.
 - 1.31 "Costa Hawkins Act" has the meaning set forth in Exhibit D.
 - 1.32 "Cypress Square" is described in Section 1.b of Exhibit C.
 - 1.33 "Cypress Stairs" are described in Section 1.b of Exhibit C.
 - 1.34 "**Default**" has the meaning set forth in <u>Section 9.3</u>.
- 1.35 "**DBI**" means the Department of Building Inspection of the City and County of San Francisco.
- 1.36 "**Developer**" has the meaning set forth in the opening paragraph of this Agreement, and shall also include (i) any Transferee as to the applicable Transferred Property, and (ii) any Mortgagee or assignee thereof that acquires title to any Foreclosed Property but only as to such Foreclosed Property.
- 1.37 "Development Agreement Statute" has the meaning set forth in <u>Recital D</u>, as in effect as of the Effective Date.
- 1.38 "**Development Parcel**" means a parcel within the Project Site on which a Building or other improvements will be constructed, as set forth in a Subdivision Map.
 - 1.39 "Effective Date" has the meaning set forth in Section 2.1.
 - 1.40 "Enacting Ordinances" has the meaning set forth in Recital L.
 - 1.41 "Euclid Green" is described in Section 1.h of Exhibit C.
 - 1.42 "Excusable Delay" has the meaning set forth in Section 11.5.2.
- 1.43 "Existing Mortgage" means the deed of trust recorded in the Official Records of San Francisco County on March 30, 2018 as Instrument Nos. 2018-K595916-00 and 2018-K595918-00, including all modification thereto.
 - 1.44 "Existing Standards" has the meaning set forth in Section 5.2.
- 1.45 "Existing Uses" means all existing lawful uses of the existing Buildings and improvements (and including, without limitation, pre-existing, non-conforming uses under the

Planning Code) on the Project Site as of the Effective Date, as the same may be modified by the Approvals and any Later Approvals.

- 1.46 "Federal or State Law Exception" has the meaning set forth in Section 5.8.1.
 - 1.47 "FEIR" has the meaning set forth in <u>Recital I</u>.
- 1.48 "Finally Granted" means (i) any and all applicable appeal periods for the filing of any administrative or judicial appeal challenging the issuance or effectiveness of any of the Approvals, this Agreement or the FEIR shall have expired and no such appeal shall have been filed, or if such an administrative or judicial appeal is filed, the Approvals, this Agreement or the FEIR, as applicable, shall have been upheld by a final decision in each such appeal without adverse effect on the applicable Approval, this Agreement or the FEIR and the entry of a final judgment, order or ruling upholding the applicable Approval, this Agreement or the FEIR and (ii) if a referendum petition relating to this Agreement is timely and duly circulated and filed, certified as valid and the City holds an election, the date the election results on the ballot measure are certified by the Board of Supervisors in the manner provided by the Elections Code reflecting the final defeat or rejection of the referendum.
- 1.49 "First Construction Document" shall be as defined in San Francisco Building Code Section 107A.13.1(a)(8).
 - 1.50 "Foreclosed Property" is defined in Section 10.5.
- 1.51 "General Plan Consistency Findings" has the meaning set forth in Recital <u>J</u>.
- 1.52 "Gross Floor Area" has the meaning set forth in the Planning Code as of the applicable date of determination of such area.
- 1.53 "**Housing Program**" means the Affordable Housing Program attached as Exhibit D.
- 1.54 "Impact Fees and Exactions" means any fees, contributions, special taxes, exactions, impositions, and dedications charged by the City, whether as of the date of this Agreement or at any time thereafter during the Term, in connection with the development of Projects, including but not limited to transportation and transit fees, child care requirements or inlieu fees, dedications, housing (including affordable housing) requirements or fees, dedication or

reservation requirements, and obligations for on-or off-site improvements. Impact Fees and Exactions shall not include the Mitigation Measures, Processing Fees, taxes or special assessments or school district fees, SFPUC Capacity Charges, and any fees, taxes, assessments, and impositions imposed by any Non-City Agency, all of which shall be due and payable by Developer as and when due in accordance with applicable Laws.

- 1.55 "Later Approval" means any other land use approvals, entitlements, or permits from the City or any City Agency, other than the Approvals, that are consistent with the Approvals and necessary or advisable for the implementation of the Project, including without limitation, demolition permits, grading permits, site permits, building permits, lot line adjustments, sewer and water connection permits, major and minor encroachment permits, street and sidewalk modifications, street improvement permits, permits to alter, certificates of occupancy, transit stop relocation permits, Subdivision Maps, improvement plans, lot mergers, and lot line adjustments. A Later Approval shall also include any amendment to the foregoing land use approvals, entitlements, or permits, or any amendment to the Approvals that are sought by Developer and approved by the City in accordance with the standards set forth in this Agreement.
- 1.56 "Law(s)" means the Constitution and laws of the United States, the Constitution and laws of the State of California, the laws of the City and County of San Francisco, and any codes, statutes, rules, regulations, or executive mandates thereunder, and any State or Federal court decision (including any order, injunction or writ) thereunder. The term "Laws" shall refer to any or all Laws as the context may require.
 - 1.57 "Law Adverse to City" is defined in Section 5.8.4.
 - 1.58 "Law Adverse to Developer" is defined in Section 5.8.4.
- 1.59 "Life of the Project" shall mean, for each Building that is constructed on the Project Site under this Agreement, the life of that Building.
 - 1.60 "Litigation Extension" has the meaning set forth in Section 11.5.1.
 - 1.61 "Losses" has the meaning set forth in Section 4.7.
- 1.62 "Material Change" means any modification that (a) would materially alter the rights, benefits or obligations of the City or Developer under this Agreement, (b) is not consistent with the Project SUD or a planned unit development authorization made under the Project SUD, (c) extends the Term, (d) changes the uses of the Project Site from those described in this Agreement, (e) decreases the Community Benefits, (f) increases the maximum height,

density, bulk or size of the Project (except to the extent permitted under the Project SUD or a planned unit development authorization for the Project), (g) increases parking ratios, or (h) reduces the Impact Fees and Exactions.

- 1.63 "Mayfair Walk" is described in Section 1.c of Exhibit C.
- 1.64 "Mitigation Measures" means the mitigation measures (as defined by CEQA) applicable to the Project as set forth in the MMRP or that are necessary to mitigate adverse environmental impacts identified through the CEQA process as part of a Later Approval.
- 1.65 "MMRP" means that certain mitigation monitoring and reporting program attached as Exhibit F.
- 1.66 "MOHCD" means the Mayor's Office of Housing and Community Development.
 - 1.67 "MOHCD AMI" is defined in Exhibit D (Affordable Housing Program).
- 1.68 "Mortgage" means a mortgage, deed of trust or other lien on all or part of the Project Site to secure an obligation made by the applicable property owner, including the Existing Mortgage.
- 1.69 "Mortgagee" means (i) any mortgagee or beneficiary under a Mortgage, and (ii) a person or entity that obtains title to all or part of the Project Site as a result of foreclosure proceedings or conveyance or other action in lieu thereof, or other remedial action.
- 1.70 "Municipal Code" means the San Francisco Municipal Code. All references to any part of the Municipal Code in this Agreement shall mean that part of the Municipal Code in effect on the Effective Date, as the Municipal Code may be modified by changes and updates that are adopted from time to time in accordance with Section 5.4 or by permitted New City Laws as set forth in Section 5.6.
 - 1.71 "New City Laws" has the meaning set forth in Section 5.6.
- 1.72 "Non-City Agency" means Federal, State, and local governmental agencies that are independent of the City and not parties to this Agreement.
- 1.73 "Non-City Approval" means any permits, agreements, or entitlements from Non-City Agencies as may be necessary for the development of the Project.
- 1.74 "OEWD" means the San Francisco Office of Economic and Workforce Development.

- 1.75 "Official Records" means the official real estate records of the City and County of San Francisco, as maintained by the City's Assessor-Recorder's Office.
- 1.76 "Party" and "Parties" has the meaning set forth in the opening paragraph of this Agreement and shall also include any party that becomes a party to this Agreement, such as a Transferee (each during its period of ownership of all or part of the Project Site).
 - 1.77 "Pine Street Steps" are described in Section 1.e of Exhibit C.
 - 1.78 "Planning Code" means the San Francisco Planning Code.
- 1.79 "**Planning Commission**" means the Planning Commission of the City and County of San Francisco.
- 1.80 "Planning Department" means the Planning Department of the City and County of San Francisco.
- 1.81 "Planning Director" means the Director of Planning of the City and County of San Francisco.
 - 1.82 "Presidio Overlook" is described in Section 1.d of Exhibit C.
- 1.83 "Processing Fees" means the standard fee imposed by the City upon the submission of an application for a permit or approval, which is not an Impact Fee or Exaction, in accordance with the City practice on a City-Wide basis.
- 1.84 "Project" means the project as described in <u>Recital B</u>, <u>Exhibit B</u>, and the Approvals, including, without limitation, the Project variant and Project alternatives described in the Project SUD, together with Developer's rights and obligations under this Agreement.
- 1.85 "**Project Site**" has the meaning set forth in <u>Recital A</u>, and as more particularly described in <u>Exhibit A</u>.
- 1.86 "Project SUD" means Planning Code Section 249.[___] as adopted by the Board in Ordinance No. [___].
- 1.87 "Public Health and Safety Exception" has the meaning set forth in Section 5.8.1.
- 1.88 "Publicly Accessible Private Improvements" means the privately-owned and publicly-accessible California Plaza, Cypress Square, Cypress Stairs, Mayfair Walk, Presidio Overlook, Pine Street Steps, Walnut Walk North, Walnut Walk South, Walnut Drive and Walnut Court, and Euclid Green, all as further described and depicted in Exhibit C-1, and Schedule 1 and which exceeds the Required Open Space for the Project.

- 1.89 "PW" means San Francisco Public Works.
- 1.90 "Required Open Space" has the meaning given such term in Section 102 of the Planning Code.
 - 1.91 "SFMTA" means the San Francisco Municipal Transportation Agency.
 - 1.92 "SFPUC" means the San Francisco Public Utilities Commission.
- 1.93 "SFPUC Capacity Charges" means all water and sewer capacity and connection fees and charges payable to the SFPUC, as and when due in accordance with theapplicable City requirements.
- 1.94 "Streetscape Improvements" means the following improvements, all as further described and depicted in Exhibit C, Exhibit C-1, and Schedule 1: (i) reconfiguring portions of the curb lines at Presidio Avenue and Masonic Avenue; (ii) reconfiguring the triangular-shaped pedestrian island and the right-most travel lane for southbound traffic on Presidio Avenue merging onto Masonic and incorporating it into the Pine Street Steps, (iii) reconfiguring the triangularshaped pedestrian island and the right-most travel lane for southbound traffic on Masonic Avenue merging onto Euclid Avenue and incorporating it into Walnut Walk South (iv) constructing corner bulb-outs on the west side of the Masonic Avenue/Presidio Avenue/Pine Street intersection, the northeast corner of Laurel Street/Mayfair Drive, the southwest corner of the California Street/Laurel Street intersection, the southeast and southwest corners of the California Street/Walnut Street intersection, and the northeast corner of the Laurel Street/Euclid Avenue intersection; (v) installing a continental crosswalk crossing Presidio Avenue to Pine Street and an eastside crosswalk at the three-way intersection at Laurel Street crossing Mayfair Drive; and (vi) widening sidewalks on portions of Presidio Avenue, Masonic Avenue, Euclid Avenue, and Laurel Street.
 - 1.95 "Subdivision Code" means the San Francisco Subdivision Code.
- 1.96 "Subdivision Map" means any map that Developer submits for the Project Site with respect to the Project under the Subdivision Map Act and the Subdivision Code, which may include, but not be limited to, tentative or vesting tentative subdivision maps, final or vesting final subdivision maps and any tentative or final parcel map, or transfer map, including phased final maps to the extent authorized under an approved tentative subdivision map, but excluding the Tentative Map.

- 1.97 "Subdivision Map Act" means the California Subdivision Map Act, California Government Code Section 66410 et seq.
- 1.98 "**Tentative Map**" means the tentative map for the Project Site approved by PW on 2019.
 - 1.99 "Term" has the meaning set forth in Section 2.2.
- 1.100 "Third-Party Challenge" means any administrative, legal or equitable action or proceeding instituted by any party other than the City or Developer challenging the validity or performance of any provision of this Agreement, the Project, the Approvals or Later Approvals, the adoption or certification of the FEIR or other actions taken pursuant to CEQA, or other approvals under Laws relating to the Project, any action taken by the City or Developer in furtherance of this Agreement, or any combination thereof relating to the Project or any portion thereof.
- 1.101 "Transfer," "Transferee" and "Transferred Property" have the meanings set forth in Section 12.1, and in all events excludes (1) a transfer of ownership or membership interests in Developer or any Transferee, (2) grants of easement or of occupancy rights for existing or completed Buildings or other improvements (including, without limitation, space leases in Buildings), and (3) the placement of a Mortgage on the Project Site.
- 1.102 "Transportation Demand Management" benefits are described in Exhibit <u>J</u>.
 - 1.103 "Vested Elements" has the meaning set forth in Section 5.1.
 - 1.104 "Walnut Walk North" is described in Section 1.f of Exhibit C.
 - 1.105 "Walnut Walk South" is described in Section 1.f of Exhibit C.
- 1.106 "Workforce Agreement" means the Workforce Agreement attached as Exhibit I.

2. EFFECTIVE DATE; TERM

- 2.1 <u>Effective Date</u>. This Agreement shall take effect upon the later of (i) the full execution and delivery of this Agreement by the Parties and (ii) the date the Enacting Ordinances are effective and operative ("**Effective Date**").
- 2.2 Term. The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for fifteen (15) years thereafter unless extended or earlier terminated as provided herein ("Term"); provided, however, that (i) the Term shall be

extended for each day of a Litigation Extension and (ii) Developer shall have the right to terminate this Agreement with respect to a Development Parcel upon completion of the Building within that Development Parcel and the Associated Community Benefits for that Building, as set forth in Section 7.1. The term of any conditional use permit or planned unit development shall be for the longer of the Term (as it relates to the applicable parcel) or the term otherwise allowed under the conditional use or planned unit development approval, as applicable. The term of the Tentative Map and any Subdivision Map shall be for the longer of the Term (as it relates to the applicable parcel) or the term otherwise allowed under the Subdivision Map Act.

3. GENERAL RIGHTS AND OBLIGATIONS

- 3.1 <u>Development of the Project</u>. Developer shall have the vested right to develop the Project in accordance with and subject to the provisions of this Agreement, and the City shall consider and process all Later Approvals for development of the Project in accordance with and subject to the provisions of this Agreement. The Parties acknowledge that Developer (i) has obtained all Approvals from the City required to Commence Construction of the Project, other than any required Later Approvals, and (ii) may proceed in accordance with this Agreement with the construction and, upon completion, use and occupancy of the Project as a matter of right, subject to the attainment of any required Later Approvals and any Non-City Approvals.
- 3.2 <u>Workforce</u>. Developer shall require project sponsors, contractors, consultants, subcontractors and subconsultants, as applicable, to undertake workforce development activities in accordance with the Workforce Agreement attached as Exhibit I.

4. PUBLIC BENEFITS; DEVELOPER OBLIGATIONS AND CONDITIONS TO DEVELOPER'S PERFORMANCE

A.1 Community Benefits Exceed Those Required by Existing Ordinances and Regulations. The Parties acknowledge and agree that the development of the Project in accordance with this Agreement provides a number of public benefits to the City beyond those achievable through existing Laws, including, but not limited to, those set forth in this Article 4 (the "Community Benefits"). The City acknowledges and agrees that a number of the Community Benefits would not be otherwise achievable without the express agreement of Developer under this Agreement. Developer acknowledges and agrees that, as a result of the benefits to Developer under this Agreement, Developer has received good and valuable consideration for its provision of the Community Benefits, and the City would not be willing to enter into this Agreement without

the Community Benefits. Payment or delivery of each of the Community Benefits is tied to a specific Building or the number of constructed residential units as described in the Community Benefits Linkages and Impact Fees Schedule attached as <u>Schedule 1</u> to this Agreement or as described elsewhere in this Agreement (each, an "Associated Community Benefit"). Upon Developer's Commencement of Construction of a Building, the Associated Community Benefits tied to that Building shall survive the expiration or termination of this Agreement to the date of completion of the Associated Community Benefit. Time is of the essence with respect to the completion of the Associated Community Benefits.

- 4.1.1 <u>Community Benefits</u>. Developer shall provide the following Community Benefits (collectively, the "Community Benefits Program") at the times specified in the Community Benefits Linkages and Impact Fees Schedule:
- (a) the Publicly Accessible Private Improvements, as further described in Exhibit C, Exhibit C-1, Exhibit C-2 and Schedule 1;
- (b) the Streetscape Improvements, as further described in, <u>Exhibit C, Exhibit C-1</u> and <u>Schedule 1</u>;
- (c) the Housing Program benefits, as further described in Exhibit D and Schedule 1;
 - (d) the AWSS Community Benefit Fee as further described in
 - (e) the Workforce Agreement benefits, as further described in

Schedule 2;

Exhibit I;

- (f) the Transportation Demand Management benefits, as further described in Exhibit J; and
- (g) the Child Care Program benefits, as further described in $\operatorname{\underline{Exhibit}} L$.
- 4.2 <u>Conditions to Performance of Community Benefits</u>. Developer's obligation to perform each Associated Community Benefit tied to a specific Building is expressly conditioned upon each and all of the following conditions precedent:
- (a) All Approvals for the applicable Building to which the Associated Community Benefit is tied shall have been Finally Granted;
 - (b) Developer shall have obtained all Later Approvals necessary

to Commence Construction of the applicable Building to which the Associated Community Benefit is tied, and the same shall have been Finally Granted, except to the extent that such Later Approvals have not been obtained or Finally Granted due to the failure of Developer to timely initiate and then diligently and in good faith pursue such Later Approvals. Whenever this Agreement requires completion of an Associated Community Benefit at or before the completion of or receipt of first certificate of occupancy for a Building, the City may withhold a certificate of occupancy for that Building until the required Associated Community Benefit is completed except as otherwise expressly set forth in Exhibit C, Exhibit D, Exhibit L, Schedule 1 or elsewhere in this Agreement or any Approvals; and

- (c) Developer shall have Commenced Construction of the Building to which the Associated Community Benefit applies.
- No Additional CEQA Review Required; Reliance on FEIR for Future 4.3 Discretionary Approvals. The Parties acknowledge that the FEIR prepared for the Project complies with CEQA. The Parties further acknowledge that (a) the FEIR contains a thorough analysis of the Project and possible alternatives, (b) the Mitigation Measures have been adopted to eliminate or reduce to an acceptable level certain adverse environmental impacts of the Project, and (c) the Board of Supervisors adopted CEQA Findings, including a statement of overriding considerations in connection with the Approvals, pursuant to CEQA Guidelines Section 15093, for those significant impacts that could not be mitigated to a less than significant level. Accordingly, the City does not intend to conduct any further environmental review or mitigation under CEQA for any aspect of the Project vested under this Agreement. The City shall rely on the FEIR, to the greatest extent possible in accordance with applicable Laws, in all future discretionary actions related to the Project; provided, however, that nothing shall prevent or limit the discretion of the City to conduct additional environmental review in connection with any Later Approvals to the extent that such additional environmental review is required by applicable Laws, including CEQA.
- 4.3.1 <u>Compliance with CEQA Mitigation Measures; AB900 Compliance.</u>

 Developer shall comply with all Mitigation Measures imposed as applicable to the Project except for any Mitigation Measures that are expressly identified as the responsibility of a different party or entity. Without limiting the foregoing, Developer shall be responsible for the completion of all Mitigation Measures identified as the responsibility of the "owner" or the "project sponsor". The

Parties expressly acknowledge that the FEIR and the associated MMRP are intended to be used in connection with each of the Later Approvals to the extent appropriate and permitted under applicable Law. Nothing in this Agreement shall limit the ability of the City to impose conditions on any new, discretionary permit resulting from Material Changes as such conditions are determined by the City to be necessary to mitigate adverse environmental impacts identified through the CEQA process and associated with the Material Changes or otherwise to address significant environmental impacts as defined by CEQA created by an approval or permit; provided, however, any such conditions must be in accordance with applicable Law. In addition to complying with all Mitigation Measures, Developer shall cause the Notice of Special Restrictions attached hereto as Exhibit N to be recorded in the Official Records at the same, or substantially the same, time as Developer records any other notices of special restrictions with respect to the Project and in any event prior to the issuance of a permit (including site or building permit) for grading related to the construction of any phase of of the Project, and Developer shall comply with the requirements of such Notice of Special Restrictions as more specifically set forth therein.

4.4 <u>Nondiscrimination</u>. In the performance of this Agreement, Developer agrees not to discriminate against any employee, City employee working with Developer's contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

4.5 City Cost Recovery.

- 4.5.1 Developer shall timely pay to the City all Impact Fees and Exactions applicable to the Project or the Project Site as set forth in <u>Section 5.7</u>.
- 4.5.2 Developer shall timely pay to the City all Processing Fees applicable to the processing or review of applications for the Approvals and Later Approvals.
- 4.5.3 Developer shall pay to the City all City Costs incurred in connection with the drafting and negotiation of this Agreement, defending the Approvals and Later Approvals,

and in processing and issuing any Later Approvals or administering this Agreement (except for the costs that are covered by Processing Fees), within sixty (60) days following receipt of a written invoice complying with Section 4.5.4 from the City.

- 4.5.4 OEWD shall provide Developer on a quarterly basis (or such alternative period as agreed to by the Parties) a reasonably detailed statement showing costs incurred by OEWD, the City Agencies and the City Attorney's Office, including the hourly rates for each City staff member at that time, the total number of hours spent by each City staff member during the invoice period, any additional costs incurred by the City Agencies and a brief nonconfidential description of the work completed (provided, for the City Attorney's Office, the billing statement will be reviewed and approved by OEWD but the cover invoice forwarded to Developer will not include a description of the work). OEWD will use reasonable efforts to provide an accounting of time and costs from the City Attorney's Office and each City Agency in each invoice; provided, however, if OEWD is unable to provide an accounting from one or more of such parties, then OEWD may send an invoice to Developer that does not include the charges of such party or parties without losing any right to include such charges in a future or supplemental invoice but subject to the eighteen (18) month deadline set forth below in this Section 4.5.4. Developer's obligation to pay the City Costs shall survive the termination of this Agreement. Developer shall have no obligation to reimburse the City for any City Cost that is not invoiced to Developer within eighteen (18) months from the date the City Cost was incurred. The City will maintain records, in reasonable detail, with respect to any City Costs and upon written request of Developer, and to the extent not confidential, shall make such records available for inspection by Developer.
- 4.5.5 If Developer in good faith disputes any portion of an invoice, then within sixty (60) days following receipt of the invoice Developer shall provide notice of the amount disputed and the reason for the dispute, and the Parties shall use good faith efforts to reconcile the dispute as soon as practicable. Developer shall have no right to withhold the disputed amount. If any dispute is not resolved within ninety (90) days following Developer's notice to the City of the dispute, Developer may pursue all remedies at law or in equity to recover the disputed amount.
- 4.6 <u>Prevailing Wages</u>. Developer agrees that all persons performing labor in the construction of the Streetscape Improvements and the Publicly Accessible Private Improvements shall be paid not less than the highest prevailing rate of wages for the labor so performed consistent

with the requirements of Section 6.22(e) of the Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California, and Developer shall include this requirement in any construction contract entered into by Developer for any such improvements. Upon request, Developer and its contractors will provide to City any workforce payroll records as needed to confirm compliance with this Section. Without limiting the foregoing, Developer shall comply with all applicable state law requirements relating to the payment of prevailing wages, and to the extent there is any difference between the requirements of such state law requirements and Section 6.22(e) of the Administrative Code, the stricter requirements shall apply to the construction of the Streetscape Improvements and the Publicly Accessible Private Improvements.

4.7 Indemnification of City. Developer shall indemnify, reimburse, and hold harmless the City and its officers, agents and employees (the "City Parties") from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims ("Losses") arising or resulting directly or indirectly from (i) any third party claim arising from a Default by Developer under this Agreement, (ii) Developer's failure to comply with any Approval, Later Approval or Non-City Approval, (iii) the failure of any improvements constructed pursuant to the Approvals or Later Approvals to comply with any Federal or State Laws, the Existing Standards or any permitted New City Laws, (iv) any accident, bodily injury, death, personal injury, or loss of or damage to property occurring on the Project Site (or the public right of way adjacent to the Project Site) in connection with the construction by Developer or its agents or contractors of any improvements pursuant to the Approvals, Later Approvals or this Agreement, (v) a Third-Party Challenge instituted against the City or any of the City Parties, (vi) any dispute between Developer, its contractors or subcontractors relating to the construction of any part of the Project, and (vii) any dispute between Developer and any Transferee or any subsequent owner of any of the Project Site relating to any assignment of this Agreement or the obligations that run with the land, or any dispute between Developer and any Transferee or other person relating to which party is responsible for performing certain obligations under this Agreement, each regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed on the City or any of the City Parties, except to the extent that any of the foregoing indemnification obligations is void or otherwise unenforceable under applicable Law, and except to the extent such Loss is the result of the negligence or willful misconduct of the City Parties. The foregoing

indemnity shall include, without limitation, reasonable attorneys' fees and costs and the City's reasonable cost of investigating any claims against the City or the City Parties. All indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement, to the extent such indemnification obligation arose from an event occurring before the expiration or termination of this Agreement. To the extent the indemnifications relate to Developer's obligations that survive the expiration or termination of this Agreement, the indemnifications shall survive for the term of the applicable obligation plus four (4) years.

5. VESTING AND CITY OBLIGATIONS

- 5.1 <u>Vested Rights.</u> By the Approvals, the City has made a policy decision that the Project, as described in and as may be modified in accordance with the Approvals, is in the best interests of the City and promotes the public health, safety and welfare. Developer shall have the vested right to develop the Project as set forth in this Agreement and the Project SUD, including without limitation with the following vested elements: the locations and numbers of Buildings proposed, the land uses, height and bulk limits, including the maximum density, intensity and gross square footages, the permitted uses, the provisions for open space, vehicular access, and parking (collectively, the "Vested Elements"; provided the Existing Uses on the Project Site shall also be included as Vested Elements). The Vested Elements are subject to and shall be governed by Applicable Laws. The expiration of any building permit or Approval shall not limit the Vested Elements, and Developer shall have the right to seek and obtain subsequent building permits or approvals, including Later Approvals, at any time during the Term, any of which shall be governed by Applicable Laws. Each Later Approval, once granted, shall be deemed an Approval for purposes of this Section 5.1.
- 5.2 Existing Standards. The City shall process, consider, and review all Later Approvals in accordance with (i) the Approvals, (ii) the San Francisco General Plan, the Municipal Code (including the Subdivision Code), and all other applicable City policies, rules and regulations, as each of the foregoing is in effect on the Effective Date ("Existing Standards"), as the same may be amended or updated in accordance with Section 5.4 or with permitted New City Laws as set forth in Section 5.6, (iii) California and Federal law, as applicable, and (iv) this Agreement (collectively, "Applicable Laws"). The Enacting Ordinances contain express waivers and amendments to Chapter 56 consistent with this Development Agreement.

- 5.2.1 No Implied Waiver of Codes. Nothing in this Agreement constitutes an implied waiver or exemption of the Subdivision Code or the Public Works Code. For any waiver or exemption, Developer shall comply with the City's existing processes to seek any necessary waivers or exemptions. The City's failure to enforce any part of the Subdivision Code or Public Works Code shall not be deemed a waiver of its right to do so thereafter, but it shall not override the Approvals standards set forth in Sections 5.2, 5.3, and 5.4.
- 5.2.2 <u>General Plan Consistency Findings</u>. The Parties acknowledge the Project is consistent with the City's General Plan and the General Plan Consistency Findings are intended to support all Later Approvals that are consistent with the Approvals. To the maximum extent practicable, the Planning Department shall rely exclusively on the General Plan Consistency Findings when processing and reviewing all Later Approvals, including proposed Subdivision Maps and any other actions related to the Project requiring General Plan determinations; provided Developer acknowledges that the General Plan Consistency Findings do not limit the City's discretion in connection with any Later Approval that (a) requires new or revised General Plan consistency findings because of Material Changes or amendments to any of the Approvals or (b) is analyzed in the context of a future General Plan amendment that is a non-conflicting New City Law.
- 25.3 Criteria for Later Approvals. Developer shall be responsible for obtaining all required Later Approvals before the start of any construction and timely providing project schedules to OEWD as described in Exhibit K. The City, in granting the Approvals and vesting the Project through this Agreement, is limiting its future discretion with respect to Later Approvals to the extent that they are consistent with the Approvals and this Agreement. The City shall not disapprove applications for Later Approvals based upon an item or element that is consistent with the Approvals, and shall consider all such applications in accordance with its customary practices (subject to the requirements of this Agreement). Subject to the requirements of this Agreement, the City shall not impose any new condition for a Later Approval that conflicts with the Approvals except when such condition is necessary to bring the Later Approval into compliance with Applicable Laws. For any part of a Later Approval request that has not been previously reviewed or considered by the applicable City Agency (such as additional details or plans), the City Agency shall exercise its discretion consistent with the Municipal Code and the Approvals and otherwise in accordance with the City's customary practice (but subject to the requirements of this

Agreement). Nothing in this Agreement shall preclude the City from applying New City Laws for any development not within the definition of the "Project" under this Agreement.

5.4 <u>Strict Building Code Compliance</u>.

5.4.1 <u>City-Wide Building Codes</u>. Notwithstanding anything in this Agreement to the contrary, except as otherwise provided in <u>Section 5.4.2</u>, when considering any application for a Later Approval, the City or the applicable City Agency shall apply the thenapplicable provisions, requirements, rules, or regulations (including any applicable exceptions) that are contained in the San Francisco Building Codes, including the Public Works Code (which includes the Stormwater Management Ordinance), Subdivision Code, Mechanical Code, Electrical Code, Housing Code, Plumbing Code, Fire Code, or other uniform construction codes applicable on a City-Wide basis.

5.4.2 Sidewalks, Streets and Infrastructure. By entering into this Agreement, the City's Board of Supervisors and the City Agencies have reviewed and approved (i) the Streetscape Improvements and the Publicly Accessible Private Improvements, including sidewalk, pathway, street widths, and general right of way configurations with respect to location and relationship of major elements, curbs, bicycle facilities, parking, loading areas, and landscaping, including the general location and number of new Street Trees (as defined in San Francisco Public Works Code Section 802) and the removal of certain existing Street Trees and Significant Trees (as defined in San Francisco Public Works Code Section 810A), as set forth in the Approvals described in Exhibit E (including the plans incorporated in such Approvals) and the Project SUD, as consistent with the City's central policy objective to ensure street safety for all users while maintaining adequate clearances, including for fire apparatus vehicles. No City Agency with jurisdiction may object to a Later Approval for any of the Buildings, Streetscape Improvements, or Publicly Accessible Private Improvements due to the proposed width of a sidewalk, pathway, or street, unless such objection is based upon the applicable City Agency's reserved authority to review engineering design for compliance with Applicable Laws or other authority under State law. In the case of such objection, then within five (5) business days of the objection being raised (whether raised formally or informally), representatives from Developer, PW, the Planning Department and the objecting City Agency shall meet and confer in good faith to attempt to find a mutually satisfactory resolution to the objection. If the matter is not resolved within fourteen (14) days following the objection, then the Planning Director shall notify the Clerk of the Board of Supervisors and the members of the Board of Supervisors' Land Use and Transportation Committee. The City Agencies and Developer agree to act in good faith to resolve the matter quickly and in a manner that does not conflict with the City policy, Approvals, this Agreement, or applicable Law. For purposes of this Section, "engineering design" shall mean professional engineering work as set forth in the Professional Engineers Act, California Business and Professions Code Sections 6700 et seq.

- Approval that implements a Building, such denial must be consistent with Applicable Laws, and the City must specify in writing the reasons for such denial and shall suggest modifications required for approval of the application. Any such specified modifications shall be consistent with Applicable Laws and City staff shall approve the application if it is subsequently resubmitted for City review and corrects or mitigates, to the City's reasonable satisfaction, the stated reasons for the earlier denial in a manner that is consistent and compliant with Applicable Laws and does not include new or additional information or materials that give the City a reason to object to the application under the standards set forth in this Agreement.
- 5.6 New City Laws. All future changes to Existing Standards and any other Laws, plans or policies adopted by the City or adopted by voter initiative after the Effective Date ("New City Laws") shall apply to the Project and the Project Site except to the extent they conflict with this Agreement or the terms and conditions of the Approvals. In the event of such a conflict, the terms of this Agreement and the Approvals shall prevail, subject to the terms of Section 5.8.
- 5.6.1 New City Laws shall be deemed to conflict with this Agreement and the Approvals if they:
- (a) limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the square footage or number of proposed Buildings or change the location of proposed Buildings or change or reduce other improvements from that permitted under the Approvals;
- (b) limit or reduce the height or bulk of the Project, or any part thereof, or otherwise require any reduction in the height or bulk of individual Buildings or other improvements that are part of the Project under the Approvals;
- (c) limit, reduce or change the location of vehicular access, parking or loading for the Project from that permitted under the Approvals;

- (d) limit any land uses for the Project from that permitted under the Approvals or the Existing Uses;
 - (e) change or limit the Approvals or Existing Uses;
- (f) materially delay, limit or control the rate, timing, phasing, or sequencing of the Project, including the demolition of existing buildings at the Project Site, except as expressly set forth in this Agreement;
- (g) require the issuance of permits or approvals for the Project by the City other than those required under the Existing Standards, except for (i) permits or approvals that are required on a City-Wide basis, relate to the construction of improvements, and do not prevent construction of the applicable aspects of the Project that would be subject to such permits or approvals as and when intended by this Agreement or (ii) permits that replace (but do not expand the scope or purpose of) existing permits;
- (h) limit or control the availability of public utilities, services or facilities, or any privileges or rights to public utilities, services, or facilities for the Project;
- (i) materially and adversely limit the processing or procuring of applications and approvals of Later Approvals that are consistent with Approvals;
- (j) increase the percentage of required affordable or BMR Units, change the AMI percentage levels for the affordable housing pricing or income eligibility, change the requirements regarding unit size or unit type, control or limit homeowner association or common area dues or amenity charges, or place restrictions on the right to alienate, transfer or otherwise dispose of property, or increase the amount or change the configuration of required open space for the Project;
- (k) designate any existing tree on the Project Site as a Landmark Tree (as defined in San Francisco Public Works Code Section 802) if such designation would interfere with the construction of the Project; or
- (l) impose new or modified Impact Fees and Exactions on the Project that are expressly prohibited in <u>Section 5.7.2</u>.
- 5.6.2 Developer shall have the right, from time to time and at any time, to file Subdivision Map applications (including phased final map applications and development-specific condominium map or plan applications) with respect to some or all of the Project Site and subdivide (including reconfiguring or merging parcels, subject to Developer's obligations under

the Housing Program and the Child Care Program) the Project Site as may be necessary or desirable in order to develop a particular part of the Project as shown generally in Exhibit B-1. The specific boundaries of Development Parcels shall be set by Developer and approved by the City during the subdivision process. Nothing in this Agreement shall authorize Developer to subdivide or use any of the Project Site for purposes of sale, lease or financing in any manner that conflicts with the Subdivision Map Act or with the Subdivision Code. Nothing in this Agreement shall prevent the City from enacting or adopting changes in the methods and procedures for processing subdivision and parcel maps so long as such changes do not conflict with the provisions of this Agreement or with the Approvals. Prior to recording any final Subdivision Map with respect to the Project, Developer shall cause any then-existing Mortgagee to provide its authorized signature on such final Subdivision Map (or any other written approval permitted under Applicable Law), which shall include consent and acknowledgement of the BMR Units requirements with specified AMI levels for the life of the Project, in accordance with this Agreement.

5.7 Fees and Exactions.

5.7.1 <u>Generally</u>. The Project shall only be subject to the Processing Fees and Impact Fees and Exactions as set forth in this <u>Section 5.7</u>, and the City shall not impose any new Processing Fees or Impact Fees and Exactions on the development of the Project or impose new conditions or requirements for the right to develop the Project (including required contributions of land, public amenities or services) except as set forth in this Agreement. The Parties acknowledge that the provisions contained in this <u>Section 5.7</u> are intended to implement the intent of the Parties that Developer have the right to develop the Project pursuant to specified and known criteria and rules, and that the City receive the benefits which will be conferred as a result of such development without abridging the right of the City to act in accordance with its powers, duties and obligations, except as specifically provided in this Agreement.

5.7.2 <u>Impact Fees and Exactions</u>. During the Term, as extended by any Litigation Extensions, no Impact Fees and Exactions shall apply to the Project or components thereof except for (i) those Impact Fees and Exactions specifically set forth on <u>Schedule 1</u>, <u>Schedule 2</u>, <u>Exhibit D</u> and <u>Exhibit L</u>, (ii) the SFPUC Capacity Charges, (iii) New City Laws that do not conflict with this Agreement as set forth in <u>Section 5.6</u>, and (iv) as expressly set forth below in this Section. The Impact Fees and Exactions and SFPUC Capacity Charges shall be calculated and determined at the time payable in accordance with the City requirements on that date, and the

parties acknowledge and agree that the Impact Fees and Exactions shall be subject to the Planning Department's final confirmation once the applicable final land uses and Gross Floor Area are determined. Accordingly, Developer shall be subject to any increase or decrease in the fee amount payable and any changes in methodology of calculation (e.g., use of a different index to calculate annual increases) but will not be subject to any new types of Impact Fees and Exactions or modification to existing Impact Fees and Exactions after the Effective Date except as described in Section 5.6 and this Section. Developer agrees that any new or reduced impact fee or exaction enacted after the Effective Date that (i) is of City-Wide applicability (e.g., applies to all retail development in the City), (ii) does not pertain to affordable housing, open space or community improvements (for which this Agreement reflects the required Developer contributions), and (iii) would otherwise apply to the Project, shall apply to the Project or the applicable portion thereof.

5.7.3 <u>Processing Fees</u>. Developer shall pay all Processing Fees in effect, on a City-Wide basis, at the time that Developer applies for a Later Approval for which such Processing Fee is payable in connection with the applicable part of the Project.

5.8 Changes in Federal or State Laws.

City's Exceptions. Notwithstanding any provision in this 5.8.1 Agreement to the contrary, each City Agency having jurisdiction over the Project shall exercise its discretion under this Agreement in a manner that is consistent with the public health and safety and shall at all times retain its respective authority to take any action that is necessary to protect the physical health and safety of the public (the "Public Health and Safety Exception") or reasonably calculated and narrowly drawn to comply with applicable changes in Federal or State Law affecting the physical environment (the "Federal or State Law Exception"), including the authority to condition or deny a Later Approval or to adopt a new Law applicable to the Project so long as such condition or denial or new regulation (i)(a) is limited solely to addressing a specific and identifiable issue in each case required to protect the physical health and safety of the public, or (b) is required to comply with a Federal or State Law and in each case not for independent discretionary policy reasons that are inconsistent with the Approvals or this Agreement and (ii) is applicable on a City-Wide basis to the same or similarly situated uses and applied in an equitable and non-discriminatory manner. Developer retains the right to dispute any City reliance on the Public Health and Safety Exception or the Federal or State Law Exception. If the Parties are not able to reach agreement on such dispute following a reasonable meet and confer period, then Developer or City may seek judicial relief with respect to the matter.

5.8.2 <u>Changes in Federal or State Laws</u>. If Federal or State Laws issued, enacted, promulgated, adopted, passed, approved, made, implemented, amended, or interpreted after the Effective Date have gone into effect and (i) preclude or prevent compliance with one or more provisions of the Approvals or this Agreement, or (ii) materially and adversely affect Developer's or the City's rights, benefits or obligations under this Agreement, then such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal or State Law. In such event, this Agreement shall be modified only to the extent necessary or required to comply with such Law, subject to the provisions of <u>Section 5.8.4</u>, as applicable.

5.8.3 <u>Changes to Development Agreement Statute</u>. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute. No amendment of or addition to the Development Agreement Statute that would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights of Developer hereunder, or increase the obligations or diminish the benefits to the City hereunder shall be applicable to this Agreement unless such amendment or addition is specifically required by Law or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected.

5.8.4 Effect on Agreement. If any of the modifications, amendments or additions described in this Section 5.8 would materially and adversely affect the construction, development, use, operation, or occupancy of the Project as currently contemplated by the Approvals, or any material portion thereof, such that the Project, or the applicable portion thereof, becomes economically infeasible (a "Law Adverse to Developer"), then Developer shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. If any of the modifications, amendments or additions described in Section 5.8 would materially and adversely affect or limit the Community Benefits (a "Law Adverse to the City"), then the City shall notify Developer and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. Upon receipt of a notice under this Section 5.8.4, the Parties agree to meet and confer in good faith for a period of not less than ninety (90) days in an attempt to resolve the issue. If the Parties cannot resolve the issue in ninety (90) days or such longer period as may be agreed to by the Parties, then

the Parties shall mutually select a mediator at JAMS in San Francisco for nonbinding mediation for a period of not less than thirty (30) days. If the Parties remain unable to resolve the issue following such mediation, then either party shall have the right to seek available remedies at law or in equity to maintain the benefit of the bargain or alternatively to seek termination of this Agreement if the benefit of the bargain cannot be maintained in light of the Law Adverse to Developer or Law Adverse to the City.

- 5.9 <u>No Action to Impede Approvals</u>. Except and only as required under <u>Section 5.8</u>, the City shall take no action under this Agreement nor impose any condition on the Project that would conflict with this Agreement or the Approvals. An action taken or condition imposed shall be deemed to be in conflict with this Agreement or the Approvals if such actions or conditions result in the occurrence of one or more of the circumstances identified in <u>Section 5.6.1</u>.
- 5.10 Estoppel Certificates. Developer may, at any time, and from time to time, deliver notice to the Planning Director requesting that the Planning Director certify to Developer, a potential Transferee, or a potential lender to Developer, in writing that to the best of the Planning Director's knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified, and if so amended or modified, identifying the amendments or modifications and stating their date and providing a copy or referring to the recording information; (iii) Developer is not in Default in the performance of its obligations under this Agreement, or if in Default, to describe therein the nature and amount of any such Defaults; and (iv) the findings of the City with respect to the most recent annual review performed pursuant to Section 8. The Planning Director, acting on behalf of the City, shall execute and return such certificate within twenty (20) days following receipt of the request.
- 5.11 Existing, Continuing Uses and Interim Uses. The Parties acknowledge that the Existing Uses are lawfully authorized uses and may continue as such uses may be modified by the Project, provided that any modification thereof not a component of or contemplated by the Project is subject to Planning Code Section 178 and the applicable provisions of Section 5. Developer may install interim or temporary uses on the Project Site, which uses must be consistent with those uses allowed under the Project Site's zoning, the Approvals, the Project SUD, or any planned unit development authorization granted under the Project SUD, as applicable.
- 5.12 <u>Taxes</u>. Nothing in this Agreement limits the City's ability to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment, provided

(i) the City shall not institute, on its own initiative, proceedings for any new or increased special tax or special assessment for a land-secured financing district (including the special taxes under the Mello-Roos Community Facilities Act of 1982 (Government Code Section 53311 *et seq.*) but not including business improvement districts or community benefit districts formed by a vote of the affected property owners) that includes the Project Site unless the new district is City-Wide or Developer gives its prior written consent to or requests such proceedings, and (ii) no such tax or assessment shall be targeted or directed at the Project, including, without limitation, any tax or assessment targeted solely at all or any part of the Project Site. Nothing in the foregoing prevents the City from imposing any tax or assessment against the Project Site, or any portion thereof, that is enacted in accordance with Law and applies to all similarly-situated property on a City-Wide basis.

6. NO DEVELOPMENT OBLIGATION

There is no requirement under this Agreement that Developer initiate or complete development of the Project, or any portion thereof. There is also no requirement that development be initiated or completed within any period of time or in any particular order, subject to the requirement to complete Associated Community Benefits for each Building (or for any market rate residential unit in excess of three hundred eighty-six (386), as applicable) commenced by Developer as set forth in Section 4.1. The development of the Project is subject to numerous factors that are not within the control of Developer or the City, such as availability of financing, interest rates, access to capital, and similar factors. In Pardee Construction Co. v. City of Camarillo, 37 Cal.3d 465 (1984), the California Supreme Court ruled that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development and controlling the parties' agreement. It is the intent of the Parties to avoid such a result by acknowledging and providing for the timing of development of the Project in the manner set forth herein. Accordingly, the Parties agree that except as expressly set forth in this Agreement and any express construction dates set forth in a Later Approval, (i) Developer shall have the right to develop the Project in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment, (ii) such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement, and (iii) without such a right, Developer's development of the Project would be subject to the

uncertainties sought to be avoided by the Development Agreement Statute, Chapter 56 and this Agreement.

7. MUTUAL OBLIGATIONS

- 7.1 Notice of Completion, Revocation or Termination. Within thirty (30) days after any early revocation or termination of this Agreement (as to all or any part of the Project Site), the Parties agree to execute a written statement acknowledging such revocation or termination, signed by the appropriate agents of the City and Developer, and record such instrument in the Official Records. In addition, within thirty (30) days after Developer's request, when a Building and all of the Associated Community Benefits tied to that Building have been completed, the City and Developer shall execute and record a notice of completion in the form attached as Exhibit G for the applicable Building property.
- 7.2 <u>General Cooperation</u>; <u>Agreement to Cooperate</u>. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with the Approvals, any Later Approvals and this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of this Agreement, the Approvals and any Later Approvals are implemented. Except for ordinary administrative costs of the City, nothing in this Agreement obligates the City to spend any sums of money or incur any costs other than City Costs or costs that Developer reimburses through the payment of Processing Fees. The Parties agree that the Planning Department will act as the City's lead agency to facilitate coordinated City review of applications for the Project.
- 7.3 Third-Party Challenge. Developer shall assist and cooperate with the City at Developer's own expense in connection with any Third-Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney's sole discretion. Developer shall reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney's Office (at the non-discounted rates then charged by the City Attorney's Office) and any consultants; provided, however, Developer shall have the right to monthly invoices for all such costs.
- 7.3.1 To the extent that any such action or proceeding challenges or a judgment is entered limiting Developer's right to proceed with the Project or any material portion thereof under this Agreement (whether the Project commenced or not), including the City's actions

taken pursuant to CEQA, Developer may elect to terminate this Agreement. Upon any such termination (or, upon the entry of a judgment terminating this Agreement, if earlier), the City and Developer shall jointly seek to have the Third-Party Challenge dismissed and Developer shall have no obligation to reimburse City defense costs that are incurred after the dismissal (other than, in the case of a partial termination by Developer, any defense costs with respect to the remaining portions of the Project). Notwithstanding the foregoing, if Developer conveys or transfers some but not all of the Project, or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore, there is more than one party that assumes obligations of "Developer" under this Agreement, then only the Party holding the interest in such portion of the Project shall have the right to terminate this Agreement as to such portion of the Project (and only as to such portion), and no termination of this Agreement by such Party as to such Party's portion of the Project shall effect a termination of this Agreement as to any other portion of the Project.

- 7.3.2 The filing of any Third Party Challenge shall not delay or stop the development, processing or construction of the Project or the issuance of Later Approvals unless the third party obtains a court order preventing the activity.
- 7.4 <u>Good Faith and Fair Dealing</u>. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement and implementing the Approvals and any Later Approvals.
- 7.5 Other Necessary Acts. Each Party shall use good faith efforts to take such further actions as may be reasonably necessary to carry out this Agreement, the Approvals and any Later Approvals, in accordance with the terms of this Agreement (and subject to all applicable Laws) in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

8. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

8.1 <u>Annual Review</u>. Pursuant to Section 65865.1 of the Development Agreement Statute and Section 56.17 of the Administrative Code (as of the Effective Date), at the beginning of the second week of each January following final adoption of this Agreement and for so long as the Agreement is in effect (the "Annual Review Date"), the Planning Director shall commence a review to ascertain whether Developer has, in good faith, complied with the Agreement. The failure to commence such review in January in any calendar year shall not waive the Planning Director's right to do so later in the calendar year. The Planning Director may elect

to forego an annual review if no significant construction work occurred on the Project Site during that year, or if such review is otherwise not deemed necessary.

- 8.2 <u>Review Procedure</u>. In conducting the required initial and annual reviews of Developer's compliance with this Agreement, the Planning Director shall follow the process set forth in this Section 8.2.
- 8.2.1 <u>Required Information from Developer</u>. Within sixty (60) days following request by the Planning Director, Developer shall provide a letter to the Planning Director explaining, with appropriate backup documentation, Developer's compliance with this Agreement for the preceding calendar year, including, but not limited to, compliance with the requirements regarding Community Benefits. The burden of proof, by substantial evidence, of compliance is upon Developer. The Planning Director shall post a copy of Developer's submittals on the Planning Department's website.
- 8.2.2 <u>City Report</u>. Within sixty (60) days after Developer submits such letter, the Planning Director shall review the information submitted by Developer and all other available evidence regarding Developer's compliance with this Agreement, and shall consult with applicable City Agencies as appropriate. All such available evidence, including final staff reports, shall, upon receipt by the City, be made available as soon as possible to Developer. The Planning Director shall notify Developer in writing whether Developer has complied with the terms of this Agreement (the "City Report"), and post the City Report on the Planning Department's website. If the Planning Director finds Developer not in compliance with this Agreement, then the City may pursue available rights and remedies in accordance with this Agreement and Chapter 56. The City's failure to initiate or to timely complete the annual review shall not be a Default and shall not be deemed to be a waiver of the right to do so at a later date. All costs incurred by the City under this Section shall be included in the City Costs.
- 8.2.3 <u>Effect on Transferees</u>. If a Developer has effected a Transfer so that its interest in the Project Site is divided among multiple Developers at the time of an annual review, then that annual review shall be conducted separately with respect to each Developer, each Developer shall submit the materials required by this Article 8 with respect to the portion of the Project Site owned by such Developer, and the City review process will proceed as one for the whole Project. Notwithstanding the foregoing, the Planning Commission and Board of Supervisors shall make its determinations and take its action separately with respect to each Developer pursuant

to Chapter 56. If there are multiple Developers and the Board of Supervisors terminates, modifies or takes such other actions as may be specified in Chapter 56 and this Agreement in connection with a determination that a Developer has not complied with the terms and conditions of this Agreement, such action by the Planning Director, Planning Commission, or Board of Supervisors shall be effective only as to the Party to whom the determination is made and the portions of the Project Site in which such Party has an interest. In other words, even when the review process is bundled for multiple Developers, any action determination of noncompliance or default will be made only against the defaulting Party and not against any of the other Developers.

8.2.4 <u>Default</u>. The rights and powers of the City under this <u>Section 8.2</u> are in addition to, and shall not limit, the rights of the City to terminate or take other action under this Agreement on account of a Default by Developer.

9. ENFORCEMENT OF AGREEMENT; DEFAULT; REMEDIES

- 9.1 <u>Enforcement.</u> As of the date of this Agreement, the only Parties to this Agreement are the City and Developer. Except as expressly set forth in this Agreement (for successors, Transferees and Mortgagees), this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.
- Meet and Confer Process. Before sending a notice of default in accordance with Section 9.3, the Party which may assert that the other Party has failed to perform or fulfill its obligations under this Agreement shall first attempt to meet and confer with the other Party to discuss the alleged failure and shall permit such Party a reasonable period, but not less than ten (10) days, to respond to or cure such alleged failure; provided, however, the meet and confer process shall not be required (i) for any failure to pay amounts due and owing under this Agreement, or (ii) if a delay in sending a notice pursuant to Section 9.3 would impair, prejudice or otherwise adversely affect a Party or its rights under this Agreement. The Party asserting such failure shall request that such meeting and conference occur within three (3) business days following the request and if, despite the good faith efforts of the requesting Party, such meeting has not occurred within seven (7) business days of such request, then such Party shall be deemed to have satisfied the requirements of this Section and may proceed in accordance with the issuance of a notice of default under Section 9.3.
- 9.3 <u>Default</u>. The following shall constitute a "**Default**" under this Agreement: (i) the failure to make any payment within sixty (60) days following notice that such payment was

not made when due and demand for compliance; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant of this Agreement and the continuation of such failure for a period of sixty (60) days following notice and demand for compliance. Notwithstanding the foregoing, if a failure can be cured but the cure cannot reasonably be completed within sixty (60) days, then it shall not be considered a Default if a cure is commenced within said 60-day period and diligently prosecuted to completion thereafter. Any notice of default given by a Party shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured (if at all). Notwithstanding any other provision in this Agreement to the contrary, if Developer conveys or transfers some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore there is more than one Party that assumes obligations of "Developer" under this Agreement, there shall be no cross-default between the separate Parties that assumed Developer obligations. Accordingly, a default by one "Developer" shall not be a Default by any other "Developer" that owns or controls a different portion of the Project Site.

9.4 Remedies.

- 9.4.1 <u>Specific Performance</u>. Subject to, and as limited by, the provisions of <u>Sections 9.4.3</u>, <u>9.4.4</u>, and <u>9.5</u>, in the event of a Default, the remedies available to a Party shall include specific performance of this Agreement in addition to any other remedy available at law or in equity.
- 9.4.2 <u>Termination</u>. Subject to the limitation set forth in <u>Section 9.4.4</u>, in the event of a Default, the non-defaulting Party may elect to terminate this Agreement by sending a notice of termination to the other Party, which notice of termination shall state the Default. Any such termination shall be effective upon the date set forth in the notice of termination, which shall in no event be earlier than sixty (60) days following delivery of the notice. Consistent with <u>Sections 9.3</u> and <u>12.3</u>, there are no cross-defaults under this Agreement, and therefore if there is more than one "Developer" (as it relates to different parts of the Project Site), then any termination of this Agreement for Default will be limited to the Developer that sent or received the termination notice.
- 9.4.3 <u>Limited Damages</u>. The Parties have determined that except as set forth in this <u>Section 9.4.3</u>, (i) monetary damages are generally inappropriate, (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by a Party as a

result of a Default hereunder, and (iii) equitable remedies and remedies at law, not including damages but including specific performance and termination, are particularly appropriate remedies for enforcement of this Agreement. Consequently, Developer agrees that the City shall not be liable to Developer for damages under this Agreement, and the City agrees that Developer shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) either Party shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for a Party's failure to pay sums to the other Party as and when due under this Agreement, (2) the City shall have the right to recover actual damages for Developer's failure to make any payment due under any indemnity in this Agreement, (3) to the extent a court of competent jurisdiction determines that specific performance is not an available remedy with respect to an unperformed Associated Community Benefit, the City shall have the right to monetary damages equal to the costs that the City incurs or will incur to complete the Associated Community Benefit as determined by the court, (4) either Party shall have the right to recover reasonable attorneys' fees and costs as set forth in Section 9.6, and (5) the City shall have the right to administrative penalties or liquidated damages if and only to the extent expressly stated in an Exhibit to this Agreement or in the applicable portion of the San Francisco Municipal Code incorporated into this Agreement. For purposes of the foregoing, "actual damages" means the actual amount of the sum due and owing under this Agreement, with interest as provided by Law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

9.4.4 <u>City Processing/Certificates of Occupancy</u>. The City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which payments due the City from Developer are past due; provided, however, if Developer has conveyed or transferred some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore, there is more than one party that assumes obligations of "Developer" under this Agreement, then the City shall continue to process requests and take other actions as to the other portions of the Project so long as the applicable Developer as to those portions is current on payments due the City. The City shall have the right to withhold a final certificate of occupancy for a Building until all of the

Associated Community Benefits tied to that Building have been completed. For a Building to be deemed completed, Developer shall have completed all of the streetscape and open space improvements described in <u>Exhibit C</u> and <u>Exhibit J</u>, or a Later Approval, for that Building; provided, if the City issues a final certificate of occupancy before such items are completed, then Developer shall promptly complete such items following issuance.

- 9.5 Time Limits; Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict or timely performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of any condition or failure of performance, including a Default, shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such failure. No express written waiver shall affect any other condition, action or inaction, or cover any other period of time, other than any condition, action or inaction and/or period of time specified in such express waiver. One or more written waivers under any provision of this Agreement shall not be deemed to be a waiver of any subsequent condition, action or inaction, and the performance of the same or any other term or provision contained in this Agreement. Nothing in this Agreement shall limit or waive any other right or remedy available to a Party to seek injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm.
- Attorneys' Fees. Should legal action be brought by either Party against the other for a Default under this Agreement or to enforce any provision herein, the prevailing Party in such action shall be entitled to recover its reasonable attorneys' fees and costs. For purposes of this Agreement, "reasonable attorneys' fees and costs" means the reasonable fees and expenses of counsel to the Party, which may include printing, duplicating and other expenses, air freight charges, hiring of experts and consultants, and fees billed for law clerks, paralegals, librarians, and others not admitted to the bar but performing services under the supervision of an attorney. The term "reasonable attorneys' fees and costs" shall also include, without limitation, all such reasonable fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Agreement, the reasonable fees of attorneys of City Attorney's Office shall be based on the fees regularly charged by private

attorneys with the equivalent number of years of experience in the subject matter area of the Law for which the City Attorney's Office's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

10. FINANCING; RIGHTS OF MORTGAGEES

- 10.1 <u>Developer's Right to Mortgage</u>. Nothing in this Agreement limits the right of Developer to mortgage or otherwise encumber all or any portion of the Project Site for the benefit of any Mortgagee as security for one or more loans. Developer represents that, as of the Effective Date, there are no Mortgages on the Project Site other than the Existing Mortgage. Prior to commencing construction under the First Construction Document for the Project, Developer shall cause the Existing Mortgage, if then still in effect, and any other then-existing Mortgage(s), to be subordinated to this Agreement.
- 10.2 Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement (except as set forth in this Section and Section 10.5), a Mortgagee, including any Mortgagee who obtains title to the Project Site or any part thereof as a result of foreclosure proceedings, conveyance or other action in lieu thereof, or other remedial action shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or any part thereof or to guarantee such construction or completion. The foregoing provisions shall not be applicable to any party who, after a foreclosure, conveyance or other action in lieu thereof, or other remedial action obtains title to some or all of the Project Site from or through the Mortgagee, or any other purchaser at a foreclosure sale other than the Mortgagee itself, on which certain Associated Community Benefits must be completed as set forth in Section 4.1. Nothing in this Section or any other Section or provision of this Agreement shall be deemed or construed to permit or authorize any Mortgagee or any other person or entity to devote the Project Site or any part thereof to any uses other than uses consistent with this Agreement and the Approvals, and nothing in this Section shall be deemed to give any Mortgagee or any other person or entity the right to construct any improvements under this Agreement (other than as set forth above for required Community Benefits or as needed to conserve or protect improvements or construction already made) unless or until such person or entity assumes Developer's obligations under this Agreement.
 - 10.3 Copy of Notice of Default and Notice of Failure to Cure to Mortgagee.

Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations under this Agreement, the City shall at the same time forward a copy of such notice or demand to each Mortgagee having a Mortgage on the real property which is the subject of the breach or default who has previously made a written request to the City therefor, at the last address of such Mortgagee specified by such Mortgagee in such notice. In addition, if such breach or default remains uncured for the period permitted with respect thereto under this Agreement, the City shall deliver a notice of such failure to cure such breach or default to each such Mortgagee at such applicable address. A delay or failure by the City to provide such notice required by this Section shall extend for the number of days until notice is given, the time allowed to the Mortgagee for cure. In accordance with Section 2924b of the California Civil Code, the City requests that a copy of any notice of default and a copy of any notice of sale under any Mortgage be mailed to the City at the address for notices under this Agreement. Any Mortgagee relying on the protections set forth in this Article 10 shall send to the City a copy of any notice of default and notice of sale.

10.4 Mortgagee's Option to Cure Defaults. After receiving any notice of failure to cure referred to in Section 10.3, each Mortgagee shall have the right, at its option, to commence within the same period as the Developer to remedy or cause to be remedied any Default, plus an additional period of: (a) sixty (60) days to cure a monetary Default; and (b) one hundred twenty (120) days to cure a non-monetary event of default which is susceptible of cure by the Mortgagee without obtaining title to the applicable property. If an event of default is not cured within the applicable cure period, the City nonetheless shall refrain from exercising any of its remedies with respect to the event of default if, within the Mortgagee's applicable cure period: (i) the Mortgagee notifies the City that it intends to proceed with due diligence to foreclose the Mortgage or otherwise obtain title to the subject property; and (ii) the Mortgagee commences foreclosure proceedings within sixty (60) days after giving such notice, and thereafter diligently pursues such foreclosure to completion; and (iii) after obtaining title, the Mortgagee diligently proceeds to cure those events of default: (A) which are required to be cured by the Mortgagee and are susceptible of cure by the Mortgagee, and (B) of which the Mortgagee has been given notice by the City. Any such Mortgagee or Transferee of a Mortgagee who shall properly complete the improvements relating to the Project Site or applicable part thereof shall be entitled, upon written request made to the Agency, to a Certificate of Completion.

- anything to the contrary in this Agreement, no Mortgagee shall have any obligations or other liabilities under this Agreement unless and until it acquires title by any method to all or some portion of the Project Site (referred to hereafter as "Foreclosed Property"). A Mortgagee that, by foreclosure under a Mortgage, acquires title to any Foreclosed Property shall take title subject to all of the terms and conditions of this Agreement, to the extent applicable to the Foreclosed Property, including any claims for payment or performance of obligations which are due as a condition to enjoying the benefits of this Agreement and shall have all of the rights and obligations of Developer under this Agreement as to the applicable Foreclosed Property, including completion of the Associated Community Benefits under Section 4.1. Upon the occurrence and continuation of an uncured default by a Mortgagee or Transferee in the performance of any of the obligations to be performed by such Mortgagee or Transferee pursuant to this Agreement, the City shall be afforded all its remedies for such uncured default as provided in this Agreement.
- 10.6 <u>No Impairment of Mortgage</u>. No default by Developer under this Agreement shall invalidate or defeat the lien of any Mortgagee. No foreclosure of any Mortgage or other lien shall defeat, diminish, render invalid or unenforceable or otherwise impair Developer's rights or obligations under this Agreement or constitute a default under this Agreement.
- 10.7 <u>Cured Defaults</u>. Upon the curing of any event of default by any Mortgagee within the time provided in this Article 10 the City's right to pursue any remedies with respect to the cured event of default shall terminate.

11. AMENDMENT; TERMINATION; EXTENSION OF TERM

Amendment or Termination. This Agreement may only be amended with the mutual written consent of the City and Developer; provided, however, that following a Transfer, the City and Developer or any Transferee may amend this Agreement as it affects Developer or the Transferee and the portion of the Project Site owned by Developer or the Transferee without affecting other portions of the Project Site or other Transferees. Other than upon the expiration of the Term and except as provided in Sections 2.2, 7.3, 9.4.2, and 11.2, this Agreement may only be terminated with the mutual written consent of the Parties. Any amendment to this Agreement that does not constitute a Material Change may be agreed to by the Planning Director (and, to the extent it affects any rights or obligations of a City department, with

the approval of that City department). Any amendment that is a Material Change will require the approval of the Planning Director, the Planning Commission and the Board of Supervisors (and, to the extent it affects any rights or obligations of a City department, after consultation with that City Department). The determination of whether a proposed change constitutes a Material Change shall be made, on City's behalf, by the Planning Director following consultation with the City Attorney and any affected City Agency.

- 11.2 Early Termination Rights. Developer shall, upon thirty (30) days prior notice to the City, have the right, in its sole and absolute discretion, to terminate this Agreement in its entirety at any time if Developer does not Commence Construction on any part of the Project Site by the date which is five (5) years following the Effective Date as such five (5) year date may be extended by any Litigation Extension. Thereafter, the City shall, upon sixty (60) days prior notice to Developer, have the right, in its sole and absolute discretion, to terminate this Agreement if the Developer has not Commenced Construction; provided Developer can prevent any such termination by the City by providing to the City notice, within the above sixty (60) day period, of Developer's intent to start construction and the Developer thereafter Commences Construction within one hundred twenty (120) days following delivery of Developer's notice to the City, or, if unable to actually Commence Construction within said time period, demonstrates reasonable, good faith and continuing efforts to Commence Construction, such as by pursuing all necessary Later Approvals, and thereafter promptly Commences Construction upon receipt of the Later Approvals.
- 11.3 <u>Termination and Vesting</u>. Any termination under this Agreement shall concurrently effect a termination of the Approvals with respect to the terminated portion of the Project Site, except as to any Approval pertaining to a Building that has Commenced Construction in reliance thereon. In the event of any termination of this Agreement by Developer resulting from a Default by the City and except to the extent prevented by such City Default, Developer's obligation to complete the Associated Community Benefits shall continue as to the Building that has Commenced Construction and all relevant and applicable provisions of this Agreement shall be deemed to be in effect as such provisions are reasonably necessary in the construction, interpretation or enforcement to this Agreement as to any such surviving obligations. The City's and Developer's rights and obligations under this <u>Section 11.3</u> shall survive the termination of this Agreement.
 - 11.4 Amendment Exemptions. No issuance of a Later Approval, or amendment

of an Approval or Later Approval, shall by itself require an amendment to this Agreement. And no change to the Project that is permitted under the Project SUD or a planned unit development authorization issued under the Project SUD shall by itself require an amendment to this Agreement. Upon issuance or approval, any such matter shall be deemed to be incorporated automatically into the Project and vested under this Agreement (subject to any conditions set forth in the amendment or Later Approval). Notwithstanding the foregoing, if there is any direct conflict between the terms of this Agreement and a Later Approval, or between this Agreement and any amendment to an Approval or Later Approval, then the Parties shall concurrently amend this Agreement (subject to all necessary approvals in accordance with this Agreement) in order to ensure the terms of this Agreement are consistent with the proposed Later Approval or the proposed amendment to an Approval or Later Approval. The Planning Department and the Planning Commission, as applicable, shall have the right to approve changes to the Project as described in the Exhibits in keeping with its customary practices and the Project SUD, and any such changes shall not be deemed to conflict with or require an amendment to this Agreement or the Approvals so long as they do not constitute a Material Change. If the Parties fail to amend this Agreement as set forth above when required, however, then the terms of this Agreement shall prevail over any Later Approval or any amendment to an Approval or Later Approval that conflicts with this Agreement.

11.5 Extension Due to Legal Action or Referendum; Excusable Delay.

challenging this Agreement or any of the Approvals described on Exhibit E (the "Initial Approvals") and it directly or indirectly delays this Agreement or such Initial Approval, or if this Agreement or any of the Initial Approvals is suspended pending the outcome of an electoral vote on a referendum, then the Term of this Agreement and the effectiveness of the Initial Approvals (starting from the date of the initial grant of the Initial Approval) shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension to the end of such litigation or suspension (a "Litigation Extension"). The Parties shall document the start and end of a Litigation Extension in writing within thirty (30) days from the applicable dates.

11.5.2 "Excusable Delay" means the occurrence of an event beyond a Party's reasonable control which causes such Party's performance of an obligation to be delayed, interrupted or prevented, including, but not limited to: changes in Federal or State Laws; strikes or

the substantial interruption of work because of labor disputes; inability to obtain materials; freight embargoes; civil commotion, war or acts of terrorism; inclement weather, fire, floods, earthquakes, or other acts of God; epidemics or quarantine restrictions; litigation; unforeseen site conditions (including archaeological resources or the presence of hazardous materials); or the failure of any governmental agency, public utility or communication service provider to issue a permit, authorization, consent or approval required to permit construction within the standard or customary time period for such issuing authority following Developer's submittal of a complete application for such permit, authorization, consent or approval, together with any required materials. Excusable Delay shall not include delays resulting from failure to obtain financing or have adequate funds, changes in market conditions, or the rejection of permit, authorization or approval requests based upon Developer's failure to satisfy the substantive requirements for the permit, authorization or approval request. In the event of Excusable Delay, the Parties agree that (i) the time periods for performance of the delayed Party's obligations impacted by the Excusable Delay shall be strictly limited to the period of such delay, interruption or prevention and the delayed Party shall, to the extent commercially reasonable, act diligently and in good faith to remove the cause of the Excusable Delay or otherwise complete the delayed obligation, and (ii) following the Excusable Delay, a Party shall have all rights and remedies available under this Agreement, if the obligation is not completed within the time period as extended by the Excusable Delay. If an event which may lead to an Excusable Delay occurs, the delayed Party shall notify the other Party in writing of such occurrence as soon as possible after becoming aware that such event may result in an Excusable Delay, and the manner in which such occurrence is likely to substantially interfere with the ability of the delayed Party to perform under this Agreement.

12. TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE

12.1 <u>Permitted Transfer of this Agreement</u>. At any time, Developer shall have the right to convey, assign or transfer all of its right, title and interest in and to all or part of the Project Site (a "**Transfer**") to a party (including any Mortgagee) without the City's consent, provided that it also transfers to such party (the "**Transferee**") all of its interest, rights or obligations under this Agreement with respect to such portion of the Project Site together with any portion required to complete the Associated Community Benefits for such portion (the "**Transferred Property**"). Developer shall not, by Transfer, separate a portion of the Project Site from the Associated Community Benefits tied to that portion of the Project Site without the prior

written consent of the Planning Director. Notwithstanding anything to the contrary in this Agreement, if Developer Transfers one or more parcels such that there are separate Developers within the Project Site, then the obligation to perform and complete the Associated Community Benefits for a Building shall be the sole responsibility of the applicable Developer (*i.e.*, the person or entity that is the Developer for the Development Parcel on which the Building is located); provided, however, that any ongoing obligations (such as open space operation and maintenance) may be transferred to a residential, commercial or other management association ("CMA") on commercially reasonable terms so long as the CMA has the financial capacity and ability to perform the obligations so transferred.

- Notice of Transfer. Developer shall provide not less than ten (10) days' notice to the City before any proposed Transfer of its interests, rights and obligations under this Agreement, together with a copy of the assignment and assumption agreement for that parcel (the "Assignment and Assumption Agreement"). The Assignment and Assumption Agreement shall be in recordable form, in substantially the form attached as Exhibit H (including the indemnifications, the agreement and covenant not to challenge the enforceability of this Agreement, and not to sue the City for disputes between Developer and any Transferee) and any material changes to the attached form will be subject to the review and approval of the Director of Planning, not to be unreasonably withheld or delayed. The Director of Planning shall use good faith efforts to complete such review and grant or withhold approval within thirty (30) days after the Director of Planning's receipt of such material changes. Notwithstanding the foregoing, any Transfer of Community Benefit obligations to a CMA as set forth in Section 12.1 shall not require the transfer of land or any other real property interests to the CMA.
- Agreement (following the City's approval of any material changes thereto if required pursuant to Section 12.2 above), the assignor shall be released from any prospective liability or obligation under this Agreement related to the Transferred Property, as specified in the Assignment and Assumption Agreement, and the assignee/Transferee shall be deemed to be "Developer" under this Agreement with all rights and obligations related thereto with respect to the Transferred Property. Notwithstanding anything to the contrary contained in this Agreement, if a Transferee Defaults under this Agreement, such default shall not constitute a Default by Developer or any other Transferee with respect to any other portion of the Project Site and shall not entitle the City

to terminate or modify this Agreement with respect to such other portion of the Project Site, except as otherwise provided herein. Additionally, the annual review provided by <u>Section 8</u> shall be conducted separately as to Developer and each Transferee and only as to those obligations that Developer or such Transferee has under this Agreement.

- 12.4 Responsibility for Performance. The City is entitled to enforce each and every such obligation assumed by each Transferee directly against the Transferee as if the Transferee were an original signatory to this Agreement with respect to such obligation. Accordingly, in any action by the City against a Transferee to enforce an obligation assumed by the Transferee, the Transferee shall not assert as a defense against the City's enforcement of performance of such obligation that such obligation (i) is attributable to Developer's breach of any duty or obligation to the Transferee arising out of the Transfer or the Assignment and Assumption Agreement or any other agreement or transaction between Developer and the Transferee, or (ii) relates to the period before the Transfer. The foregoing notwithstanding, the Parties acknowledge and agree that a failure to complete a Mitigation Measure may, if not completed, delay or prevent a different party's ability to start or complete a specific Building or improvement under this Agreement if and to the extent the completion of the Mitigation Measure is a condition to the other party's right to proceed, as specifically described in the Mitigation Measure, and Developer and all Transferees assume this risk.
- 12.5 <u>Constructive Notice</u>. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Site is, and shall be, constructively deemed to have consented to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Site and undertakes any development activities at the Project Site, is, and shall be, constructively deemed to have consented and agreed to, and is obligated by all of the terms and conditions of this Agreement (as such terms and conditions apply to the Project Site or applicable portion thereof), whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site.
- 12.6 <u>Rights of Developer</u>. The provisions in this <u>Section 12</u> shall not be deemed to prohibit or otherwise restrict Developer from (i) granting easements or licenses to facilitate

development of the Project Site, (ii) encumbering the Project Site or any portion of the improvements thereon by any Mortgage, (iii) granting an occupancy leasehold interest in portions of the Project Site, (iv) entering into a joint venture agreement or similar partnership agreement to fulfill its obligations under this Agreement, or (v) transferring all or a portion of the Project Site pursuant to a foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a Mortgage, and none of the foregoing shall constitute a Transfer for which the City's consent is required.

13. DEVELOPER REPRESENTATIONS AND WARRANTIES

- 13.1 <u>Interest of Developer; Due Organization and Standing.</u> Developer represents that it is the sole owner of the Project Site, with the right and authority to enter into this Agreement. Developer is a limited liability company, duly organized and validly existing and in good standing under the Laws of the State of Delaware. Developer has all requisite power to own its property and authority to conduct its business as presently conducted. Developer represents and warrants that there is no Mortgage, existing lien or encumbrance recorded against the Project Site that, upon foreclosure or the exercise of remedies, would permit the beneficiary of the Mortgage, lien or encumbrance to eliminate or wipe out the obligations set forth in this Agreement that run with applicable land.
- 13.2 <u>No Inability to Perform; Valid Execution</u>. Developer represents and warrants that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement and it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated hereby by Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.
- 13.3 <u>Conflict of Interest</u>. Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 *et seq*. and Section 1090 *et seq*. of the California Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the Term.
 - 13.4 Notification of Limitations on Contributions. Through its execution of this

Agreement, Developer acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for that contract or twelve (12) months after the date that contract is approved. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

Developer acknowledges that (i) the prohibition on contributions applies to Developer, each member of Developer's board of directors, Developer's chief executive officer, chief financial officer and chief operating officer, any person with an ownership interest of more than ten percent (10%) in Developer, any subcontractor listed in the contract, and any committee that is sponsored or controlled by Developer, and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department seeking to enter into the contract must notify the Ethics Commission of the parties and any subcontractor to the contract. Additionally, Developer certifies it has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract to the City, and has provided the names of the persons required to be informed to the City department seeking to enter into that contract within thirty (30) days of submitting its contract proposal to the City department receiving that submittal, and acknowledges the City department receiving that submittal was required to notify the Ethics Commission of those persons.

13.5 Other Documents. To the current, actual knowledge of Dan Safier, after reasonable inquiry, no document furnished by Developer to the City with its application for this Agreement nor this Agreement contains any untrue statement of material fact or omits a material

fact necessary to make the statements contained therein, or herein, not misleading under the circumstances under which any such statement shall have been made.

13.6 <u>No Bankruptcy</u>. Developer represents and warrants to the City that Developer has neither filed nor is the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or Laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Developer's knowledge, no such filing is threatened.

14. MISCELLANEOUS PROVISIONS

- 14.1 <u>Entire Agreement</u>. This Agreement, including the preamble paragraph, Recitals and Exhibits, and the agreements between the Parties specifically referenced in this Agreement, constitutes the entire agreement between the Parties with respect to the subject matter contained herein.
- 14.2 <u>Incorporation of Exhibits</u>. Except for the Approvals which are listed solely for the convenience of the Parties, each Exhibit to this Agreement is incorporated herein and made a part hereof as if set forth in full. Each reference to an Exhibit in this Agreement shall mean that Exhibit as it may be updated or amended from time to time in accordance with the terms of this Agreement.
- Binding Covenants; Run With the Land. Pursuant to Section 65868 of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to the provisions of this Agreement, including without limitation Section 12, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. Subject to the provisions of this Agreement, including without limitation Section 12, all provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable Law, including but not limited to California Civil Code Section 1468.
- 14.4 <u>Applicable Law and Venue</u>. This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the Laws of the

State of California. All rights and obligations of the Parties under this Agreement are to be performed in the City and County of San Francisco, and the City and County of San Francisco shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

- 14.5 <u>Construction of Agreement</u>. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both the City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement to this Agreement or any of the Approvals shall be deemed to refer to this Agreement or the Approvals as amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. In the event of a conflict between the provisions of this Agreement and Chapter 56, the provisions of this Agreement will govern and control.
- 14.6 Project Is a Private Undertaking; No Joint Venture or Partnership. The development proposed to be undertaken by Developer on the Project Site is a private development. The City has no interest in, responsibility for, or duty to third persons concerning any of said improvements. Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement. Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and Developer. Neither Party is acting as the agent of the other Party in any respect hereunder. Developer is not a state or governmental actor with respect to any activity conducted by Developer hereunder.
- 14.7 <u>Recordation</u>. Pursuant to the Development Agreement Statute and Chapter 56, the Clerk of the Board of Supervisors shall have a copy of this Agreement recorded in the Official Records within ten (10) days after the Effective Date of this Agreement or any amendment thereto, with costs to be borne by Developer.
- 14.8 <u>Obligations Not Dischargeable in Bankruptcy</u>. Developer's obligations under this Agreement are not dischargeable in bankruptcy.

14.9 <u>Survival</u>. Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provision which, by its express terms, survive the expiration or termination of this Agreement.

14.10 <u>Signature in Counterparts</u>. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

14.11 <u>Notices</u>. Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by registered mail, return receipt requested. Notice, whether given by personal delivery or registered mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon notice to the other Party, designate any other person or address in substitution of the person and address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:

John Rahaim

Director of Planning

San Francisco Planning Department 1650 Mission Street, Suite 400

San Francisco, California 94102

with a copy to:

Dennis J. Herrera, Esq.

City Attorney

City Hall, Room 234

1 Dr. Carlton B. Goodlett Place

San Francisco, CA 94102

Attn: Real Estate/Finance, 3333 California Project

To Developer:

c/o The Prado Group, Inc. 150 Post Street, Suite 320

San Francisco, CA 94108

Attn: Dan Safier

14.12 <u>Limitations on Actions</u>. Pursuant to Section 56.19 of the Administrative Code, any decision of the Board of Supervisors made pursuant to Chapter 56 shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the Board of Supervisors shall be commenced within ninety (90) days after such

decision or determination is final and effective. Any court action or proceeding to attack, review, set aside, void or annul any final decision by (i) the Planning Director made pursuant to Administrative Code Section 56.15(d)(3) or (ii) the Planning Commission pursuant to Administrative Code Section 56.17(e) shall be commenced within ninety (90) days after said decision is final.

- 14.13 <u>Severability</u>. Except as is otherwise specifically provided for in this Agreement with respect to any Laws which conflict with this Agreement, if any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of this Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.
- 14.14 <u>MacBride Principles</u>. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 *et seq*. The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Developer acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.
- 14.15 <u>Tropical Hardwood and Virgin Redwood</u>. The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code Section 250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that Developer in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other Laws, Developer shall mark any such materials as such. When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.

14.17 <u>Non-Liability of City Officials and Others</u>. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, commissioner, officer, employee, official or agent of City or other City Parties shall be personally liable to Developer, its successors and assigns, in the event of any Default by City, or for any amount which may become due to Developer, its successors and assigns, under this Agreement.

14.18 <u>Non-Liability of Developer Officers and Others</u>. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, officer, employee, official, partner, employee, or agent of Developer or any affiliate of Developer shall be personally liable to City, its successors and assigns, in the event of any Default by Developer, or for any amount which may become due to City, its successors and assigns, under this Agreement.

14.19 <u>No Third Party Beneficiaries</u>. There are no third party beneficiaries to this Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

and year first above written. CITY: Approved as to form: CITY AND COUNTY OF SAN FRANCISCO, DENNIS J. HERRERA, City Attorney a municipal corporation By: Carol Wong, Deputy City Attorney John Rahaim Director of Planning RECOMMENDED: By: [Name] Director, MOHCD By: Mohammed Nuru Director of Public Works

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day

[DEVELOPER'S SIGNATURE ON FOLLOWING PAGE]

Approved on _____, 20__ Board of Supervisors Ordinance No. ___

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

Ву: _

Name: Dan Safier Title: Manager

State of California County of San Francisco)		
County of San Francisco			
personally appeared satisfactory evidence to be tand acknowledged to me	that he/she/they of is/her/their signature	, who p name(s) is/are subscrexecuted the same e(s) on the instrument	, a Notary Public proved to me on the basis of ribed to the within instrumer in his/her/their authorize in the person(s), or the entit
I certify under PENALTY foregoing paragraph is true		der the laws of the	State of California that th
WITNESS my hand and of	ficial seal.		
Signature			

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)	
personally appeared satisfactory evidence to be the and acknowledged to me	that he/she/they execus/her/their signature(s) or	, who proved to me on the basis of (s) is/are subscribed to the within instrument ted the same in his/her/their authorized in the instrument the person(s), or the entity
I certify under PENALTY foregoing paragraph is true a		ne laws of the State of California that the
WITNESS my hand and offi	cial seal.	
Signature		

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.

Exhibit A

Project Site Legal Description

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

Project Description

The Project Site is an approximately 446,490-square-foot, or 10.25-acre, parcel bounded by California Street to the north, Presidio Avenue to the east, Masonic Avenue to southeast, Euclid Avenue to the south, and Laurel Street/Mayfair Drive to the west, at the southern edge of San Francisco's Presidio Heights neighborhood in the northwest portion of San Francisco. The project sponsor, Laurel Heights Partners, LLC, owns the site and temporarily leases it to the Regents of the University of California, which uses the Project Site for its University of California San Francisco (UCSF) Laurel Heights Campus. The Project Site does not include the San Francisco Fireman's Credit Union (now called the SF Fire Credit Union) at the southwest corner of California Street and Presidio Avenue, which is on a separate parcel.

The Project Site is currently used as office and related research, child care, and parking. It is developed with a four-story, approximately 455,000-gross-square-foot office building including a three-level, 212-space, an approximately 93,000-gross-square-foot partially below-grade parking garage at the center of the site; a one-story, approximately 14,000-gross-square-foot annex building at the corner of California and Laurel streets; three surface parking lots with a total of 331 spaces connected by internal roadways; two circular garage ramp structures leading to below-grade parking levels; and landscaping or landscaped open space for the USCF Laurel Heights Campus occupants.

The proposed project includes approximately 1,427,832 gross square feet of new and rehabilitated space, comprising approximately 977,437 gross square feet of residential floor area with approximately 744 dwelling units; approximately 34,496 gross square feet of retail floor area; and an approximately 14,665 gross-square-foot child care center use. The proposed project would provide approximately 857 off-street parking spaces (including approximately 10 car share spaces), approximately 762 Class One bicycle spaces, and 77 Class Two bicycle spaces. These proposed uses would be located in 13 new buildings (known as Plaza A, Plaza B, Walnut, Mayfair, Laurel Townhomes, Euclid and Masonic) and in the adaptively reused office building (known as Center A and Center B), which would be divided into two separate buildings and converted to residential use.

25% of the proposed project's units will be deed-restricted, on-site affordable units designated for low-income senior households. These affordable units will be located in the proposed Walnut Building on California Street and consist of 185 studios and 1-bedrooms for seniors plus one (1) on-site manager's unit. The Walnut Building would also include an approximately 175-seat child care facility, including a contiguous outdoor activity area. The project includes approximately 34,496 square feet of neighborhood-serving retail located in the buildings fronting onto California Street (Plaza A, Plaza B and the Walnut Building). This retail

corridor is aligned with the existing Laurel Village shopping center on California Street and will be designed to enhance the retail offerings for the neighborhood.

The proposed project would contain approximately 52 percent of the overall lot area (approximately 236,000 square feet — excluding green roofs) as open area, with portions to be developed with a combination of public open space, common open space (some of which would be open to the public) and private open space for residents. The proposed project would include **2.87 acres of publicly accessible landscaped open space** with multi-purpose plazas, lawns, pathways and streetscape improvements as further described in <u>Exhibit C</u>, which will provide the public with new open space amenities and improve pedestrian connectivity and safety through the neighborhood.

The Project's circulation and open space plan includes multiple new public entrances into and through the Site in order to integrate the Site with the surrounding neighborhood and street network. The proposed north-south pedestrian connection (Walnut Walk) and the proposed east-west pedestrian connection (Mayfair Walk) would be open to the public and would provide the primary points of access to other publicly accessible common open spaces, plazas, squares, and vista points within the Project Site. The proposed Walnut Walk would align with Walnut Street to the north and the intersection of Euclid and Masonic to the south, incorporating the site into the surrounding street grid.

Exhibit B-1

Project Site Plan

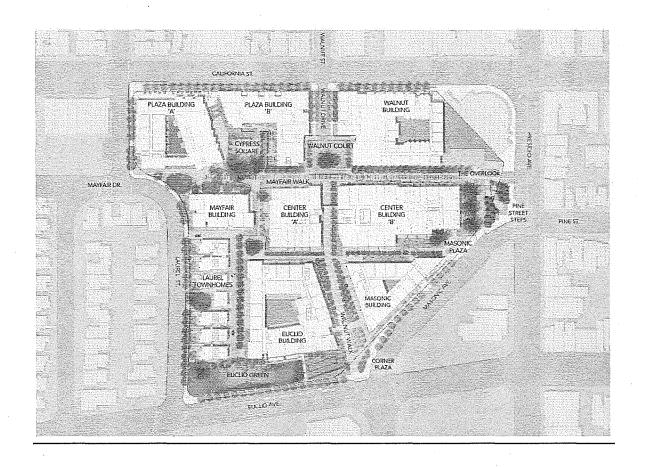


Exhibit C

Project Open Space

The Project would provide the following open space, substantially in accordance with <u>Attachment C-1</u>, <u>Attachment C-2</u>, <u>Attachment C-3</u>, and <u>Schedule 1</u> to the Agreement:

- 1. <u>Publicly Accessible Private Improvements.</u> The Project would include the construction, operation, and maintenance of the Publicly Accessible Private Improvements, which is comprised of approximately 2.87 acres of open space (1.63 acres of which exceed the Planning Code open space requirements that would otherwise apply for the Project) developed as follows:
 - a. <u>California Plaza</u>: An approximately 4,290 square foot plaza adjacent to California Street and the Plaza A and B retail uses. California Plaza will be improved with a combination of quality hardscape, planters and seating elements adjacent to the City sidewalk and designed to comply with the City's Better Streets policies.
 - b. Cypress Square and Stairs: Cypress Stairs (approximately 1,255 sq. ft.) are one of several pedestrian access points into the Project and would connect pedestrians from California Street to Cypress Square and the network of internal public open spaces throughout the Project Site. There will also be ADA access from California Street to Cypress Square adjacent to the Cypress Stairs. Cypress Square would be an approximately 12,052 square foot south-facing plaza that would retain the existing mature and healthy Cypress trees identified in the landscape plan. It would include hardscaped walkways and a central, paved open plaza area with wood decking, seating and landscaping.
 - c. Mayfair Walk: Mayfair Walk (approximately 30,685 sq. ft.) is the Project's main east-west pedestrian connector that will stitch the site back into the adjacent neighborhood's urban fabric with publicly-accessible landscaped pathways. The Walk includes a connection to Mayfair Drive/Laurel Street to the west with seating, stairs and landscaping, including the retention of existing mature and healthy oak trees and the addition of new trees as identified in the landscape plan. The Walk would include a hardscape pathway with landscaped borders and access to ground floor residential units. The Walk would connect with the ADA-accessible Pine Street Stairs to Presidio Avenue to the east.
 - d. <u>Presidio Overlook</u>: At the east side of the Project Site atop Pine Street Stairs, the Presidio Overlook will provide scenic views of downtown San Francisco for the public and ADA and stair access to Presidio Avenue. The Overlook will consist of approximately 10,450 square feet of open space and would include a large terrace with trees, planters and seating. The Overlook would act as an interconnection and scenic area between the east portion of the Mayfair Walk and the Pine Street Stairs.

- e. <u>Pine Street Steps</u>: The Pine Street Steps would be approximately 7,015 square feet and are inspired by California's indigenous biodiversity and include a grove of mature existing and new Redwood trees. They have been designed to provide the public with an ADA-accessible connection from the east side of the Project Site to the west.
- f. Walnut Walk North and Walnut Walk South: Walnut Walk would consist of a total of approximately 23,730 square feet of open space and will be the Project's main north-south public pedestrian access. Walnut Walk would run through the center of the Project Site from California Street (via Walnut Court) to the Masonic and Euclid Avenue intersection, helping to stitch the site back into the neighborhood's urban fabric. Walnut Walk would be a pedestrian pathway with a network of landscaped open spaces and seating.
- g. Walnut Drive and Walnut Court: Walnut Drive and Walnut Court would consist of approximately 17,825 square feet of open space and would include tree-lined hardscape pedestrian walkways on either side of Walnut Drive leading into Walnut Court, which would include a tree-lined vehicular turnaround plaza with a tree feature at the center. The drive and court areas would provide direct access to California Street, Mayfair Walk and Walnut Walk.
- h. <u>Euclid Green</u>: The new green lawn at the corner of Euclid and Laurel would provide the public with views of downtown San Francisco to the east, and views of the Golden Gate Bridge to the northwest. Euclid Green will consist of approximately 18,004 square feet of open space at the southwest corner of the Project at Laurel Street and Euclid Avenue. The existing green lawn will be renovated and maintained as a large, naturally sloping lawn with plantings and a direct access to the sidewalks on Euclid Avenue and Laurel Street.

The Publicly Accessible Private Improvements will be privately owned but accessible to the public on the terms described in <u>Attachment C-2</u> and <u>Attachment C-3</u>. The Publicly Accessible Private Improvements would be provided substantially as depicted in <u>Attachment C-1</u>, constructed in accordance with the terms of <u>Attachment C-2</u> and <u>Schedule 1</u>, and operated and maintained on the terms of <u>Attachment C-2</u> and <u>Attachment C-3</u>.

- 2. <u>Streetscape Improvements</u>. The Project would include the streetscape improvements depicted in <u>Attachment C-1</u> to enhance the safety of, and strengthen the network of, existing sidewalks and street crossings that abut the Project Site including Presidio Avenue, Masonic Avenue, Euclid Avenue, Laurel Street, Mayfair Street and California Street.
- 3. <u>Provision of Required Open Space</u>. The amount and phasing of private and/or common usable open space for the residential uses on the Project shall be governed by the Approvals.

Exhibit C-1

Open Space Plan

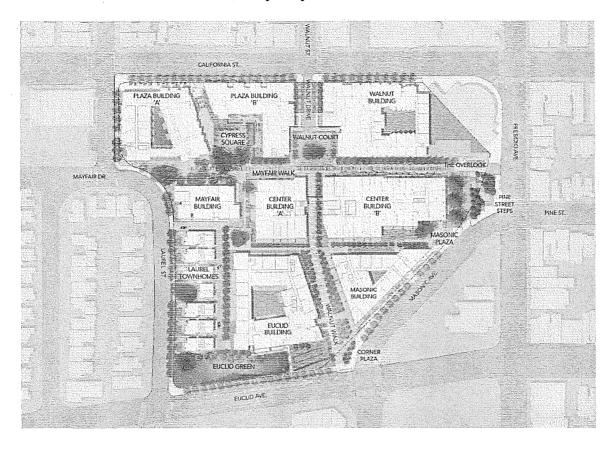


Exhibit C-2

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 (each, a "Publicly Accessible Private Improvement" and collectively, the "Publicly Accessible Private Improvements") as defined in Section 1 of this Agreement. The Publicly Accessible Private Improvements are the open spaces proposed for the Project that are privately owned, but will remain accessible to the public, as described in this Exhibit, and include California Plaza, Cypress Stairs, Cypress Square, Euclid Green, Mayfair Walk those portions of the Pine Street Steps that are privately owned, Presidio Overlook, Walnut Drive and Walnut Court, Walnut Walk North, and Walnut Walk South.

- 1. Permitted Uses. Upon completion of a Publicly Accessible Private Improvement in accordance with this Agreement, Developer 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 Developer 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. Developer 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. Developer 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, this Agreement, the Approvals, and any Later Approvals.

- 3. <u>No Discrimination.</u> Developer 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. <u>Maintenance Standard</u>. 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. <u>Temporary Closure.</u> Developer 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 Developer reasonably deems necessary to address either of the circumstances below:
 - a. <u>Emergency</u>; <u>Public Safety</u>. 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). Developer 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. <u>Maintenance and Repairs</u>. Developer may temporarily close a Publicly Accessible Private Improvement (or affected portions thereof) in order to make any repairs or perform any maintenance as Developer, 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 Improvements. Operation of each Publicly Accessible Private Improvement shall be subject to the additional requirements of this Paragraph.
 - a. Hours of Operation. 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 Agreement (including, without limitation, Paragraphs 4 and 5(b) of these Regulations), or (iii) reasonably imposed by Developer, 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.
 - b. <u>Signs.</u> Developer shall post signs at the major public entrances to each of its Publicly Accessible Private Improvement, indicating that it is a privately-owned public open space ("<u>POPOS</u>") 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.
- 7. Permissive Use. Developer may post at each entrance to each of its 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 Agreement. 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.
- 8. <u>Arrest or Removal of Persons.</u> Developer 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, Developer 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. Developer 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.

- 9. Project Security During Period of Non-Access. Developer 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 Developer's obligations under Applicable Law, Developer 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 Developer's right to install security cameras and monitoring devices anywhere on the Project.
- 10. <u>Removal of Obstructions</u>. Developer 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 Agreement, 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.
- 11. <u>Temporary Structures.</u> Subject to Developer'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.

Exhibit C-3

Public Access Declaration

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, 2019, 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").				
Project Site as a large mixed-use development hild care, open space, parking, and related uses been between Declarant and City dated eement "), approved by the City's Board of on November, 2019, a Special Use District Ordinance No on November, Zoning Map, and Height Map adopted by the				

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. <u>Construction</u>.

- (a) <u>Timing</u>. If Declarant constructs any Building during the DA Term, Declarant shall build the applicable Publicly Accessible Private Improvements (as defined in the attached <u>Exhibit C</u>) specified in the attached <u>Exhibit C</u> in compliance with the requirements of the Development Agreement.
- (b) <u>Conceptual Plans; Changes</u>. If Declarant is obligated to construct Publicly Accessible Private Improvement pursuant to <u>Section 1(a)</u> above, then Declarant shall construct the Publicly Accessible Private Improvement substantially as described in the conceptual plans dated ______, and stamped as Exhibit ____ in the City's Planning Department docket for Case No. ______, as such plans may be modified pursuant to conditions of approval for the Project adopted by the City's Planning Commission on September _____, 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 Uses (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.

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")

Maintenance and Modifications. Following the completion of the Publicly Accessible 2. Private Improvement, Declarant shall maintain 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. Notwithstanding the foregoing, 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 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. <u>City Regulatory Approvals</u>. 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. <u>Use</u>; <u>Operation</u>. On substantial completion of a Publicly Accessible Private Improvement, Declarant shall maintain 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 <u>Exhibit D</u> ("**Regulations**"). If Declarant closes any Publicly Accessible Private Improvement pursuant to Section 5 of the Regulations, Declarant 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 to the Declarant of any actual or alleged violation of the covenants or restrictions set forth in this Declaration before taking any enforcement action. Such notices shall be given to Declarant at the address last furnished to the City; provided, however, that following completion of a Publicly Accessible Private Improvement, such notices shall be given to any Association (as defined in Section 12 below), the owner of the legal parcel on which such Publicly Accessible Private Improvement is located (the "Improvement Owner"), and the owner of the legal parcel of each Building to which such completed Publicly Accessible Private Improvement is associated, as set forth in Exhibit C (the "Associated Owner"). Declarant shall have (i) a period of five (5) business days after receipt of such 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") and (ii) a period of thirty (30) days after receipt of such notice to cure any other violation, provided that if the violation is not capable of cure within such 30-day period, Declarant shall have such additional time as shall be reasonably required to complete a cure as long as Declarant 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 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 the Lender Cure Period, as defined in Section 6 below) as long as Declarant (or any applicable 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. The City's rights and remedies in this Section 5 shall be subject to the provisions of Section 12 below regarding responsibility for the Publicly Accessible Private Improvements following completion thereof and transfer to an association.

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 1650 Mission Street, Suite 400 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

6. <u>Lender Notice and Cure Rights</u>. As long as any deed of trust encumbering any portion of the Project Site made in good faith and for value (each, an "**Encumbrance**") shall remain unsatisfied of record, the City shall give to the beneficiary of such Encumbrance (each, a "**Lender**") a copy of each notice the City gives to Declarant from time to time of the occurrence of a violation under this Declaration if that Lender has given to the City a written request for such notices. Copies of such notices shall be given to any requesting Lender at the address that requesting Lender last furnished to the 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 <u>Section 7</u> below).

Each Lender shall have the right, but not the obligation, to do any act or thing required of Declarant 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 under this Declaration. In the case of any notice of violation given by the City to Declarant, the Lender shall have the same concurrent cure periods as are given Declarant under this Declaration for remedying a default or causing it to be remedied and, except in the event of a Public Access Violation, if prior to the expiration of the applicable cure period specified in Section 5 above, 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 such cure period, or (ii) the date that the City has served such notice of default 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. <u>Enforcement.</u> 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 fails to maintain a Publicly Accessible Private Improvement in the manner required in this Declaration, and Declarant fails to timely cure such failure pursuant to Section 5 above and no Lender cures such failure pursuant to Section 6 above, City shall further have the right, at its sole option, to remedy such failure at Declarant's expense by providing ten (10) days' prior written notice of City's intention to cure such failure (a "Self-Help Notice") to the Association (if any), the applicable Improvement Owner, and the applicable Associated Owner. 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 is obligated to perform. Association 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 there is no Association or an existing Association or Improvement Owner fails to timely reimburse City for City's Costs, then the applicable Associated Owner 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. If neither the Association (if any), the applicable Improvement Owner, nor the applicable Associated Owner timely reimburses City for City's Costs, City shall have the right to record a notice of such unpaid costs and expenses against record title to the legal parcel on which the Publicly Accessible Private Improvement is located and the legal parcel of each Building to which such Publicly Accessible Private Improvement is associated, as described in the attached Exhibit C. At City's request, Declarant shall provide security in a form and amount satisfactory to City to City to ensure Declarant's prompt reimbursement of any amounts owed by Declarant to City pursuant to this Section.

- 8. <u>Priority of Lien.</u> 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. <u>No Waiver</u>. 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. <u>Compliance With Laws</u>. 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 City brings an action or proceeding (including any cross-complaint, counterclaim, or third-party claim) against Declarant or the then-owner(s) of the Project Site 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. <u>Binding on Successors; No Merger; Post-Construction Responsibility</u>. 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 require a residential, commercial or other management association for the Project Site (an "Association") to perform its obligations under this Declaration for a completed Publicly Accessible Private Improvement, but Declarant's rights and obligations under this Declaration in maintaining and operating a completed Publicly Accessible Private Improvement shall remain with the applicable Improvement Owner and the applicable Associated Owner.
- 13. <u>Severability</u>. 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 of San Francisco County, 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 its successors in interest to any fee interest of the Project Site) and City.

- 16. <u>Governing Law</u>. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- 17. <u>Recordation</u>. 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: [Name], Director of Planning			
APPROVED AS TO FORM	[:			
DENNIS J. HERRERA, City Attorney				
By: Carol Wong Deputy City Attorne	y			

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

State of California)		
) ss		
County of San Francisco)		
On, be	fore me,		, a notary public in and for
said State, personally appear			, who proved to me
on the basis of satisfactory	evidence to be t	the person(s) whose	name(s) is/are subscribed to the
within instrument and ack	nowledged to me	e that he/she/they e	xecuted the same in his/her/their
authorized capacity(ies), ar	nd that by his/her	/their signature(s) o	n the instrument the person(s), or
the entity upon behalf of w	hich the person(s)) acted, executed the	e instrument.
I certify under PENALTY OF paragraph is true and correct		the laws of the Stat	e of California that the foregoing
WITNESS my hand and offic	cial seal.		
Signature		(Seal)	

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

State of California)		
,) ss	•	
County of San Francisco)		
On, be	efore me,		, a notary public in and for
said State, personally appe	ared		, who proved to me
on the basis of satisfactor	y evidence to b	e the person(s) who	se name(s) is/are subscribed to the
	nd that by his/h	ner/their signature(s)	executed the same in his/her/their on the instrument the person(s), or he instrument.
I certify under PENALTY Oparagraph is true and corre		er the laws of the St	ate of California that the foregoing
WITNESS my hand and off	cial seal.		
Signature		(Seal)	

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

[see attached]

EXHIBIT B-2

Depiction of Buildings and Publicly Accessible Private Improvements

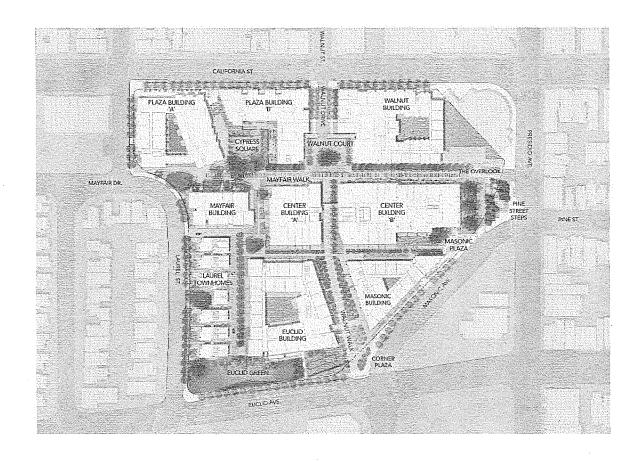


EXHIBIT C

Completion Schedule

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

- 1. <u>Description of Publicly Accessible Private Improvements</u>. Each of the following shall be a "Publicly Accessible Private Improvement" and shall collectively be the "Publicly Accessible Private Improvements":
- a. <u>California Plaza</u>: An approximately 4,290 square foot plaza adjacent to California Street, located in the general area depicted in the attached <u>Exhibit B-2</u>. 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. <u>Cypress Square</u>: 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 <u>Exhibit B-2</u>. The improvements will consist of the existing mature and healthy Cypress trees identified in the Project landscape plan submitted to ______ on ___ (the "Landscape Plan"), hardscaped walkways, and a central, paved open plaza area with wood decking, seating and landscaping.
- c. <u>Cypress Stairs</u>: 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 <u>Exhibit B-2</u>. The improvements will consist of stairs with landscaped planters along the edges.
- d. <u>Euclid Green</u>: An approximately 18,004 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 <u>Exhibit B-2</u>. The improvements will consist of a large, naturally sloping lawn with plantings.
- e. <u>Mayfair Walk</u>: 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 <u>Exhibit B-2</u>. 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. <u>Presidio Overlook</u>: 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 <u>Exhibit B-2</u>. The improvements will consist of a terrace with trees, planters, and seating.

- g. <u>Pine Street Steps</u>: 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 <u>Exhibit B-2</u>. The improvements will consist of stairs with landscaped planters along the edges.
- h. <u>Walnut Drive and Walnut Court</u>: 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 <u>Exhibit B-2</u>. 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. <u>Walnut Walk North</u>: 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 <u>Exhibit B-2</u>. 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. <u>Walnut Walk South</u>: 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 <u>Exhibit B-2</u>. 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. <u>Installation Schedule</u>. 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. <u>California Plaza</u>. Declarant shall complete construction of California Plaza before the issuance of an Occupancy Certificate (as defined below) for any non-retail portion of the Plaza A Building, which is described on the attached <u>Exhibit B-1</u> and depicted on the attached <u>Exhibit B-2</u>. Once completed, California Plaza shall be associated with the Plaza A Building.
- b. <u>Cypress Square</u>. 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 <u>Exhibit B-1</u> and depicted on the attached <u>Exhibit B-2</u>. Once completed, Cypress Square shall be associated with the Plaza B Building.

- c. <u>Cypress Stairs</u>. 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. <u>Euclid Green</u>. 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. <u>Mayfair Walk</u>. 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. <u>Pine Street Steps</u>. 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. <u>Presidio Overlook</u>. 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. <u>Walnut Drive and Walnut Court</u>. 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 <u>Exhibit B-1</u> and depicted on the attached <u>Exhibit B-2</u>). Once completed, Walnut Drive and Walnut Court shall be associated with the Plaza B Building and the Walnut Affordable Housing Building.

- i. <u>Walnut Walk North</u>. 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. <u>Walnut Walk South</u>. 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 <u>Exhibit B-1</u> and depicted on the attached <u>Exhibit B-2</u>) or the Masonic Building (described on the attached <u>Exhibit B-1</u> and depicted on the attached <u>Exhibit B-2</u>). Once completed, Walnut Walk South shall be associated with the Euclid Building and the Masonic Building.
- 3. <u>Delayed Completion</u>. 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. <u>Alternative Pedestrian Access</u>. 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 "<u>Regulations</u>") 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. <u>No Discrimination.</u> 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. <u>Maintenance Standard.</u> 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. <u>Temporary Closure.</u> 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. <u>Emergency</u>; <u>Public Safety</u>. 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. <u>Maintenance and Repairs.</u> 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. <u>Signs.</u> 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.
- 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. <u>Temporary Structures.</u> 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.

Exhibit D

Affordable Housing Program

This Exhibit D describes the affordable housing program for the Project (the "Housing Plan"). All initially-capitalized, undefined terms used in this Exhibit D shall have the meanings given to them in the Development Agreement to which it is attached.

Recognizing the City's pressing need for housing – market rate and affordable - the Developer has agreed to (1) increase the total number of residential units for the Project from the 558 residential units initially proposed to 744 residential units; (2) construct 185 studio and one-bedroom affordable residential units for Senior Households at the Project Site (the "BMR Units") in order to make 25% of the Project residential units affordable, rather than the Section 415 (as defined below) requirement of providing 18% on-site affordable residential units or paying the City in-lieu affordable housing fees, together with 1 Manager Unit (as defined below); and (3) fund all predevelopment costs and gap financing required to complete the BMR Units.

The BMR Units will be deed-restricted to be affordable to qualified senior households with an average income not more than 59% of MOHCD AMI (as defined below) and will be constructed before the Developer can receive a CofO (as defined below) on more than three hundred eightysix (386) Market Rate Units (as defined below).

1. Definitions.

"Adjustment Date" means each anniversary of the Effective Date.

"Affordable Housing Developer" means Mercy Housing California, a non-profit California corporation, or any other non-profit affordable housing developer with experience developing and operating affordable housing in San Francisco.

"Affordable Rent" means a monthly rental charge for a BMR Unit (including the Utility Allowance applicable to the Household Size of such BMR Unit but excluding parking charges if a Parking Space is allocated to such BMR Unit) that does not exceed thirty percent (30%) of the maximum MOHCD AMI permitted for such BMR Unit, based on Household Size.

"Approved Legal Description" means a legal description of the Walnut Land that substantially conforms to the depiction attached as <u>Attachment D-1</u> and is approved by the City's Director of Property and the MOHCD Director.

"CofO" means a first certificate of occupancy issued by City's Department of Building Inspection, including any temporary certificate of occupancy.

"CPI Increase" means, for the first Adjustment Date, the difference between the published CPI Index in effect at the time of the first Adjustment Date and the published CPI Index in effect at the time of the Effective Date. For each following Adjustment Date, the "CPI Increase" means the difference between the published CPI Index in effect at the time of an

applicable Adjustment Date and the published CPI Index in effect at the time of the immediately-preceding Adjustment Date.

"CPI Index" means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics or, if the Consumer Price Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Consumer Price Index had not been discontinued or revised.

"Development Agreement" shall mean the body of the Development Agreement to which this Housing Plan is attached.

"Development Fee Deferral Surcharge Rate" means an amount determined by DBI under Building Code Section 107A.13.3.2.

"First Construction Document" shall be as defined in San Francisco Building Code Section 107A.13.1(a)(8).

"Fair Market Value" shall have the meaning given such term in Attachment D-2.

"Household" means one or more related or unrelated individuals who live together or intend to live together in a Senior Unit as their primary dwelling.

"Household Size" means the number of persons in a Household as calculated under the MOHCD Manual.

"Housing Entity" means a limited partnership with the Affordable Housing Developer (or a subsidiary entity owned or controlled by Affordable Housing Developer) as the general partner.

"HUD" means the United States Department of Housing and Urban Development, or any successor agency.

"LIHTC" means the federal low income housing tax credit 4% program.

"Manager Unit" means the 2-bedroom unit for the Walnut Affordable Housing Building manager.

"Market Rate Unit" means any Project Site residential unit that is not a BMR Unit.

"MOHCD AMI" means median income as published annually by MOHCD, which is derived from the income limits determined by HUD for the San Francisco area, adjusted solely for household size but not high housing cost area. If HUD ceases to publish such data for 18 or more months, MOHCD and the Housing Entity will make good faith efforts to agree on other publicly available and credible substitute data for MOHCD AMI.

"MOHCD Director" means the Director of the Mayor's Office of Housing and Community Development.

"MOHCD Manual" means the City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual, as published by MOHCD and as updated from time to time.

"Outside Date" means the 12th anniversary of the Effective Date.

"Ownership Gap Fee" means an amount equal to (i) the Gross Floor Area (as defined in Planning Code Section 401) for an applicable ownership Market Rate Unit multiplied by (ii) an amount equal to, at the time of calculation, (A) [insert an amount equal to MOHCD's published under Planning Code Section 415.5(b)(2) as of the effective date of the BOS legislation approving the Development Agreement, currently \$199.50 per square foot of Gross Floor Area of residential use], which shall be adjusted each anniversary of the Effective Date by the CPI Increase multiplied by (B) the lower of (1) [insert an amount equal to Planning Code Section 415.5 percentage for ownership units as of the effective date of the BOS legislation approving the Development Agreement] and (2) the percentage of off-site affordable ownership units that would otherwise be used for the Project if calculated under Planning Code Section 415.5(b).

"Parking Space" means a parking space assigned to a Senior Unit.

"Property Covenants" is defined in Section 2.A.

"Rental Gap Fee" means an amount equal to (i) the Gross Floor Area (as defined in Planning Code Section 401) for an applicable rental Market Rate Unit multiplied by (ii) an amount equal to, at the time of calculation, (A) [insert an amount equal to MOHCD's published under Planning Code Section 415.5(b)(2) as of the effective date of the BOS legislation approving the Development Agreement, currently \$199.50 per square foot of Gross Floor Area of residential use], which shall be adjusted each anniversary of the Effective Date by the CPI Increase, multiplied by (B) the lower of (1) [insert an amount equal to Planning Code Section 415.5 percentage for rental units as of the effective date of the BOS legislation approving the Development Agreement] and (2) the percentage of off-site affordable rental units that would otherwise be used for the Project if calculated under Planning Code Section 415.5(b).

"Section 415" means the City's Inclusionary Affordable Housing Program (Planning Code Sections 415 and 415.1 through 415.11), as amended from time to time.

"Senior Households" means a household that is 62 years old or older, or as otherwise defined by the requirements of any funding source used to construct or operate the Walnut Affordable Housing Building.

"Substantially Completed" means, with respect to any Senior Unit, the issuance of a CofO for that Senior Unit.

"Tax Credit Closing" means the date by which the Housing Entity has received (i) an LIHTC allocation for the Walnut Affordable Housing Building and (ii) all financing needed to commence and complete the construction of the Walnut Affordable Housing Building.

"Title Policy" is defined in Section 4.F.

"Utility Allowance" means a dollar amount determined in a manner acceptable to the California Tax Credit Allocation Committee, which may include an amount published periodically by the San Francisco Housing Authority or successor based on standards established by HUD, for the cost of basic utilities for households, adjusted for Household Size. If both the San Francisco Housing Authority and HUD cease publishing a Utility Allowance, then Developer may use another publicly available and credible dollar amount approved by MOHCD.

"Walnut Affordable Housing Building" is defined in Section 2.A.

"Walnut Child Care Parcel" is defined in Section 2.A.

"Walnut Housing Parcel" is defined in Section 2.A.

"Walnut Retail Parcel" is defined in Section 2.A.

"Walnut Land" is defined in Section 2.A.

2. Walnut Affordable Housing Building

A. <u>Description</u>. The 185 BMR Units and the Manager Unit will all be located in a single residential building (the "Walnut Affordable Housing Building") that will be located within a condominium parcel (the "Walnut Housing Parcel") on the portion of the Project Site depicted as the "Walnut Land" on <u>Attachment D-1</u> (the "Walnut Land"). The Walnut Affordable Housing Building will be comprised only of the BMR Units, the Manager Unit (which shall only be occupied by the Walnut Affordable Housing Building manager or, to the extent permitted under law, other property management staff), and the common and parking area for the BMR Units and Manager Unit. A condominium parcel for retail uses (the "Walnut Retail Parcel") and a condominium parcel for child care uses (the "Walnut Child Care Parcel") will also be located on the Walnut Land. The Walnut Housing Parcel, the Walnut Retail Parcel, and the Walnut Child Care Parcel will be created through a final map prepared under the Tentative Map as required in the Subdivision Map.

Before obtaining a First Construction Document for any portion of the Project or transferring the Walnut Land or the Walnut Housing Parcel to the Housing Entity, the Developer shall obtain legal descriptions for the Walnut Housing Parcel and the Walnut Child Care Parcel that are reasonably acceptable to City, cause the Walnut Land to be made a separate legal parcel, and record a declaration of restrictions (in a form approved by City and using such approved legal descriptions) that limits the use of the Walnut Housing Parcel to the construction and operation of the Walnut Affordable Housing Building and the Walnut Child Care Parcel to the construction and operation of a child care facility. In connection with the development of the Project, Developer shall have the right to enter into commercially reasonable licenses, easements, covenants, conditions and restrictions, reciprocal easement agreements, and similar agreements that affect the Walnut Housing Parcel to the extent necessary for the use or operation of any portion of the Walnut Housing Parcel (each, a "Property Covenant"); provided, however, that (i) Developer shall deliver the final version of each proposed Property Covenant to the MOHCD Director at least thirty (30) days before it is fully executed or recorded in the

Official Records of San Francisco County and (ii) all maintenance, repair, replacement and installation costs to be paid under a Property Covenant for the common area benefitting the Walnut Retail Parcel, the Walnut Housing Parcel, and the Walnut Child Care Parcel shall be proportionately allocated to the owners of the Walnut Retail Parcel, the Walnut Housing Parcel, and the Walnut Child Care Parcel based on the relative size of their respective parcel or any other commercially reasonable allocation that is approved in advance by the MOHCD Director, which approval shall not be unreasonably withheld.

- B. Housing Entity. Before commencing the construction of the Project's first Market Rate Unit, the Housing Entity will be formed and the Developer will contribute the Walnut Housing Parcel (subject to the requirements of the Development Agreement) to the Housing Entity. As a non-profit affordable housing developer and operator, the Affordable Housing Developer will operate the Walnut Affordable Housing Building to only serve Senior Households with incomes below 80% of MOHCD AMI, with an overall average of not more than 59% of MOHCD AMI.
- C. Financing. The Housing Entity will structure equity and debt financing for construction, and the Developer will fund all predevelopment costs and gap financing required to complete the construction, of the Walnut Affordable Housing Building. The Housing Entity will seek LIHTC and City-issued tax-exempt bond financing for construction. The Developer or the Housing Entity may apply to the following state funding programs for constructing the Walnut Affordable Housing Building without the City's prior written consent: the Multifamily Housing Program (MHP) and the Infill Infrastructure Grant Program (IIG). At the time of such application, the Developer or the Housing Entity shall provide the MOHCD Director with written notification of such application and a commitment that the award of such funding would lower the average MOHCD AMI for the Walnut Affordable Housing Building. Neither the Developer nor the Housing Entity can seek other federal or other state resources for constructing the Walnut Affordable Housing Building without the prior written consent of the MOHCD Director, which consent may be withheld if the award of such funding would not result in a lower average MOHCD AMI for the Walnut Affordable Housing Building or applying for the proposed funding would compete with the application of a MOHCD-supported project. A failure to obtain LIHTC, MHP, IIG, or non-competitive federal or state resources for constructing the Walnut Affordable Housing Building shall not decrease the Developer's affordable housing or other obligations under the Development Agreement. City has no obligation to provide any funding for the Walnut Affordable Housing Building. Developer may collaborate with other entities to obtain additional funding sources to the extent that those sources contribute to the feasibility, production speed, or increase the affordability of the Walnut Affordable Housing Building
- D. <u>Project Phasing</u>. The Developer may not obtain CofO for more than three hundred eighty-six (386) Market Rate Units until DBI issues a CofO for the Walnut Affordable Housing Building. In addition, the Developer must obtain a CofO for the Walnut Affordable Housing Building before the expiration of the Term.
- E. <u>Equivalency</u>. The Walnut Affordable Housing Building shall be substantially equivalent to the Project's other multi-unit residential buildings in exterior appearance and overall quality of construction. All BMR Units must be wired for telephone, cable, and internet

access and have substantially equivalent interior features and amenities (e.g. balconies, outdoor patios, number of bathrooms) as the studio and 1-bedroom rental Market Rate Units. Equivalency shall be guided by the MOHCD Manual as applicable to this Housing Plan, except that the terms set forth in the Development Agreement (including this Housing Plan) shall prevail (including the parties' agreement that all BMR Units will be studio or 1-bedroom residential units located in the Walnut Affordable Housing Building).

- F. Rental; Affordability. The initial rental and re-rental of the BMR Units shall comply with the lottery preferences and other provisions utilized by MOHCD under the MOHCD's Housing Preferences and Lottery Procedures Manual, as published by MOHCD and as each may be updated from time to time, to the extent permitted by law, and the reporting and monitoring requirements of the MOHCD Manual, to the extent permitted by law. The BMR Units must be provided at Affordable Rents and in accordance with the rent requirements in the MOHCD Manual and MOHCD's Hold Harmless Policy for MOHCD's Income Limits and Maximum Rents, effective as of May 3, 2019, as may be updated from time to time. The Developer or the Housing Entity shall record affordability and leasing restrictions that are senior to any financing documents and remain in effect for the life of the Walnut Affordable Housing Building against each of the BMR Units, in a form and priority approved by MOHCD, before their occupancy. The Housing Entity shall carry appropriate insurance to allow for the reconstruction of the Walnut Affordable Housing Building if there is any damage or casualty.
- G. Outreach. Given the Project's Site's location, the Parties desire that, to the greatest extent permitted by MOHCD's then-applicable policies and procedures, pre-marketing and marketing programs for BMR Units target residents of Supervisorial District 2 and/or residents residing within three-quarter (0.75) miles of the Project Site. In addition, the Parties desire that residents of District 2 and residents residing within three-quarter (0.75) miles of the Project Site be given the maximum neighborhood preference for leasing of BMR Units permitted under MOHCD's then-applicable policies and procedures.
- H. <u>Planning Code Section 415</u>. Except for Planning Code Section 415.6(a)-(f), (h) and (i), the Parties shall implement affordable housing requirements for the Walnut Affordable Housing Building that incorporate the provisions of Planning Code Section 415 and the MOHCD Manual. The following changes shall be deemed to conflict with the Development Agreement and therefore shall not apply to the Project: (i) any increase in the required number or percentage of affordable housing units beyond what is required by the Development Agreement; and (ii) any change in the minimum or maximum AMI percentage levels for the affordable housing pricing or income eligibility. The Parties acknowledge and agree that MOHCD will monitor and enforce the requirements applicable to BMR Units under this Housing Plan in accordance with Planning Code Section 415.9, except that all references to Section 415 will be deemed to refer to the requirements under this Housing Plan. To the extent there are implementation issues that have not been addressed in this Housing Plan, then the provisions of Section 415 and the MOHCD Manual shall govern and control such issues.
- 3. <u>Fees.</u> Before obtaining a First Construction Document for any portion of the Project, the parties shall select a mutually-agreeable third-party escrow (the "Escrow Account") to hold and disburse the Rental Gap Fees and Ownership Gap Fees under the requirements of this Housing Plan. Subject to the last sentence of this Section, for each Market Rate Unit the Developer

commences to construct before the Tax Credit Closing, the Developer shall, at its sole election, either deposit an amount equal to the Rental Gap Fee or Ownership Gap Fee, as applicable, for that unit in the Escrow Account before obtaining a First Construction Document for that unit, or deposit an amount equal to the Rental Gap Fee or Ownership Gap Fee, as applicable, for that unit and the Development Fee Deferral Surcharge for such Rental Gap Fee or Ownership Gap Fee (as calculated by DBI at the time of the Developer deposits such Rental Gap Fee or Ownership Gap Fee) in the Escrow Account between obtaining the First Construction Document and the CofO for that unit.

At any time within thirty (30) days after Developer's written request (accompanied by reasonable supporting materials), City shall authorize the release of funds from the Escrow Account to reimburse Developer for reasonable and customary Walnut Affordable Housing Building pre-development costs incurred prior to the Tax Credit Closing, such as, but not limited to, design drawings, schematic drawings, and commercially reasonable costs for financing that expedites the construction of the Walnut Affordable Housing Building. If the Tax Credit Closing occurs, all remaining funds in the Escrow Account needed to finance the construction of the Walnut Affordable Housing Building shall be disbursed to pay construction and development costs that are approved by the Walnut Affordable Housing Building construction lender at the time such costs are due and payable. If the Developer provides reasonable documentation to City that there are excess Escrow Account funds that are not required to finance the construction of the Walnut Affordable Housing Building, such excess Escrow Account funds shall be disbursed to the Developer.

If the Tax Credit Closing does not occur by the Outside Date, subject to extension for any applicable Excusable Delay, then City shall have the right to receive the Escrow Account funds by delivering written notice to the Escrow Account holder any time after the Outside Date for deposit in City's Citywide Affordable Housing Fund established in San Francisco Administrative Code Section 10.100-49. Within three (3) business days of receiving such written notice, the Escrow Account holder shall deliver the funds to the address specified by the MOHCD Director.

4. Transfer of Walnut Land to City.

Transfer Notice. If the Tax Credit Closing does not occur by the Outside Date, Α. subject to extension for any applicable Excusable Delay, and construction of any Building occurs during the Term, then City shall have the right to acquire, and Developer agrees to transfer to the City, fee ownership of the Walnut Land pursuant to the form of grant deed (the "Grant Deed") attached as Attachment D-3, with the Approved Legal Description attached to it as Exhibit A. City shall have the right to exercise its right to acquire the Walnut Land by giving Developer, between the Outside Date and the last day of the Term, written notice of the City's request to acquire the Walnut Land pursuant to this Section (the "Transfer Notice"). If City receives the Walnut Land pursuant to this Section, and Developer later obtains all financing needed to commence and complete construction of retail improvements on the Walnut Retail Parcel (or child care improvements on the Walnut Child Care Parcel) prior to City's receipt of a First Construction Document for the Walnut Affordable Housing Building, City shall transfer fee ownership of the Walnut Retail Parcel or the Walnut Child Care Parcel, as applicable, to Developer within ten (10) business days of Developer's receipt of a First Construction Document for such improvements.

- B. <u>Developer's Representations</u>. Developer represents that it has the full right to make the commitments set forth in this Section without the consent or approval of any third party (or, if required, Developer has obtained all necessary consents and approvals).
- C. <u>Subordination; Condition of Title</u>. The rights of any Mortgagee secured by a Mortgage that encumbers all or part of the Walnut Land shall be subordinate to the City's rights under this Housing Plan. The City accepts the condition of the Walnut Land's title subject only to the matters described on the attached <u>Attachment D-4</u>, any additional matter that is approved in writing by the MOHCD Director in his or her sole and absolute discretion, and any Property Covenant that complies with the requirements of Section 2.A above. Developer further agrees to deliver the Walnut Land to the City generally in the condition that it is in on the Effective Date, provided it shall be free of all tenants and occupants. The Developer agrees that all contracts entered into by the Developer relating to the Walnut Land shall be terminated by Developer, at no cost to City, on or before the transfer unless the City agrees to assume the same.
- D. Cooperation. The Developer agrees to cooperate with City and to take all such actions as may be needed to promptly transfer the Walnut Land to City as set forth in this Section. To secure the Developer's obligations under this Section, before obtaining a First Construction Document for any portion of the Project or transferring the Walnut Land or the Walnut Housing Parcel to the Housing Entity, the Developer shall deliver a duly executed and acknowledged deed of trust to the City in substantially the form attached as Attachment D-5, with the Approved Legal Description attached to it as Exhibit A. City shall have the right to record the deed of trust in the Official Records of San Francisco County. There will be no conditions or City obligations relative to the Developer's transfer of the Walnut Land to City, and the form of any other transfer documents other than the Grant Deed needed to transfer fee ownership of the Walnut Land to City in the manner contemplated in this Section (collectively, the "Transfer Documents") will be subject to the reasonable approval of the Director of Property and the MOHCD Director, following consultation with the City Attorney's Office. By approving the Development Agreement, the City's Board of Supervisors authorizes the City's Director of Property and the MOHCD Director to enter into the Transfer Documents, if any, without additional action by City's Board of Supervisors as long as the Transfer Documents are consistent with the terms outlined in this Section.
- E. <u>Costs and Fees</u>. The Developer shall pay (1) all actual costs incurred by the City relating to the negotiation of Transfer Documents, if any, and all transfer taxes, recording fees, and escrow fees, and (2) the premium for the CLTA Title Policy. The Developer shall further indemnify the City for all costs and losses, including reasonable attorney's fees and costs, resulting from (i) any claim with respect to the Walnut Land relating to the period before the transfer of the Walnut Land to City, (ii) any contest to the Developer's right to transfer the Walnut Land as contemplated by this Section, and (iii) any failure by the Developer to satisfy the requirements of this Section. This indemnification shall survive the transfer of the Walnut Land to City.
- F. <u>Closing</u>. The Developer shall have a period of 60 days after Developer's receipt of the Transfer Notice (the "**Closing Period**") to (i) provide to City a CLTA policy of title

insurance, insuring City's fee interest in the Walnut Land in an amount equal to the fair market value of the Walnut Land, as reasonably determined by City, with only the exceptions permitted under Section 4.C above (the "Title Policy"), and (ii) to execute and deliver the Grant Deed and the Transfer Documents, if any, to City. Within 7 days after the City's receipt of the Title Policy, the duly executed and acknowledged Grant Deed, and, if any, the Transfer Documents, duly executed and acknowledged as applicable, City shall execute and return one (1) fully executed original of any Transfer Document to the Developer.

- City's Remedies. If the Developer fails to transfer the Walnut Land to City in G. accordance with this Section, then City shall have the right to specific performance to compel the transfer of the Walnut Land to City in accordance with this Section or to exercise its rights under the Deed of Trust to foreclose and take title to the Walnut Land. Following any specific performance to transfer the Walnut Land to City or any foreclosure of the Walnut Land by City under the Deed of Trust, Developer's obligations under this Section shall be satisfied; provided if the Developer is not able to transfer the Walnut Land to City in the condition required by this Section (a "Condition Preventing Transfer"), then City, as its sole remedy for a Condition Preventing Transfer, shall instead accept an in lieu payment in the amount of Fair Market Value. City's exercise of its remedy for a Condition Preventing Transfer shall be by delivering written notice of such exercise to Developer, with a statement explaining the basis for the determination that the Walnut Land cannot be transferred in accordance with this Section. If City delivers such notice, the Developer shall pay City an in lieu payment in the amount of Fair Market Value made within 60 days following the determination of the Fair Market Value. Any failure by Developer to make such in lieu payment when due shall accrue interest at 10% per annum from the date it is due until paid.
- H. <u>Fulfillment of Developer's Obligations</u>. On City's receipt of (i) fee ownership of the Walnut Land through an action for specific performance or foreclosure under the Deed of Trust or a payment of an in lieu payment due to a Condition Preventing Transfer, and (ii) the funds deposited in the Escrow Account as required in <u>Section 3</u> above, City shall have no further rights or remedies under the Development Agreement resulting from Developer's failure to timely commence or complete construction of the Walnut Affordable Housing Building. If the Developer obtains a First Construction Document for any Market Rate Unit after the Outside Date, nothing in the foregoing sentence shall limit the Developer's obligation to pay the fee calculated under Section 415.5 for such Market Rate Unit.

5. <u>Costa-Hawkins Rental Housing Act</u>

A. Non-Applicability of Costa-Hawkins Act. Chapter 4.3 of the California Government Code directs public agencies to grant concessions and incentives to private developers for the production of housing for lower income households. The Costa-Hawkins Rental Housing Act, California Civil Code Sections 1954.50 et seq. (the "Costa-Hawkins Act"), provides for no limitations on the establishment of the initial and all subsequent rental rates for a dwelling unit with a certificate of occupancy issued after February 1, 1995, with exceptions, including an exception for dwelling units constructed pursuant to a contract with a public agency in consideration for a direct financial contribution or any other form of assistance specified in Chapter 4.3 of the California Government Code (Section 1954.52(b)). The Parties agree that the Costa-Hawkins Act does not and in no way shall limit or otherwise affect the restriction of rental

charges for the BMR Units. The Development Agreement falls within the express exception to the Costa-Hawkins Act, Section 1954.52(b) because the Development Agreement is a contract with a public entity in consideration for contributions and other forms of assistance specified in Chapter 4.3 (commencing with Section 65919 of Division 1 of Title 7 of the California Government Code). The City and Developer would not be willing to enter into the Development Agreement without the understanding and agreement that Costa-Hawkins Act provisions set forth in California Civil Code Section 1954.52(a) do not apply to the BMR Units as a result of the exemption set forth in California Civil Code Section 1954.52(b) for the reasons specified above.

- B. General Waiver. Developer, on behalf of itself and all of its successors and assigns of all or any portion of the Project Site, agrees not to challenge and expressly waives, now and forever, any and all rights to challenge the requirements of the Development Agreement related to the establishment of the BMR Units under the Costa-Hawkins Act (as the Costa-Hawkins Act may be amended or supplanted from time to time). If and to the extent such general covenants and waivers are not enforceable under Law, the Parties acknowledge and that they are important elements of the consideration for the Development Agreement and the Parties should not have the benefits of the Development Agreement without the burdens of the Development Agreement. Accordingly, if Developer challenges the application of this covenant and waiver, then such breach will be an Event of Default and City shall have the right to terminate the Development Agreement in its entirety.
- C. <u>Notification</u>. Developer shall notify any potential buyer of all or part of the Project Site of the provisions of this Housing Plan. By acquiring any interest in the Project Site, a buyer agrees to these provisions, and agrees to the specific waiver, releases and indemnifications set forth herein. If Developer fails to notify a buyer of these provisions and a buyer alleges that it is not subject to the requirements of this Housing Plan because it was not made aware of these provisions before it acquired an interest in the Project Site, the Developer shall indemnify and defend the City against any and all claims or losses resulting from such allegation.

6. Nondiscrimination Based on Section 8, Household Size, or Source of Income

For all housing units within the Project Site, Developer shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing program under Section 8 of the Housing Act (42 U.S.C. §1437 et. seq.), or any successor program or similar federal, state or local governmental assistance program. Developer shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective tenants. Developer shall not collect security deposits or other deposits from Section 8 certificate or voucher holders in excess of that allowed under the Section 8 program. Developer shall not discriminate against tenant applicants on the basis of legal source of income (e.g., TANF, Section 8 or SSI), and Developer shall consider a prospective tenant's previous rent history of at least one year as evidence of the ability to pay the applicable rent (i.e., ability to pay shall be demonstrated if such a tenant can show that the same percentage or more of the tenant's income has been consistently paid on time for rent in the past as will be required to be paid for the rent applicable to the unit to be occupied, provided that such tenant's expenses have not increased materially).

Exhibit D-1

Depiction of Walnut Land

Exhibit D-2

Appraisal Process

1. Arbitration for Fair Market Value.

Appointment. Each Party shall appoint one (1) Appraiser (as defined below) within thirty (30) days after City delivers written notice to Developer that the arbitration provisions of this Exhibit have been invoked (the "Initial Selection Period"). Upon selecting its Appraiser, a Party shall promptly notify the other Party in writing of the name of that Appraiser. Each Appraiser selected by a Party under this Section shall be an "Initial Appraiser".

An "Appraiser" shall mean a competent and licensed appraiser who is qualified by training and experience in the City and County of San Francisco and a member in good standing of the Appraisal Institute and designated as a MAI, or, if the Appraisal Institute no longer exists, shall hold the senior professional designation awarded by the most prominent organization of appraisal professionals then awarding such professional designations. An Appraiser may have a prior working relationship with either or both of the Parties, provided that such working relationship shall be disclosed to both Parties. Without limiting the foregoing, an Appraiser shall have at least ten (10) years' experience valuing multi-family residential real estate that is in the City and County of San Francisco and substantially similar product-type to the Walnut Affordable Housing Building (i.e., affordable senior housing and condominium airspace interests or similar property interests such as ground leases) required for the Walnut Affordable Housing Building. If a Party fails to appoint its Appraiser within the Initial Selection Period, the Initial Appraiser appointed by the other Party shall individually determine the Fair Market Value in accordance with the provisions hereof.

Instruction and Completion. The term "Fair Market Value" shall mean the then current fair market value of the Walnut Land, as determined pursuant to this Exhibit. Each Initial Appraiser will make an independent determination of the Fair Market Value. The following instructions shall govern the preparation and delivery of each appraisal report giving the respective Initial Appraiser's opinion of the Fair Market Value. The Parties may supplement or modify these instructions upon mutual agreement. Each final opinion of value will be stated in a self-contained appraisal report based on a comprehensive study and analysis and setting forth, in detail, all data, analysis, and conclusions necessary and typical of a complete, self-contained appraisal report in compliance with the current version of the Uniform Standards of Professional Appraisal Practice ("USPAP"). The appraisal report will include the Initial Appraiser's final opinion of the Fair Market Value stated as a specific dollar figure. The Walnut Land shall be appraised based on the actual residential project that it is entitled for at the time of Appraisal consistent with the zoning and all conditions on the Walnut Land and assuming that the following apply to the Walnut Land: (i) the Approvals (as such term is defined in the Development Agreement), including, without

As of 2014, USPAP replaced the terminology of "Restricted Use, Summary and Self Contained", and replaced the report content types with two types, "Appraisal Report" and "Restricted Appraisal Report." The reference to "Self Contained" in V, Appraisal Standards, refers to the meaning it had prior to 2014. Also, the reference to "Complete" appraisal has the meaning that it did prior this term being removed officially from USPAP, i.e. essentially that no relevant and applicable valuation approaches or methodologies may be excluded (and the rationale for any approach excluded be provided).

limitation, the applicable conditions of approval and any notices of special restrictions, (ii) the Development Agreement (subject to the eventual expiration thereof), (iii) permitted exceptions to title, (iv) the final subdivision map, (v)covenants, conditions and restrictions, reciprocal easement agreements and similar agreements regarding operation and use of condominium airspace parcels on the Walnut Land, regardless of whether such agreements are then in effect, it being agreed that the Walnut Land will be subject to such agreements in a commercially reasonable form, (v) applicable zoning, (vi) applicable development impact fees, (vii) its then-current "as-is", "whereis" condition, provided the only exceptions to title will be those described in Section 4.C of Exhibit D to the Development Agreement and (viii) such other documents and restrictions that the Parties mutually agree to present to the Initial Appraisers (or the Initial Appraiser if there is only one) during the appraisal process. The Fair Market Value will be determined as if the Walnut Land were served by streets and utilities but otherwise vacant and unimproved by any structures, buildings, improvements, fixtures, additions, alterations, and betterments of whatsoever nature or description. For clarity, it is understood that the Walnut Land valuation shall take into consideration the actual costs and expenses necessary for the improvements to specifically serve the Walnut Land. Each Initial Appraiser will use sales comparisons to estimate value, presented in individual write-up sheets. Each Initial Appraiser shall adhere to USPAP direction pertaining to comparable sales requiring extraordinary verification and weighting considerations. If there is more than one Initial Appraiser, the Initial Appraisers may share and have access to objective information in preparing their appraisals, but they will independently analyze the information in their determination of the Fair Market Value, and neither of the Initial Appraisers shall have access to the appraisal of the other (except for the sharing of objective information contained in such appraisals) until both of the appraisals are submitted in accordance with the provisions of this Section. Neither Party shall communicate with the Initial Appraiser selected by the other Party regarding the instructions contained in this Section before the Initial Appraisers complete their appraisals. If an Initial Appraiser has questions regarding the instructions in this Section, such Initial Appraiser shall use his or her own professional judgment and shall make clear all assumptions upon which his or her professional conclusions are based, including any supplemental instructions or interpretative guidance received from the Party appointing such Initial Appraiser. There shall not be any arbitration or adjudication of the instructions to the Initial Appraisers contained in this Section. Each Initial Appraiser shall complete, sign and submit its written appraisal setting forth the Fair Market Value to the Parties within sixty (60) days after the appointment of the last of the Initial Appraisers (or if only one Initial Appraiser is selected, within sixty (60) days after the expiration of the Initial Selection Period).

If only one Initial Appraiser is selected during the Initial Selection Period, then the Fair Market Value shall be the figure in such Initial Appraiser's appraisal. If two Initial Appraisers are selected during the Initial Selection Period, and the higher appraised Fair Market Value is not more than one hundred ten percent (110%) of the lower appraised Fair Market Value, then the Fair Market Value shall be the average of such two (2) Fair Market Value figures.

1.3 <u>Potential Third Appraiser</u>. If two Initial Appraisers are selected during the Initial Selection Period, and the higher appraised Fair Market Value is more than one hundred ten percent (110%) of the lower appraised Fair Market Value, then the Initial Appraisers shall agree upon and appoint an independent third Appraiser meeting the requirements for an Appraiser specified in Section 1.2 within thirty (30) days after the appraisals of both of the Initial Appraisers have been

submitted to the Parties in accordance with the following procedure. The Initial Appraisers shall inform the Parties of their appointment of the proposed third Appraiser at or before the end of such thirty (30)-day appointment period. Each Party shall have the opportunity to question the proposed third Appraiser, in writing only, as to his or her qualifications, experience, past working relationships with the Parties, and any other matters relevant to the appraisal. Either Party may, by written notice (given within three (3) business days after receiving notice of the selection of the third proposed Appraiser) to the other Party and the Initial Appraisers, raise a good faith objection to the selection of the third proposed Appraiser based on his or her failure to meet the requirements for an Appraiser specified in Section 1.2. In such event, if the Initial Appraisers determine that the objection was made in good faith, the Initial Appraisers shall promptly select another third proposed Appraiser, subject again to the same process for the raising of objections. If neither Party raises a good faith objection to the appointment of the third proposed Appraiser within three (3) business days after receiving notice of his or her appointment, each such Party shall be deemed to have waived any issues or questions relating to the qualifications or independence of the third Appraiser or any other matter relating to the selection of the third Appraiser under this Exhibit. If for any reason the Initial Appraisers do not appoint a third proposed Appraiser within such thirty (30)-day appointment period (or within a ten (10) business days thereafter), then either Party may apply to the Writs and Receivers Department of the Superior Court of the State of California in and for the County of San Francisco for appointment of a third Appraiser meeting the requirements for an Appraiser specified in Section 1.2. If the Court denies or otherwise refuses to act upon such application within sixty (60) days from the date on which the Party first applies to the Court for appointment of the third Appraiser, either Party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent third Appraiser meeting the foregoing qualifications. An Appraiser appointed pursuant to this Section shall be the "Third Appraiser".

- 1.4 <u>Baseball Appraisal</u>. The Third Appraiser, if any, shall consider the appraisals submitted by the Initial Appraisers, as well as any other relevant written evidence the Third Appraiser may request of either or both of the Initial Appraisers. If either of the Initial Appraisers submits any such evidence to the Third Appraiser, it shall do so only at the request of the Third Appraiser and shall deliver a complete and accurate copy to the other Party and the Initial Appraiser such Party selected, at the same time it submits the same to the Third Appraiser. Neither Party, nor the Initial Appraisers they appoint, shall conduct any ex parte communications with the Third Appraiser regarding the subject matter of the appraisal. Within thirty (30) days after his or her appointment, the Third Appraiser shall select the Fair Market Value determined by one or the other of the Initial Appraisers that is the closer, in the opinion of the Third Appraiser, to the actual Fair Market Value. The determination of the Third Appraiser shall be limited solely to the issue of deciding which of the determinations of the two Initial Appraisers is closest to the actual Fair Market Value. The Third Appraiser shall have no right to propose a middle ground or to modify either of the two appraisals or any provision of this Exhibit.
- 1.5 <u>Conclusive Determination</u>. Except as provided in California Code of Civil Procedure Section 1286.2 (as the same may be amended from time to time), the determination of the Fair Market Value by the accepted appraisal shall be conclusive, final and binding on the Parties. No Appraiser selected or appointed pursuant to this Exhibit shall have any power to

modify any of the provisions of this Exhibit and must base his or her decision on the definitions, standards, assumptions, instructions and other provisions contained in this Exhibit. Subject to the provisions of this Section, the Parties will cooperate to provide all appropriate information to each Appraiser selected or appointed under this Exhibit. The Appraisers selected or appointed under the provisions of this Exhibit will each produce their determination in writing, supported by the reasons for the determination.

1.6 <u>Fees and Costs; Waiver.</u> Each Party shall bear the fees, costs and expenses of the Initial Appraiser it selects. The fees, costs and expenses of the Third Appraiser, including the fees, costs and expenses in his or her appointment pursuant to this Exhibit, shall be shared equally by the City and Developer.

Exhibit D-3

Form of Grant Deed

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

Director of Property Real Estate Division City and County of San Francisco 25 Van Ness Avenue, Suite 400 San Francisco, California 94102

The undersigned hereby declares this instrument to be exempt from Recording Fees (CA Govt. Code § 27383) and Documentary Transfer Tax (CA Rev. & Tax Code § 11922 and S.F. Bus. & Tax Reg. Code § 1105)

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

GRANT DEED

(Lot No. ____ Block No. ___)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, LAUREL HEIGHTS PARTNERS, LLC, a Delaware limited liability company ("Grantor"), hereby grants to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the real property located in the City and County of San Francisco, State of California, described on Exhibit A attached hereto and made a part hereof (the "Property"), together with any and all rights, privileges and easements incidental or appurtenant to the Property, including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances on and under the Property, as well as any and all development rights, air rights, water, water rights, riparian rights and water stock relating to the Property, and any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the land and all of Grantor's right, title and interest in and to any and all roads and alleys adjoining or servicing the Property, and subject to the exceptions set forth on Exhibit B attached hereto and made a part hereof.

Executed as of this	day of _	, 20		
		LAUREL HEIGHTS PARTNERS, LLC a Delaware limited liability company		
		By: Name: Its:		
		By: Name: Its:		

Page 1 to Exhibit D-5

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, b	efore me,	, a notary public in and for
said State, personally app	eared	, who proved to me
within instrument and ac authorized capacity(ies),	knowledged to me that and that by his/her/their	rson(s) whose name(s) is/are subscribed to the he/she/they executed the same in his/her/their signature(s) on the instrument the person(s), or I, executed the instrument.
I certify under PENALTY of paragraph is true and corr		ws of the State of California that the foregoing
WITNESS my hand and o	official seal.	
Signature	(Seal)

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

State of California)	. •	
County of San Fran) cisco)		
On	, before me,		, a notary public in and for
said State, personall	y appeared		, who proved to me
within instrument a authorized capacity	nd acknowledged to	me that he/she/the ner/their signature(hose name(s) is/are subscribed to the ey executed the same in his/her/their s) on the instrument the person(s), or d the instrument.
I certify under PENA paragraph is true an		er the laws of the	State of California that the foregoing
WITNESS my hand	and official seal.		
Signature		(Seal)	• .

CERTIFICATE OF ACCEPTANCE

inis is to certify t	nat the interest in real property conveyed by the foregoing Grant Deed t
the City and County of S	San Francisco, a municipal corporation, is hereby accepted pursuant t
Board of Supervisors' C	Ordinance No. , approved September , 2019, and the
2	dation thereof by its duly authorized officer.
8	· · · · · · · · · · · · · · · · · · ·
Dated:	CITY AND COUNTY OF SAN FRANCISCO,
	a municipal corporation
•	
	By:
	Director of Property

EXHIBIT A

Legal Description of Property

EXHIBIT B

List of Exceptions

- 1. The lien of real property taxes not yet due or payable at the time City acquires fee title to the Walnut Land
- 2. The lien of any taxes for Mello Roos Community Facilities District No. 90-1 not yet due or payable at the time City acquires fee title to the Walnut Land
- 3. Water rights, claims or title to water, whether or not disclosed by the public records
- 4. The declaration of public access covenants and restrictions attached as Exhibit C-3 to the Development Agreement
- 5. The notice of special restrictions for a child care facility to be recorded under Exhibit L to the Development Agreement

Exhibit D-4

Accepted Conditions of Title

- 1. The lien of real property taxes not yet due or payable at the time City acquires fee title to the Walnut Land
- 2. The lien of any taxes for Mello Roos Community Facilities District No. 90-1 not yet due or payable at the time City acquires fee title to the Walnut Land
- 3. Water rights, claims or title to water, whether or not disclosed by the public records
- 4. The declaration of public access covenants and restrictions attached as Exhibit C-3 to the Development Agreement
- 5. The notice of special restrictions for a child care facility to be recorded under Exhibit L to the Development Agreement

Exhibit D-5
Deed of Trust

RECORDING REQUESTED BY CLERK OF THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO AND WHEN RECORDED MAIL TO:

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

Exempt from Recording Fees (CA Govt. Code §27383) and Documentary Transfer Tax (CA Rev. & Tax Code §11922 and S.F. Bus. & Tax Reg. Code §1105)

APN: Block ____ Lot ____ Street Address:

DEED OF TRUST

This DEED OF TRUS	T (this "Deed	of Trust") is made as	s of	, 2019,
among LAUREL HEIGHTS PA	ARTNERS, LLO	C, a Delaware limited 1	liability company	y ("Trustor"),
whose address is		·, [],
("Trustee"), whose address is			, and THE	CITY AND
COUNTY OF SAN FRANCI	SCO, a munici	pal corporation ("Bei	neficiary"), who	se address is
	, Trustor irrev	ocably grants, transfe	ers and assigns	to Trustee in
trust, with power of sale, all o	of Trustor's righ	nt, title and interest in	and to that cer	tain property
located in the City and County	of San Francisc	o, California, more pa	rticularly describ	oed in <u>Exhibit</u>
A attached hereto and incorpora	ated by referenc	e herein (the "Land"),	including, without	out limitation,
all improvements located on the	e Land ("Impro	vements"), subject, ho	wever, to the ter	rmination, re-
conveyance and subordination	provisions of S	ection E.6 below. The	e Land and the In	mprovements
shall be collectively referred to	in this Deed of	Trust as the "Propert	y". Capitalized t	terms that are
used but not defined herein sha	ll have the mea	nings given such term	s in that certain	Development
Agreement by and between the	e City and Cou	nty of San Francisco	and Laurel Heig	ghts Partners,
LLC, dated	_, 2019, and re	ecorded in the Official	al Records of S	an Francisco
County as Document No	on	, 20 (1	the "DA").	

For the purpose of securing only (1) Trustor's obligation to transfer the Property in accordance with Section 4 of Exhibit D to the DA (the "Transfer Section") as and when required under the Transfer Section, and (2) the performance of each agreement of Trustor incorporated by reference or contained herein or reciting it is so secured (items (1) and (2) above are referred to herein as the "Secured Obligations"). Other than such transfer obligation under the Transfer Section, no other provision of the DA is secured by this Deed of Trust.

- A. To protect and maintain the security of this Deed of Trust, Trustor agrees:
- 1. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any suit brought by Beneficiary to foreclose this Deed of Trust.
 - 2. To pay all costs, fees and expenses of this Deed of Trust.

3. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, with interest from date of expenditure at the maximum rate allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed that:

- 1. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his or her right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.
- 2. At any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust, and without affecting the personal liability, if any, of any person for payment of the indebtedness secured hereby, Trustee has the right to reconvey any part of the Property, consent to the making of any map or plat thereof, join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.
- 3. Upon written request of Beneficiary stating that all actions required under the Transfer Section have been performed, all sums secured hereby have been paid, and upon surrender of this Deed of Trust to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."
- C. The occurrence of any of the following events shall constitute an event of default (a "Default") under this Deed of Trust:
- 1. Trustor (i) transfers its interest in the Property, or any part of thereof, or any interest in the Property, in any manner other than (a) a transfer to the Housing Entity (as defined in the DA), (b) the grant of a deed of trust or mortgage to any Mortgagee (as defined in the DA) that is subordinate to this Deed of Trust and encumbers all or part of Trustor's interest in the Property, (c) leases entered into in the ordinary course, or (d) Property Covenants (as defined in Section 2.A of Exhibit D of the DA) in accordance with Section 2.A of Exhibit D of the DA or (ii) is divested of its title or any interest in the Property in any manner or way, whether voluntarily or involuntarily, in each case without the Beneficiary's prior written consent (which consent shall not be unreasonably withheld).
- 2. Trustor's failure to perform any covenant or obligation of Trustor contained herein, as and when performance is due, and the continuance of such failure for a period of thirty (30) days following written notice thereof from Beneficiary to Trustor; provided, however, that if such failure is not reasonably susceptible of cure within such thirty (30) day period, then, so long as Trustor commences to cure such failure within such thirty (30) day period and continually and

diligently pursues such cure and completes such cure within a reasonable period, such failure shall not be a Default.

- 3. Trustor's becomes insolvent, makes an assignment for the benefit of creditors, or commences or becomes subject to any proceeding under the federal Bankruptcy Code or any other insolvency, receivership, reorganization, arrangement of debt, liquidation or debtor's relief law wherein the Trustor is the debtor.
- 5. Trustor's fails to transfer the Property in accordance with the Transfer Section, as and when required under the Transfer Section.
- D. If any Default occurs, and as long any such Default exists, Beneficiary shall have the right to declare all indebtedness secured hereby to be immediately due and payable, and all such indebtedness shall thereupon become immediately due and payable, without any presentment, demand, protest or notice of any kind, all of which are expressly waived by Trustor, and Beneficiary shall have the following remedies:
- 1. Beneficiary shall have the right, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of the security, to enter upon and take possession of the Property, or any part thereof, in its own name or in the name of Trustee, and do any acts which Beneficiary deems necessary or desirable to preserve the value, marketability or rentability of the Property or increase the income therefrom or protect the security hereof, and, with or without taking possession of the Property, to sue for or otherwise collect the rents and profits of the Property, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, upon any indebtedness secured hereby, all in such order as Beneficiary may determine.
- 2. Beneficiary shall have the right to commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof.
- 3. Beneficiary shall have the right to deliver to Trustee a written declaration of default and demand for sale pursuant to the power of sale in this Deed of Trust. If Beneficiary elects to foreclose this Deed of Trust by exercise of the power of sale in this Deed of Trust, Beneficiary shall notify Trustee and shall deposit with Trustee such written notice of default and election to sell and such receipts or evidence of expenditures made and secured hereby as Trustee may require. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by Trustee in said notice of sale, as a whole, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee shall have the right to postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter shall have the right to postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the

truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary, may purchase at such sale.

- 4. After deducting all costs, fees and expenses of Trustee and of the trust created under this Deed of Trust ("Trust"), including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.
- 5. Every right, power and remedy granted to Trustee or Beneficiary in this Deed of Trust shall be cumulative and not exclusive, and in addition to all rights, powers and remedies granted at law or in equity or by statute, and each such right, power and remedy may be exercised from time to time and as often and in such order as may be deemed expedient by Trustee or Beneficiary, and the exercise of any such right, power or remedy shall not be deemed a waiver of the right to exercise, at the same time or thereafter, any other right, power or remedy.
- 6. Trustor hereby requests that a copy of any notice of default and of any notice of sale under this Deed of Trust be mailed to Trustor at the address of Trustor set forth in this Deed of Trust as required by applicable law.

E. It is further mutually agreed that:

- 1. Beneficiary, or any successor in its rights under the Transfer Section or ownership of any indebtedness secured hereby, has the right to, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee.
- 2. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine or the neuter, and the singular number includes the plural.
- 3. The Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.
- 4. A copy of any notice of default and any notice of sale hereunder shall be mailed to Trustor at his address hereinbefore set forth.

- 5. Trustor shall have no personal liability under this Deed of Trust, and Beneficiary's only recourse against Trustor for the satisfaction of the Secured Obligations shall be Beneficiary's exercise of its rights and remedies with respect to the Property.
- 6. Immediately prior to the earlier to occur of (i) the Tax Credit Closing (as defined in Exhibit D to the DA) or (ii) the payment of the amounts under subsection G of the Transfer Section following City's election to take such payment, this Deed of Trust automatically shall become null and void without the need for further action by Trustor, Trustee or Beneficiary, and Beneficiary shall cause to be recorded, in the Official Records of the City and County of San Francisco, with respect to the Property a standard form of re-conveyance of deed of trust with respect to this Deed of Trust.
- 7. This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

[Remainder of Page Intentionally Blank. Signature on Following Page.]

IN WITNESS WHEREOF, the undersigned has caused this Deed of Trust to be executed and delivered under seal as of the day and year first above written.

LAUREL HEIGHTS PARTNERS, LLC, a Delaware limited liability company
By:
Name:
Title:

A notary public or other officer of the document to which this certif			
the document to which this certification	reate is attached, and not the	tradiffuness, accuracy, (of variately of that document.
State of California)		
County of San Francisco)		
Onpersonally appeared	, before me,		, a Notary Public,
personally appeared		, who proved to r	ne on the basis of
satisfactory evidence to be the	ne person(s) whose nam	e(s) is/are subscribed	d to the within
instrument and acknowledge	ed to me that he/she/they	executed the same i	in his/her/their
authorized capacity(ies), and	I that by his/her/their sig	gnature(s) on the inst	rument the person(s), or
the entity upon behalf of wh	•		
The second of th	r r(-/,		
I certify under PENALTY O	F PERJURY under the	laws of the State of C	California that the
foregoing paragraph is true a		14115 01 410 51410 01	
roregeme paragraph is a ac-			
WITNESS my hand and offi	icial seal.		
•			
Signature			

Exhibit A

Legal Description of Land

Exhibit E

List of Approvals

Final approval actions by the City and County of San Francisco Board of Supervisors 1. Ordinance [] (File No. []): (1) Approving a Development Agreement between the City and County of San Francisco and Laurel Heights Partners LLC; (2) waiving or modifying certain provisions of the Administrative Code and Planning Code, and approving specific development impact fees; and (3) adopting findings under the California Environmental Quality Act and findings of consistency with the General Plan and Planning Code priority policies. 2. Ordinance [____] (File No. [__]): Amending the Planning Code, the Zoning Map, and the Height Map to add the 3333 California Project Special Use District and adopting findings under the California Environmental Quality Act and findings of consistency with the General Plan and Planning Code priority policies. 3. Ordinance [_____] (File No. [____]): Approving Major Encroachment Permit to Laurel Heights Partners LLC for improvements on Final and Related Approval Actions of City and County of San Francisco Planning Commission (referenced by Motion Number "M No." or Resolution Number "R No.") 1. M No. []: Certifying the Final Environmental Impact Report for the 3333 California Mixed-Use District Project. 1: Adopting Findings and Statement of Overriding Considerations under the California Environmental Quality Act.]: Approving a Conditional Use Authorization/Planned Unit Development for the 3333 California Project. 4. R No. []: Recommending to the Board of Supervisors approval of amendments to the Planning Code to establish the 3333 California Project Special Use District and approval of amendments to Sectional Maps SU03 to refer to the 3333 California Project Special Use District and HT03 of the Zoning Map. 5. R No. []: Recommending to the Board of Supervisors approval of a Development Agreement between the City and Laurel Heights Partners LLC. Final and Related Approval Actions of City and County of San Francisco Municipal **Transportation Agency Board of Directors** 1. Resolution Number [consenting to a Development Agreement between the City and Laurel Heights Partners LLC, including the Transportation Exhibit. Final and Related Approval Actions of City and County of San Francisco Public Utilities Commission 1. Resolution Number [consenting to the AWSS Schedule in the Development Agreement between the City and Laurel Heights Partners LLC.

Final and Related Approval Actions by San Francisco Public Works

1. Approval of Tentative Map

Exhibit F

MMRP

[see attached]

Exhibit G

Notice of Completion and Termination

WHEN RECORDED RETURN TO:	
[address]	
Attn:	
	Space above this line reserved for Recorder's use only)
THIS NOTICE OF COMPLETION OF BUILD "Notice") dated for reference purposes only as of by and between the CITY AND COUNTY OF Smunicipal corporation of the State of California (Department, and, a	this day of, 20, is made SAN FRANCISCO, a political subdivision and (the "City"), acting by and through its Planning
of, 20 and recorded in the Of Francisco on, as Document Nu	umber (Book No, Reel No. oitalized terms used in this Notice that are not
2. Under Section 7.1 of the Develop have been completed and all of the Associated Corhave also been completed, the City agreed, uponotice of completion as it relates to the applicable	n Developer's request, to execute and record a
3. The City confirms that the Buildin described in the attached Exhibit A (the "Affected Community Benefits tied to that Building, he Development Agreement. All parties with an interely on this Notice.	ave been completed in accordance with the
CITY:	Approved as to form:
CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation	[DENNIS J. HERRERA], City Attorney
By: Director of Planning	By: Deputy City Attorney
Director of Planning	Deputy City Attorney

Exhibit A

[attach legal description of Affected Property]

Exhibit H

Form of Assignment and Assumption Agreement

RECORDING REQUESTED BY
CLERK OF THE BOARD OF SUPERVISORS
OF THE CITY AND COUNTY OF SAN FRANCISCO
(Exempt from Recording Fees
Pursuant to Government Code
Section 27383)

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

ASSIGNMENT AND ASSUMPTION AGREEMENT

RELATIVE TO DEVELOPMENT AGRI	EEMENT FOR []
THIS ASSIGNMENT AND ASSUMPTION AGREE entered into this day of, 20, 20, 20, 20	0 by and between a
("Assignee").	
RECITALS	
A	e "Development Agreement") dated as of sertain real property owned by Assignor, as velopment Agreement (the "Project Site"). cial Records of the City and County of San
information] B. The Development Agreement provides (i) Transfer all or a portion of the Project Site, (ii) obligations under the Development Agreement to a Tr Project Site transferred to the Transferee, and (iii) upon	assign all of its rights, title, interest and ansferee with respect to the portions of the

and Assumption Agreement, to be released from any prospective liability or obligation under the

Development Agreement related to the Transferred Property as set forth in Section ____ of the Development Agreement.

- C. Assignor intends to convey certain real property as more particularly identified and described on Exhibit A attached hereto (hereafter the "**Transferred Property**") to Assignee. The Transferred Property is subject to the Development Agreement.
- D. Assignor desires to assign and Assignee desires to assume Assignor's right, title, interest, burdens and obligations under the Development Agreement with respect to and as related to the Transferred Property, as more particularly described below.

ASSIGNMENT AND ASSUMPTION

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

- 1. <u>Defined Terms</u>. Initially capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Development Agreement.
- 2. <u>Assignment of Development Agreement</u>. Assignor hereby assigns to Assignee, effective as of Assignor's conveyance of the Transferred Property to Assignee, all of the rights, title, interest, burdens and obligations of Assignor under the Development Agreement with respect to the Transferred Property, including any Community Benefits that are tied to Buildings on the Transferred Property. Assignor retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect to all other portions of the Project Site owned by Assignor.
- Assignor's conveyance of the Transferred Property to Assignee, all of the rights, title, interest, burdens and obligations of Assignor under the Development Agreement with respect to the Transferred Property, including its associated Community Benefits, and agrees to observe and fully perform all the duties and obligations of Assignor under the Development Agreement with respect to the Transferred Property, and to be subject to all the terms and conditions thereof with respect to the Transferred Property. The parties intend that, upon the execution of this Assignment and conveyance of the Transferred Property to Assignee, Assignee shall become the "Developer" under the Development Agreement with respect to the Transferred Property.
- 4. <u>Reaffirmation of Indemnifications</u>. Assignee hereby consents to and expressly reaffirms any and all indemnifications of the City set forth in the Development Agreement, including without limitation Section of the Development Agreement.
- 5. <u>Housing Obligations</u>. Assignee has read and understands the obligations set forth in Exhibit __ of the Development Agreement as they relate to the Transferred Property. Without limiting the foregoing, Assignee agrees (1) to the terms and provisions of such Exhibit ___, including the indemnities, waivers and releases set forth therein, and (2) that the Development Agreement falls within the express exception to the Costa-Hawkins Act, Section 1954.52(b) because it is a contract with a public entity in consideration for contributions and other forms of assistance specified in Chapter 4.3 (commencing with Section 65919 of Division 1 of Title 7 of

the California Government Code). Assignee understands that the City would not have been willing to enter into the Development Agreement without the provisions of such Exhibit D.

- 6. <u>Assignee's Covenants</u>. Assignee hereby covenants and agrees that: (a) Assignee shall not challenge the enforceability of any provision or requirement of the Development Agreement; (b) Assignee shall not sue the City in connection with any and all disputes between Assignor and Assignee arising from this Assignment or the Development Agreement, including any failure to complete all or any part of the Project by any party; and (c) Assignee shall indemnify the City and its officers, agents and employees from, and if requested, shall defend them against any and all Losses resulting directly or indirectly from any dispute between Assignor and Assignee arising from this Assignment or the Development Agreement.
- 7. <u>Binding on Successors</u>. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

Agree	8. ment sh		The notice address for	Assignee under Se	ction	of the Development
				*		
			Attn:			
	With	copy to:				•
			Attn			

- 8. <u>Counterparts</u>. This Assignment may be executed in as many counterparts as may be deemed necessary and convenient, and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument.
- 9. <u>Governing Law</u>. This Assignment and the legal relations of the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of California, without regard to its principles of conflicts of law.

IN WITNESS HEREOF, the parties hereto have executed this Assignment as of the day and year first above written.

ASSIGNOR:

[insert signature block]

ASSIGNEE:

[insert signature block]

Exhibit I

Workforce Agreement

Developer shall make contributions and require Project Sponsors, Contractors, Consultants, Subcontractors and Subconsultants, as applicable, to undertake activities to support workforce development in the construction of the Project, as set forth in this Exhibit I.¹

A. <u>First Source Hiring Program.</u>

- 1. Each Project Sponsor shall, with respect to any building that is included as a Workforce Building², (i) include in each Contract for construction work a provision requiring each Contractor to enter into a FSHA Construction Agreement in the form attached hereto as Attachment A before beginning any construction work, and (ii) provide a signed copy thereof to the First Source Hiring Administration ("FSHA") and CityBuild within 10 business days of execution. The FSHA Construction Agreement shall be required for the initial construction of each Workforce Building, and (ii) any improvements or alterations that require a Permit, as defined in San Francisco Administrative Code Chapter 83 ("Chapter 83"), during the 10 year period following issuance of the first temporary certificate of occupancy for the Workforce Building, except as noted below (the "Workforce Period").
- 2. Each Project Sponsor shall, with respect to each Workforce Building, comply with the requirements of San Francisco Administrative Code Chapter 83 ("Chapter 83") and upon entering into leases or other occupancy contracts for commercial space at the Premises that are subject to Chapter 83 with a tenant occupying more than 25,000 square feet in floor area ("Commercial Tenant"), will include in each such contract a requirement that the Commercial Tenant enter into a FSHA Operations Agreement in the form attached hereto as Attachment B, and (ii) provide a signed copy thereof to the FSHA within 10 business days of execution. The FSHA

¹ Any capitalized term used in this <u>Exhibit I</u>, including its attachments, that is not defined herein shall have the meaning given to such term in the Development Agreement.

² Any capitalized term used in this Section A that is not defined in Section A or the Development Agreement will have the definition given to such term in <u>Attachment A</u>, including the following terms: Contract, Contractor, Entry Level Positions, Premises, Project Sponsor, Qualified Economically Disadvantaged Individuals for Entry Level Positions, and Workforce Building.

Operations Agreement shall be required for the initial Commercial Tenant and for any later Commercial Tenant that occupies all or part of a Workforce Building that is subject to Chapter 83 during the Workforce Period.

- 3. CityBuild shall represent the FSHA and will provide referrals of Qualified Economically Disadvantaged Individuals for Entry Level Positions on the construction work for each Workforce Building as required under Chapter 83. The FSHA will provide referrals of Qualified Economically Disadvantaged Individuals for the permanent Entry Level Positions located within the Premises where required under Chapter 83.
- 4. The owners or residents of the individual residential units and any residential Homeowner's Association within the Project shall have no obligations under this Section A and no obligation to enter into a FSHA Construction Agreement or FSHA Operations Agreement.
- 5. FSHA shall notify any Contractor, Subcontractor and Commercial Tenant, as applicable, in writing, with a copy to Project Sponsor, of any alleged breach on the part of that entity of its obligations under Chapter 83 or its FSHA Construction Agreement or the FSHA Operations Agreement, as applicable, before seeking an assessment of liquidated damages pursuant to Section 83.12 of the Administrative Code. FSHA's sole remedies against a Contractor, Subcontractor or Commercial Tenant shall be as set forth in Chapter 83, including the enforcement process. Upon FSHA's request, a Project Sponsor shall reasonably cooperate with FSHA in any such enforcement action against any Contractor, Subcontractor or Commercial Tenant, provided in no event shall a Project Sponsor be liable for any breach by a Contractor, Subcontractor or Commercial Tenant.
- 6. If a Project Sponsor fulfills its obligations as set forth in this Section A, it shall not be held responsible for the failure of a Contractor, Subcontractor, Commercial Tenant or any other person or party to comply with the requirements of Chapter 83 or this Section A. If a Project Sponsor fails to fulfill its obligations under this Section A, the applicable provisions of Chapter 83 shall apply, though the City and the Project Sponsor shall have the right to invoke the process set forth in Section 9.2 of the Development Agreement.

7. This Section A is an approved "First Source Hiring Agreement" as referenced in Section 83.11 of the Administrative Code.

B. <u>Local Business Enterprise (LBE) Utilization Program.</u>

Each Project Sponsor of a Workforce Building, as defined in Attachment C, and its respective Contractors and Consultants, shall comply with the Local Business Enterprise Utilization Program set forth in <u>Attachment C</u> hereto.

C. <u>FSH and LBE Obligations</u>.

The obligations set forth in this Workforce Agreement shall constitute the entirety of the First Source Hiring and LBE obligations with respect to the Project, and no additional First Source Hiring or LBE obligations, or any similar obligations, shall be imposed, directly or indirectly, on the Project.

Attachment A

Attachment B

Attachment C

Local Business Enterprise Utilization Plan

- 1. Purpose and Scope. This Attachment C ("LBE Utilization Plan") governs the Local Business Enterprise obligations of the Project pursuant to San Francisco Administrative Code Section 14B.20 and satisfies the obligations of each Project Sponsor and its Contractors and Consultants for a LBE Utilization Plan as set forth therein. Capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement or Section 14B.20 as applicable. The purpose of the City's LBE program is to cause private developers to seek, whenever practicable, to engage contracting teams that reflect the diversity of the City and include participation of both businesses and residents from the City's most disadvantaged communities. In the event of any conflict between Administrative Code Chapter 14B and this Attachment, this Attachment shall govern.
- 2. <u>Roles of Parties</u>. In connection with the design and construction phases of each Workforce Building (as defined below), the Project will provide community benefits designed to foster employment opportunities for disadvantaged individuals by offering contracting and consulting opportunities to local business enterprises ("LBEs") in accordance with this Attachment. Each Project Sponsor shall participate in this local business enterprise program, and the City's Contract Monitoring Division ("CMD") will serve the roles as set forth below; provided, however, that, as set forth in Section 5 below, the requirements of this <u>Attachment C</u> may be satisfied on a project-wide basis.
- 3. <u>Definitions</u>. For purposes of this Attachment, the definitions shall be as follows:
 - a. "CMD" shall mean the Contract Monitoring Division of the City Administrator's Office.
 - b. "Commercially Useful Function" shall mean that the business is directly responsible for providing the materials, equipment, supplies or services to the Project Sponsor, Construction Contractor or professional services firm retained to work on a Workforce Building, as the case may be (each, a "Contracting Party"), as required by the solicitation or request for quotes, bids or proposals. Businesses that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a "commercially useful function" unless the brokerage, referral or temporary employment services are those required and sought by the Project Sponsor or a Contractor or professional services firm. When the Project Sponsor or a Contractor or professional services firm requires and seeks products from an LBE supplier or distributor, including, without limitation, products that are not regularly stocked or are a specially manufactured item(s), no more than 60% of the entire cost of the product shall be credited towards LBE participation goals.
 - c. "Consultant" shall mean a person or company that has entered into a professional services contract for monetary consideration with a Project Sponsor to provide advice or services to the Project Sponsor directly related to the architectural or landscape design,

physical planning, and/or civil, structural or environmental engineering of a Workforce Building.

- d. "Contract(s)" shall mean an agreement, whether a direct contract or subcontract, for Consultant or Contractor services for all or a portion of a Workforce Building, subject to the exclusions set forth in Section 5 below.
- e. "Contractor" shall mean a person or entity that enters into a direct Contract with a Project Sponsor to build or construct all or a portion of a Workforce Building.
- f. "Good Faith Efforts" shall mean procedural steps taken by the Project Sponsor, Contractor or Consultant with respect to the attainment of the LBE participation goals, as set forth in Section 7 below.
- g. "Local Business Enterprise" or "LBE" means a business that is certified as a Micro or Small LBE under Chapter 14B.3.
- h. "LBE Liaison" shall mean the Project Sponsor's primary point of contact with CMD regarding the obligations of this LBE Utilization Plan. Each prime Contractor(s) shall likewise have a LBE Liaison.
- i. "Project Sponsor" shall mean the project sponsor of a Workforce Building.
- j. "Subconsultant" shall mean a person or entity that has a direct Contract with a Consultant to perform a portion of the work under a Contract for a Workforce Building.
- k. "Subcontractor" shall mean a person or entity that has a direct Contract with a Contractor to perform a portion of the work under a Contract for a Workforce Building.
- l. "Workforce Building" shall mean the following: (i) the residential portions of all residential buildings, including associated residential units, residential common space and amenity space, residential parking, and back of house construction; and (iii) all construction related to the residential portions of any standalone affordable housing buildings. Workforce Buildings shall expressly exclude residential owner-contracted improvements in for-sale residential units and any non-residential tenant improvements. Developer will use good faith efforts to hire LBEs for ongoing service contracts (e.g. maintenance, janitorial, landscaping, security etc.) within Workforce Buildings and advertise such contracting opportunities with CMD except to the extent impractical or infeasible. If a master association is responsible for the operation and maintenance of publicly owned improvements within the Project Site, CMD shall refer LBEs to such association for consideration with regard to contracting opportunities for such improvements. Such association will consider, in good faith such LBE referrals, but hiring decisions shall be entirely at the discretion of such association.
- 4. <u>Diversity</u>. Developer will be seeking to, whenever practicable, engage contracting teams that reflect the diversity of the City and participation of both businesses and residents from the City's most disadvantaged communities. Developer's compliance with the good faith efforts in Section 7 shall be deemed to satisfy this objective.

5. <u>LBE Participation Goal</u>. Project Sponsor agrees to participate in this LBE Utilization Program and CMD agrees to work with Project Sponsor in this effort, as set forth in this <u>Attachment C</u>. As long as this <u>Attachment C</u> remains in full force and effect, each Project Sponsor shall make good faith efforts as defined below to achieve an overall LBE participation goal of twelve percent (12%) of the total cost of all Contracts for a Workforce Building awarded to LBE Contractors, Subcontractors, Consultants or Subconsultants that are Small and Micro-LBEs, as set forth in Administrative Code Section 14B.8(A). Project Sponsor may satisfy the overall LBE participation goal on a project-wide basis.

Notwithstanding the foregoing, CMD's Director may, in his or her discretion, provide for a downward adjustment of the LBE participation goal, depending on LBE participation data presented by the Project Sponsor and its team in quarterly and annual reports and meetings. In addition, where, based on reasonable evidence presented to the Director by a party attempting to achieve the LBE Participation goals, there are not sufficient qualified Small and Micro-LBEs available and the applicable party has not already advertised for professional services and contracting opportunities with respect to the applicable work or solicited bids for such work, the Director may authorize the applicable party to satisfy the LBE participation goal through the use of Small, Micro or SBA-LBEs (as each such term is defined is employed in Chapter 14B of the Administrative Code), or may set separate subcontractor participation requirements for Small and Micro-LBEs, and for SBA-LBEs.

6. <u>Project Sponsor Obligations</u>. Each Project Sponsor shall comply with the requirements of this <u>Attachment C</u> as follows: Upon entering into a Contract with a Contractor or Consultant, each Project Sponsor will include in each such Contract a provision requiring the Contractor or Consultant to comply with the terms of this <u>Attachment C</u>, and setting forth the applicable percentage goal for such Contract and provide a signed copy thereof to CMD within 10 business days of execution. Such Contract shall specify the notice information for the Contractor or Consultant to receive notice pursuant to Section 17.

Each Project Sponsor shall identify an LBE Liaison. The LBE Liaison shall be an LBE Consultant and have experience in and responsibility for making recommendations on maximizing engagement of LBEs from disadvantaged communities. [Note to CMD: please provide contact information for possible LBE Consultants.] The LBE Liaison shall be available to meet with CMD staff on a regular basis or as necessary regarding the implementation of this Attachment C. If a Project Sponsor fulfills its obligations as set forth in this Section 6 and otherwise cooperates in good faith at CMD's request with respect to any meet and confer process or enforcement action against a non-compliant Contractor, Consultant, Subcontractor or Subconsultant, then it shall not be held responsible for the failure of a Contractor, Consultant, Subcontractor or Subconsultant or any other person or party to comply with the requirements of this Attachment C.

7. <u>Good Faith Efforts</u>. City acknowledges and agrees that each Project Sponsor, Contractor, Subcontractor, Consultant and Subconsultant shall have the sole discretion to qualify, hire or not hire LBEs. If a Contractor or Consultant does not meet the LBE hiring goal set forth above, it will nonetheless be deemed to satisfy the good faith effort obligation of this Section 7 and thereby satisfy the requirements and obligations of this <u>Attachment C</u> if the Contractor,

Consultants and their Subcontractors and Subconsultants, as applicable, perform the good faith efforts set forth in this Section 7 as follows:

- a. <u>Advance Notice</u>. Notify CMD in writing of all upcoming solicitations of proposals for work under a Contract at least 15 business days before issuing such solicitations to allow opportunity for CMD to identify and outreach to any LBEs that it reasonably deems may be qualified for the Contract scope of work.
- b. <u>Contract Size</u>. Where practicable, the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant will divide the work in order to encourage maximum LBE participation or, encourage joint venturing, as long as such division will not lead to inefficiencies in the performance of the work as reasonably determined by the Contracting Party. If the Contracting Party reasonably determines that it would be efficient for Subcontractors to perform specific items, then the Contracting Party will identify those specific items of each Contract that may be performed by Subcontractors.
- c. Advertise. The Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant will (i) advertise for 30 days for professional services and contracting opportunities in media focused on small businesses including the Bid and Contract Opportunities website through the City's SF Supplier Portal and other local and trade publications, and (ii) allow subcontractors to attend outreach events, pre-bid meetings, and invite LBEs to submit bids to Project Sponsor or its prime Contractor or Consultant, as applicable. As practicable, the contractor shall convene pre-bid or pre-solicitation meetings no less than 15 days prior to the opening of bids and proposals to all for LBEs to ask questions about the selection process and technical specifications/requirements. A Project Sponsor may request CMD's permission to award a contract without advertising if the work consists of specialty services or otherwise does not provide opportunities for LBE participation.
- d. <u>CMD Invitation</u>. If a pre-bid meeting or other similar meeting is held with proposed Contractors, Subcontractors, Consultants or Subconsultants, invite CMD to the meeting to allow CMD to explain proper LBE utilization.
- e. <u>Public Solicitation</u>. The Project Sponsor or its Prime Contractor(s) and/or Consultants, as applicable, will work with CMD to follow up on initial solicitations of interest by contacting LBEs to determine with certainty whether they are interested in performing specific items in a project, have sufficient experience with performing similar types of work, and are available during the desired time frame for performance of the work.
- f. Outreach and Other Assistance. The Project Sponsor or its Prime Contractor(s) and/or Consultants, as applicable, will a) provide LBEs with plans, specifications and requirements for all or part of the project; and b) notify LBE trade associations that disseminate bid and contract information and provide technical assistance to LBEs. The designated LBE Liaison(s) will work with CMD to conduct outreach to LBEs for all consulting/contracting opportunities in the applicable trades and services in order to encourage them to participate on the project.

- g. <u>Contacts</u>. Make contacts with LBEs, associations or development centers, or any agencies, which disseminate bid and contract information to LBEs and document any other efforts undertaken to encourage participation by LBEs.
- h. <u>Good Faith/Nondiscrimination</u>. Make good faith efforts to enter into Contracts with LBEs and give good faith consideration to bids and proposals submitted by LBEs. Use nondiscriminatory selection criteria (for the purpose of clarity, exercise of subjective aesthetic taste in selection decisions for architect and other design professionals shall not be deemed discriminatory and the exercise of its commercially reasonable judgment in all hiring decisions shall not be deemed discriminatory), including assessment of qualifications for the scope of work, ability to obtain bonds and insurance with types and amounts of coverage typical in the general marketplace, and availability during the desired time frame for performance of the work, and whether the LBE's proposed pricing and other terms are commercially reasonable and competitive in the general marketplace.
- i. <u>Incorporation into contract provisions</u>. Project Sponsor shall include in prime Contracts provisions that require prospective Contractors and Consultants that will be utilizing Subcontractors or Subconsultants to follow the above good faith efforts to subcontract to LBEs, including overall LBE participation goal and any LBE percentage that may be required under such Contract.
- j. <u>Monitoring</u>. Allow CMD Contract Compliance unit to monitor Consultant/Contractor selection processes and, when necessary give suggestions as to how best to maximize LBEs ability to complete and win procurement opportunities.
- k. <u>Insurance and Bonding</u>. Recognizing that lines of credit, insurance and bonding are problems common to local businesses, staff will be available to explain the applicable insurance and bonding requirements, answer questions about them, and, if possible, suggest governmental or third party avenues of assistance. Contractor, Subcontractor, Consultant and Subconsultant will work with the Project Sponsor and CMD in good faith to consider any commercially reasonable insurance programs that are available at the time to provide to LBE subcontractors access to the required coverage through either the owner, Owner-Controlled Insurance Policy (OCIP), general contractor, Contractor-Controlled Insurance Policy (CCIP), or other insurance programs.
- l. <u>Maintain Records and Cooperation</u>. Maintain records of LBEs that are awarded Contracts, not discriminate against any LBEs, and, if requested, meet and confer with CMD as reasonably required in addition to the meet and confer sessions described in Section 10 below to identify a strategy to meet the LBE goal;
- m. <u>Quarterly Reports</u>. During construction, the LBE Liaison(s) shall prepare a quarterly report of LBE participation goal attainment and submit to CMD as required by Section 10 herein; and
- n. <u>Meet and Confer</u>. Attend the meet and confer process described in Section 10.
- 8. <u>Good Faith Outreach</u>. Good faith efforts shall be deemed satisfied solely by compliance with Section 7. Notwithstanding anything to the contrary in this LBE Utilization Plan, if despite

satisfying the good faith efforts requirements by complying with Section 7, the twelve percent (12%) LBE participation goal is not met as to any Workforce Building, then (i) CMD's Director has the discretion to provide a downward adjustment for the LBE participation goal as set forth in Section 5 above, and (ii) regardless of whether such downward adjustment is provided, the amount by which the 12% goal is unmet shall not be carried over to any remaining Workforce Building(s). Contractors and Consultants, and Subcontractors and Subconsultants as applicable shall also work with CMD to identify from CMD's database of LBEs those LBEs who are most likely to be qualified for each identified opportunity under Section 7.b, and following CMD's notice under Section 9.a, shall undertake reasonable efforts at CMD's request to support CMD's outreach to identified LBEs as mutually agreed upon by CMD and each Contractor or Consultant and its Subcontractors and Subconsultants, as applicable.

- 9. <u>CMD Obligations</u>. The following are obligations of CMD to implement this LBE Utilization Plan:
 - a. During the thirty (30) day advertising period for upcoming Contracts required by Section 7.b, CMD will work with the Project Sponsor and its prime Contractor and/or Consultant as applicable to send such notification to qualified LBEs to alert them to upcoming Contracts.
 - b. Provide detailed technical assistance to Contractors, Subcontractors, Consultants and Subconsultants on good faith outreach to LBEs.
 - c. Review quarterly reports of LBE participation goals; when necessary give suggestions as to how best to maximize LBEs ability to compete and win procurement opportunities.
 - d. Perform other tasks as reasonably required to assist the Project Sponsor and its Contractors, Subcontractors, Consultants and Subconsultants in meeting LBE participation goals and/or satisfying good faith efforts requirements.
 - e. Insurance and Bonding. Recognizing that lines of credit, insurance and bonding are problems common to local businesses, CMD staff will be available to explain the applicable insurance and bonding requirements, answer questions about them, and, if possible, suggest governmental or third party avenues of assistance.
- 10. <u>Meet and Confer Process</u>. Commencing with the first Contract that is executed for a Workforce Building, and every six (6) months thereafter, or more frequently if requested by either CMD, Project Sponsor or a Contractor or Consultant each Contractor and Consultant and the CMD shall engage in an informal meet and confer to assess compliance of such Contractor and Consultants and its Subcontractors and Subconsultants as applicable with this <u>Attachment C</u>. When deficiencies are noted, meet and confer with CMD to ascertain and execute plans to increase LBE participation and remediate deficiencies.
- 11. <u>Prohibition on Discrimination</u>. Project Sponsors shall not discriminate in its selection of Contractors and Consultants, and such Contractors and Consultants shall not discriminate in their selection of Subcontractors and Subconsultants against any person on the basis of race, gender, or any other basis prohibited by law. As part of its efforts to avoid unlawful discrimination in

the selection of Subconsultants and Subcontractors, Contractors and Consultants will undertake the Good Faith Efforts and participate in the meet and confer processes as set forth in Sections 7 and 10 above.

- 12. <u>Collective Bargaining Agreements</u>. Nothing in this <u>Attachment C</u> shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, project labor agreement, project stabilization agreement, existing employment contract or other labor agreement or labor contract ("Collective Bargaining Agreements"). In the event of a conflict between this <u>Attachment C</u> and a Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall supersede this <u>Attachment C</u>.
- 13. Reporting and Monitoring. Each Contractor, Consultant, and its Subcontractors and Subconsultants as applicable shall maintain accurate records demonstrating compliance with the LBE participation goals, including keeping track of the date that each response, proposal or bid that was received from LBEs, including the amount bid by and the amount to be paid (if different) to the non-LBE contractor that was selected, documentation of any efforts regarding good faith efforts as set forth in Section 7. Developer and/or their Contractors and Consultants shall use the City's online project reporting system (currently LCP Tracker/B2G) or other CMD approved reporting method. Project Sponsors shall create a reporting method for tracking LBE participation. Data tracked shall include the following (at a minimum):
 - a. Name/Type of Contract(s) let (e.g. Civil Engineering contract, Environmental Consulting, etc.)
 - b. Name of prime Contractors (including identifying which are LBEs and non-LBEs)
 - c. Name of Subcontractors (including identifying which are LBEs and non-LBEs)
 - d. Scope of work performed by LBEs (e.g. under an Architect, an LBE could be procured to provide renderings)
 - e. Dollar amounts associated with both LBE and non-LBE Contractors at both prime and Subcontractor levels.
 - f. Total LBE participation is defined as a percentage of total Contract dollars.
- 14. Written Notice of Deficiencies. If based on complaint, failure to report, or other cause, the CMD has reason to question the good faith efforts of a Project Sponsor, Contractor, Subcontractor, Consultant or Subconsultant, then CMD shall provide written notice to the Project Sponsor, each affected prime Contractor or Consultant and, if applicable, also to its Subcontractor or Subconsultant. The prime Contractor or Consultant and, if applicable, the Subcontractor or Subconsultant, shall have a reasonable period, based on the facts and circumstances of each case, to demonstrate to the reasonable satisfaction of the CMD that it has exercised good faith to satisfy its obligations under this Attachment C. When deficiencies are noted CMD staff will work with the appropriate LBE Liaison(s) to remedy such deficiencies.

15. <u>Remedies</u>. Notwithstanding anything to the contrary in the Development Agreement, the following process and remedies shall apply with respect to any alleged violation of this Attachment C:

Mediation and conciliation shall be the administrative procedure of first resort for any and all compliance disputes arising under this <u>Attachment C</u>. The Director of CMD shall have power to oversee and to conduct the mediation and conciliation.

Non-binding arbitration shall be the administrative procedure of second resort utilized by CMD for resolving the issue of whether a Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant discriminated in the award of one or more LBE Contracts to the extent that such issue is not resolved through the mediation and conciliation procedure described above. Obtaining a final judgment through arbitration on LBE contract related disputes shall be a condition precedent to the ability of the City or the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant to file a request for judicial relief.

If a Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant is found to be in willful breach of the obligations set forth in this <u>Attachment C</u>, assess against the noncompliant Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant liquidated damages not to exceed \$25,000 or 5% of the Contract, whichever is less, for each such willful breach. In determining the amount of any liquidated damages to be assessed within the limits described above, the arbitrator or court of competent jurisdiction shall consider the financial capacity of the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

For all other violations of this <u>Attachment C</u>, the sole remedy for violation shall be specific performance, without the limits with respect thereto in Section 9.4.3-9.4.5 of the Development Agreement.

- 16. <u>Duration of this Agreement</u>. This Attachment C shall terminate (i) as to each Workforce Building, upon the issuance of the last Certificate of Occupancy for such Workforce Building (i.e., upon completion of the Workforce Building); and (ii) as to the good faith obligations under Section 3(*l*) above with respect to services under service contracts, ten (10) years after issuance of the last Temporary Certificate of Occupancy for the applicable Building. Upon such termination, this Attachment C shall be of no further force and effect.
- 17. <u>Notice</u>. All notices to be given under this <u>Attachment C</u> shall be in writing and sent by: certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail, a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or hand delivery, in which case notice shall be deemed delivered on the date received, all as follows:

If to CMD:	
	Attn:

If to Project Sponsor:	
	Attn:
If to Contractor:	
	Attn:
If to Consultant:	
	Attn:

Any party may change its address for notice purposes by giving the other parties notice of its new address as provided herein. A "business day" is any day other than a Saturday, Sunday or a day in which banks in San Francisco, California are authorized to close.

Exhibit J

Transportation

This Transportation Exhibit outlines the Project's transportation commitments in two areas: (i) the Transportation Demand Management Plan and (ii) the reconfiguration of two slip lanes.

1. Transportation Demand Management Plan

The Developer shall implement a site-specific Transportation Demand Management Plan included as Attachment 1 to this exhibit. While the Project would be subject to Planning Code Section 169.3(e)(1) and required to implement 50% of applicable target points, the Developer commits through this Agreement, to be subject to Planning Code Section 169.3(e)(2) and to implement 75% of applicable target points. Otherwise, the Project remains subject to all of the provisions of Planning Code Section 169 et seq.

2. Reconfiguration of Slip Lanes

A key element of the Project's Public Improvements includes the reconfiguration of existing traffic slip lanes at the intersections of Presidio Avenue and Pine Street/Masonic Avenue and at Masonic Avenue and Euclid Avenue. These Public Improvements consist of bulb outs and other sidewalk improvements where two separate slip lanes are currently located. With the Public Improvements, the slip lane areas will remain publicly accessible, but will no longer be accessible to motorized vehicles. The parties, including the SFMTA Board of Directors through its consent to the Development Agreement, agree to the slip lane and sidewalk reconfiguration concept level plans that are included as Attachment 2 to this Exhibit. The Developer will work with DPW and SFMTA to obtain all necessary review, approvals and construction permits.

Attachment 1 Transportation Demand Management Plan

[see attached]

Attachment 2
Proposed Site Plans and Horizontal Control Plan

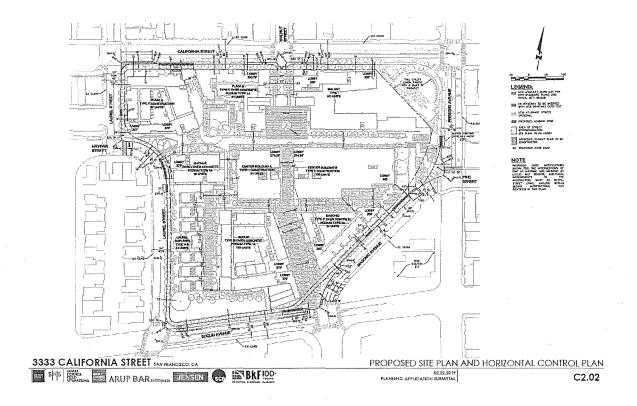




Exhibit K

Schedule Template for Later Approvals

Developer will submit a project milestone schedule at the time of filing any application for the following Later Approvals: Major Encroachment Permit (if applicable), Street Improvement Permit, Final Map(s), or other pre-construction phase Later Approvals. The initial project schedule will be conceptual in nature and will be based upon the best estimate of the Developer.

Project schedules are intended to provide basic information to assist the City with its review and staff capacity planning related to the Later Approvals described above. Due to the many outside factors that affect a real estate development project's schedule and the varying workload of City staff, the Parties understand that this schedule is intended only as guidance to the City.

This schedule should include the following major milestones and be in the format described below. Public Works Infrastructure Taskforce and OEWD will review this schedule and then share this schedule with City departments for feedback. With department feedback in hand, Public Works Infrastructure Taskforce and OEWD may request a meeting with Developer for schedule confirmation.

Milestones to be included, as applicable to project:

City approvals:

- Subdivision/mapping actions
- Transaction documents (any easements, street vacations, etc.)
- Infrastructure engineering/permit applications
 - Example: Street Improvement Plan (SIP), storm water plan, and other major systems, like AWSS or backwater system
- Any necessary commission approvals
- Start of construction (demolition/site prep, horizontal and/or vertical)
- Substantial completion
- City acceptance of infrastructure
- TCO
- Any other relevant major milestones

Non-City approvals:

Any associated non-San Francisco approvals (i.e. Navy, Caltrans, Caltrain, State lands, etc.)

Schedule format:

- The schedule should be in Gantt chart format
 - o Time should be in in fiscal years via months or quarters at the top
 - o Milestones should be in rows on the left

- Start dates (day/month/year) and durations in days should be indicated for each milestone
- Project should be broken out into major Phases and sub Phases, if applicable
- The planning horizon should include: SIP, Transactional Documents, Tent./Final Map, Vertical Design, SoC, TCO
- The preferred schedule software is Microsoft Project

Schedule submission:

Developer will submit each schedule to the following address:

Office of Economic and Workforce Development Public Works Infrastructure Taskforce City Hall, Room 496 Attn: Housing Hub/3333 California Project 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102

Exhibit L

Child Care Program

- 1. Developer to provide approximately 14,000 gross square feet of rentable area for a child care facility built on the Walnut Child Care Parcel with an adjacent open space for child care use (as required by local/State law). Developer will deliver the child care facility in warm shell condition (for example, with the space demised to meet occupancy separation requirements (minus finishes on wall, floor and ceiling), stubs for standard utilities, path to a location for mechanical equipment, storefront and rear access as required, and other items required to obtain a temporary certificate of occupancy to allow tenant to proceed with their improvements). The child care provider would specify the tenant improvements necessary for the space, which Developer would not be responsible for providing under this Agreement.
- 2. A State-licensed child care provider shall operate in the space under the following terms, provided that all Later Approvals and applicable operating and licensing and other requirements as may be necessary are first obtained.
 - a. Provider shall comply with all State guidelines and applicable local guidelines for operating a child care facility.
 - b. Provider shall operate a facility licensed to serve approximately 175 children with the final number to be determined based on state and any local licensing requirements.
 - c. In accordance with Planning Code Section 414.13, Developer shall include (and require compliance with) a provision in its lease with the child care provider requiring the provider to reserve at least ten percent (10%) of the maximum capacity of the child care facility (as determined by the license for the facility issued by the California Department of Social Services) to be affordable to children of households of low income. Operators are encouraged to work with the San Francisco Office of Early Care and Education to learn about Early Learning Scholarships for low- and moderate-income families as well as other operator resources.
 - d. Programs shall serve a broad range of age groups, including infants and toddlers.
 - e. Slots shall be made available to the general public on the same terms and conditions as those for Project residents, employees and users.
- 3. The operating term for the child care facility shall equal the life of the Walnut Building. Subject to the provisions of this Exhibit L, the Developer shall use commercially reasonable efforts to lease the space to a child care operator at all times for the life of the Walnut Building. The operating term may be fulfilled by more than one child care operator

over the life of the Walnut Building. The Developer shall comply with the terms below during initial leasing and periods of operator turnover and/or vacancy periods.

- a. (i) On the earlier to occur of (A) applying for a First Construction Document (as defined in San Francisco Building Code Section 107A.13.1(a)(8)) for the Walnut Building and (B) 15 business days before initially offering the facility for rent and (ii) within 15 business days following the expiration or termination of a child care operator's lease for the facility, the owner of the facility shall notify governmental and nonprofit entities that can assist in publicizing the availability of the facility (the "Child Care Marketers") of the opportunity to lease it, including, at a minimum, the following entities: the San Francisco Office of Early Care and Education (or any successor agency), the Family Child Care Association of San Francisco, the Children's Council, and Wu Yee Children's Services.
- b. If the child care space remains vacant for more than three years after DBI has issued of a first certificate of occupancy (including any temporary certificate of occupancy) for the Walnut Building despite Developer's commercially reasonable efforts to lease it at prevailing child care facility market terms (comparable to other similarly-sized and geographically proximate licensed child care facilities) to an initial child care operator, and Developer wishes to be released from its obligation to lease the facility to a child care operator, then Developer shall have the right to pay City an amount equal to \$2,101,489.55 [in lieu child care facility fee that would otherwise be due at the Effective Date if the fee was not waived], proportionately adjusted to reflect any increase between the published CPI Index in effect as of the Effective Date and the published CPI Index in effect at the time such payment is made (as adjusted, the "Base Fee"), plus an amount equal to 10% of the Base Fee, for deposit in the Child Care Capital Fund established under Planning Code Section 414.14. On paying such amount to City under this subsection, the Developer may use the facility for any use permitted under the Project SUD.
- c. If after having leased the facility to at least one child care operator, the child care space remains vacant for more than three years after the termination or earlier expiration of the most recent child care operator's lease despite Developer's commercially reasonable efforts to lease the facility at prevailing child care facility market terms (comparable to other similarly-sized and geographically proximate licensed child care facilities) to a child care operator, and Developer wishes to be released from its obligation to lease the facility to a child care operator, then Developer shall have the right to pay City an amount equal to the Base Fee prorated over a fifteen (15) year period, with a credit for any time the facility was operated by a child care provider in compliance with this Agreement. On paying such amount to City under this subsection, the Developer may use the facility for any use permitted under the Project SUD.

- 4. Developer or subsequent owner of the Walnut Building cannot charge rent (including security, common building charges and utilities, etc.) to the child care operator that exceeds prevailing market rent comparable to other similarly-sized and geographically proximate licensed child care facilities.
- 5. Developer or subsequent owner of the Walnut Building shall execute a Notice of Special Restrictions to dedicate the space for child care use ("NSR"). The NSR shall incorporate the requirements of this Exhibit L, be in a form approved by Developer and City (which approval shall not be unreasonably withheld or conditioned), and recorded against the Walnut Child Care Parcel at the earlier to occur of the time that the final map that includes the Walnut Child Care Parcel is recorded or the First Construction Document is issued for the Building to be constructed on the Walnut Child Care Parcel.
- 6. In consideration of this community benefit, the Project shall not be subject to the residential child care fee (Planning Code Sec. 414A) and that fee shall be waived.
- 7. Phasing/performance requirements for the child care facility will be detailed in <u>Schedule 1</u> (Community Benefits Linkages and Impact Fees). If DBI has not issued a certificate of occupancy (including any temporary certificate of occupancy) for the child care facility prior to the expiration of the Term but Developer has received First Construction Document for any Building, then Developer shall pay to City an amount equal to the Base Fee plus 20% of the Base Fee at the end of the Term.

Exhibit M

SUD Ordinance and Conditional Use/Planned Unit Development Exceptions

Exhibit N

Notice of Special Restrictions – AB900 Determination Compliance

FREE RECORDING PURSUANT TO GOVERNMENT CODE SECTION 27383

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

Planning Department City and County of San Francisco 1650 Mission Street, Suite 400 San Francisco, CA 94103-2479 Attention: Director

Property Address: 3333 California Street,

San Francisco, CA 94118

(Space Above This Line for Recorder's Use)

NOTICE OF SPECIAL RESTRICTIONS UNDER PLANNING CODE

The undersigned, LAUREL HEIGHTS PARTNERS, LLC, a Delaware limited liability company, the owner of that certain real property situated in the City and County of San Francisco, State of California more particularly described as follows: (see 'Exhibit A' for full legal description of the property)

BEING ASSESSOR'S BLOCK AND LOT: 1032-003 AND COMMONLY KNOWN AS 3333 CALIFORNIA STREET

hereby give notice that there are special restrictions on the use of said property under Part II, Chapter II of the San Francisco Municipal Code (Planning Code).

Said restrictions consist of the restrictions, conditions and requirements described herein below to be recorded in the Official Records of the Recorder of the City and County of San Francisco for the Property as required in the Development Agreement, by and between the City and County of San Francisco and Laurel Heights Partners, LLC, for Property located at 3333 California Street (the "Agreement"), approved by the Board of Supervisors of the City and County of San Francisco by Ordinance No. _______, on November ______, 2019, in connection with the proposed redevelopment of the 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, as a large mixed-use development that

will include residential, retail, commercial, child care, open space, parking, and related uses (the "Project").

Developer submitted its application and initial supporting materials for certification into the Environmental Leadership Development Project Program on August 23, 2018 (the "AB900 Application"), and, on January 30, 2019, the State of California Air Resources Board ("CARB") issued its Executive Order G-18-101 (the "CARB Executive Order") in which it determined, based on the CARB Staff Evaluation of AB 900 Application for 3333 California Street Mixed Use Project ("CARB Staff Evaluation"), dated January 30, 2019, and the AB900 Application that, pursuant California Public Resources Code section 21183(c), the Project would not result in any net additional GHG emissions (the "CARB Executive Order").

On June 7, 2019, the Governor's Office, with the concurrence of the Joint Legislative Budget Committee on July 8, 2019 (the "JLBC Letter"), determined that the Project is an eligible project under the Jobs and Economic Improvement Through Environmental Leadership Act of 2011, Public Resources Code sections 21178 et seq. (the "Determination").

Copies of the CARB Staff Evaluation, the Carb Executive Order, the JLBC Letter, and the Determination are attached to this Notice at Exhibit B.

In connection with the Determination, Project Sponsor committed to comply with certain greenhouse gas ("GHG") emissions reductions measures and procurement of offsets as more specifically set forth herein below.

The restrictions, conditions and requirements of which notice is hereby given are:

Compliance with GHG Emissions Reduction Measures and Procurement of Offsets.

a. GHG Emissions - Construction

Prior to issuance of the first permit (including site or building permit) for grading related to the construction of any phase of of the Project, Developer shall purchase carbon offsets issued by an accredited carbon registry in an amount sufficient to offset the net increase in construction-related GHG emissions attributable to that phase, as set forth in the CARB Staff Evaluation. Developer shall provide the Planning Department with copies of such contracts promptly following the execution of such contracts and prior to receipt of the first site permit for the applicable construction phase. Developer's obligations under this Section 1.a shall remain in effect as to each phase until the date on which Developer has purchased the carbon offsets that are required under this Section 1.a. with respect to the applicable phase.

b. GHG Emissions – Operations

Developer shall explore feasible GHG emissions reduction measures according to the following prioritization: (1) Project design feature/on-site reduction measures; (2) off-site local reductions; (3) off-site regional reductions; and (4) purchase of voluntary carbon offsets issued by an accredited carbon registry in an amount sufficient to offset the net increase in operation-related GHG emissions, as set forth in the CARB Staff Evaluation.

Prior to issuance of the final certificate of occupancy for each first building constructed during the applicable phase of construction, Developer shall (i) identify all project design features/on-site reduction measures, off-site local reductions, or off-site regional reductions to be implemented in order to reduce or offset GHG emissions associated with the applicable phase and identify the amount of GHG emission reductions they would achieve, (ii) execute contracts to offset any remaining net new GHG emissions generated during Project operation for the applicable phase based on the thirty (30) year period for operations set forth in the CARB Staff Evaluation, and (iii) submit documentation to the Department that corroborates any equivalent operational GHG emission reductions achieved through Project design features, such as solar photovoltaic output, that was not available at the time the AB 900 Application was submitted. Developer's obligations under this Section 1.b shall remain in effect as to each building constructed as part of the Project until the date on which Developer has offset any remaining net new GHG emissions with respect to the applicable building in the manner required in this Section 1.b.

Examples of feasible GHG emissions reduction measures include the Project's compliance with San Francisco Planning Code Section 169 -- Transportation Demand Management Program (added by Ordinance 34-17, approved February 2017), Leadership in Energy and Environmental Design (LEED) Gold certification or better for the Project, including energy efficiency, water conservation, and other green building practices that would contribute to achieving the LEED Gold certification.

2. Recordation.

Prior to the earlier to occur of the issuance of the first permit (including site or building permit) for grading related to the construction of any phase of of the Project and the time Developer records any other notice of special restrictions with respect to the Project, Developer shall record this Notice in the Official Records of the Recorder of the City and County of San Francisco for the Property.

3. Printing of conditions of approval on plans.

The restrictions, conditions and requirements of Section 1 above shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project.

4. Enforcement.

Violation of any of the restrictions, conditions or requirements contained in this Notice shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

5. Assignment.

As used in this Notice, the term Developer means the Developer originally named herein or a Transferee following a Transfer (as such terms are defined in the Development Agreement).

The use of said property contrary to these special restrictions, conditions or requirements shall constitute a violation of the Planning Code, and no release, modification or elimination of these restrictions, conditions or requirements shall be valid unless notice thereof is recorded in the Land Records by the Zoning Administrator of the City and County of San Francisco.

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:
> > > Name: Dan Safier
> > > Title: Manager

document to which this certificate	is attached, and not the truth	fulness, accuracy, or validity of that document.
State of California County of San Francisco)	
On	before me	, a Notary Public,
satisfactory evidence to be the and acknowledged to me capacity(ies), and that by his upon behalf of which the periods.	he person(s) whose name that he/she/they executed is/her/their signature(s) rson(s) acted, executed in	who proved to me on the basis of e(s) is/are subscribed to the within instrument cuted the same in his/her/their authorized on the instrument the person(s), or the entity the instrument.
I certify under PENALTY foregoing paragraph is true		the laws of the State of California that the
WITNESS my hand and off	icial seal.	
Signature		·

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the

EXHIBIT A

LEGAL DESCRIPTION

The land referred to herein is situated in the City and County of San Francisco, State of California, described as follows:

EXHIBIT B

[Attach copies of CARB Staff Evaluation, the Carb Executive Order, the JLBC Letter, and the Determination]

Schedule 1

Community Benefits Linkages and Impact Fees Schedule

Pursuant to Section 4.1 of the Agreement, the Developer's Community Benefits obligations are tied to specific Buildings or number of Market Rate Units (as defined in Exhibit D) that will be developed over the course of the Project and during the Term of the Agreement. The linkages between the specific Community Benefits and the associated Buildings or Market Rate Units are detailed below, as well as within any referenced exhibits. The development impact fees that apply to the Project are detailed below.

COMMUNITY BENEFITS

- 1. **Publicly Accessible Private Improvements.** The Developer shall complete the Publicly Accessible Private Improvements described in Exhibit C and generally depicted in Attachment C-1 prior to obtaining a first certificate of occupancy (including any temporary certificate of occupancy) for any non-retail portion, if any, of specific Buildings as described below (or, in the case of Publicly Accessible Private Improvements to be delivered only after completion of more than one Building, then prior to obtaining the first certificate of occupancy for the later Building); provided, however, that if Developer wishes to receive a first certificate of occupancy (or the equivalent thereof) for a Building (or later Building, as applicable) before completing its associated Publicly Accessible Private Improvement, then, notwithstanding anything to the contrary in this Schedule, Developer may complete this obligation after that certificate of occupancy for the associated Building (or later Building, as applicable) by providing to the City, prior to issuance of the first certificate of occupancy for that Building (or later Building, as applicable), 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, and shall diligently and continuously pursue that Publicly Accessible Private Improvement to completion following which such bond will be released.
 - a. California Plaza with the completion of Plaza A Building
 - b. Cypress Square with the completion of Plaza B Building
 - c. <u>Cypress Stairs</u> with the later completion of either Plaza A Building or Plaza B Building
 - d. <u>Mayfair Walk</u> the Mayfair Walk extends the entire width of the Project Site and shall be completed in segments tied to the completion of the adjacent Buildings as depicted in <u>Attachment C-1</u> (the later of Mayfair Building or Plaza A Building, the later of Plaza B Building or Center A Building, and the completion of Center B Building)
 - e. Presidio Overlook with the completion of Center Building B

- f. Pine Street Steps with the completion of Center Building B
- g. Walnut Walk North with the later completion of Center A Building or Center B Building
- h. <u>Walnut Walk South</u> with the later completion of the Euclid Building or Masonic Building
- i. Walnut Drive and Walnut Court with the later completion of Plaza B Building or Walnut Affordable Housing Building (as defined in Exhibit D)
- j. <u>Euclid Green</u> with the completion of the Project's final Building; provided, however, that if the Developer receives a first certificate of occupancy (including any temporary certificate of occupancy) for any Building(s) without completing all proposed Buildings during the Term, then Euclid Green shall be completed by the end of the Term.
- k. Pedestrian Access if Developer receives a first certificate of occupancy (including any temporary certificate of occupancy) for any Building(s) without completing all proposed Buildings during the Term that would otherwise require the completion of Walnut Walk North, Walnut Walk South, and Mayfair Walk as described above, then Developer, 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 Developer shall construct such alternative plan improvements prior to the end of the Term.
- 2. Streetscape Improvements. The Developer shall complete each of the Streetscape Improvements described in Exhibit C and generally depicted in Attachment C-1 (and as will be more specifically set forth in the building permit application for the Streetscape Improvements associated with the applicable Building) before obtaining any first certificate of occupancy (including any temporary certificate of occupancy) for the applicable Building (or later of adjacent Buildings, if applicable) for such Streetscape Improvement as depicted in Attachment C-1; provided, however, that if Developer wishes to receive a first certificate of occupancy for a Building before completing its associated Streetscape Improvement, then, notwithstanding anything to the contrary in this Schedule, Developer may complete its associated Streetscape Improvement after that certificate of occupancy by providing a surety performance bond or other security to City, prior to issuance of the first certificate of occupancy for that Building, in form acceptable to the City and in an amount equal to 100% of the reasonably estimated cost to complete that Streetscape Improvement, and the Developer shall diligently and continuously pursue that Streetscape Improvement to completion following which the bond shall be released. Such requirement shall be in addition to any security or bonding requirements required under

the street improvement permit issued by City's Department of Public Works for the performance of such Streetscape Improvement.

- 3. <u>Maintenance and Operation</u>. The Developer shall cause the appropriate party (e.g., a master association) to enter into agreements for the ongoing operation, maintenance and repair of the Publicly Accessible Private Improvements to the standards described in Attachment C-2 and Attachment C-3.
- 4. <u>Housing Plan.</u> The Project's BMR Units shall be complete as set forth in <u>Exhibit D</u>, the Affordable Housing Program.
- 5. <u>AWSS Community Benefit Fee.</u> The Project's AWSS Community Benefit Fee shall be paid as set forth in <u>Schedule 2</u>.
- 6. <u>Workforce Agreement.</u> The workforce requirements will apply to the Project as set forth in <u>Exhibit I</u>, the Workforce Program.
- 7. <u>Transportation Demand Management.</u> The Transportation Demand Management Plan shall be implemented as set forth in <u>Exhibit J</u>, the Transportation Exhibit, and the Approvals described in <u>Exhibit E</u>.
- 8. Child Care Program. The Developer shall have constructed the child care facility to warm shell condition, as described in Exhibit L, on the Walnut Child Care Parcel (as defined in Exhibit D) by the earlier of receiving a first certificate of occupancy (including any temporary certificate of occupancy) for the Walnut Affordable Housing Building (as defined in Exhibit D) and obtaining a first certificate of occupancy (including any temporary certificate of occupancy) for more than three hundred eighty-six (386) Market Rate Units (as defined in Exhibit D). In addition, if the Developer receives a first certificate of occupancy (or a temporary certificate of occupancy) for any Building, the Developer must obtain a first certificate of occupancy (or a temporary certificate of occupancy) for the child care facility before the expiration of the Term. The child care facility shall be operated on the terms described in Exhibit L.

DEVELOPMENT IMPACT FEES

The following development impact fees apply to the Project: Transportation Sustainability Fee (Planning Code Section 411A) and Jobs Housing Linkage Fee (Section 413). The Residential Child Care Impact Fee (Planning Code Section 414A) and the Affordable Housing Fee (Planning Code Section 414A).

Code Section 415) have been waived in consideration of the on-site provision of a child care facility and affordable housing as described in <u>Exhibit L</u> and <u>Exhibit D</u>, respectively.

Schedule 2

AWSS Community Benefit Fee

1. Background and Need

The Auxiliary Water Supply System ("AWSS") is a water distribution system used by the San Francisco Fire Department ("SFFD") for fire suppression. The AWSS delivers water under high pressure for firefighting and is independent from the San Francisco's domestic water system. The design elements of the AWSS, such as restrained pipeline joints and earthquake resistant ductile iron pipe make it more resistant to earthquake damage. The San Francisco Public Utilities Commission ("SFPUC") operates and maintains the AWSS citywide.

Life safety is the paramount concern of the SFFD, followed by the protection of property. When new developments are proposed in San Francisco with high density structures, adequate and readily available water supplies for firefighting are imperative. The Project is a proposed new development within San Francisco which will have both high occupancy and a significant amount of wood frame construction. The closest AWSS main runs east to west on Sacramento Street with AWSS/High Pressure ("HP") hydrants at each corner from Presidio Avenue to Arguello Boulevard. The closest HP hydrant to the entrance of the proposed Project is currently located at the northwest corner of Walnut and Sacramento Streets, approximately 400 feet away from the Project's closest property line. SFFD fire engines carry a maximum of 1,000 feet of fire hose.

One new HP fire hydrant shall be installed on California Street at the southern intersection of Walnut and California Streets with a connection back to the AWSS main on Sacramento Street in order for SFFD to have backup emergency water supply for firefighting and rescue operations at the Project. This HP hydrant would allow one fire engine to obtain AWSS water supply and immediately initiate firefighting and rescue operations to any area within the development upon arrival. During a greater alarm fire when fire operations demand more water than a domestic water hydrant can supply, the AWSS HP hydrant will support the need for additional water volume and pressure. Following a major event, when additional fire engines are not available, a fire crew can use the HP hydrants and still have ample water pressure and volume for firefighting operations.

2. AWSS Requirement for 3333 California Project

The SFFD and SFPUC have analyzed the Project and determined that AWSS is not required or appropriate for installation within the Project's property line. This is due to (1) confirmation that a standard 1,000 fire hose is able to serve the entire site from one new HP hydrant at the southern intersection of Walnut and California Streets; and (2) the fact that the Project will be

privately-owned and no public right of ways will be created within which AWSS could be installed, owned, and maintained by SFPUC.

The SFPUC and SFFD have determined that in order to provide the Project with a backup emergency water supply, the following new AWSS infrastructure (the "AWSS Scope") will be required: a new HP hydrant on the public sidewalk at Walnut and California Streets, and a connection to be installed on Walnut Street from the new HP hydrant to the existing AWSS main running east to west on Sacramento Street. This new infrastructure will be designed and installed by the SFPUC, with contributory fair-share funding paid by the Developer.

The Developer and SFPUC will coordinate on the installation and timing of installation of this AWSS Scope in relation to the ultimate development phasing and improvements. The intent is to have the AWSS Scope coordinated with Project's street improvements on California Street or adjacent streets to minimize or eliminate the need to demolish newly constructed improvements related to the Project.

3. AWSS Community Benefit Fee

The AWSS Community Benefit Fee will offset the cost of bringing AWSS to the Project boundary. The SFPUC has developed an initial capital cost estimate of the AWSS Scope (including contingencies) totaling approximately \$1,055,000 in 2018 dollars. In consideration of the AWSS Scope that the Project requires to be adequately served and protected by SFFD, the Developer shall pay an AWSS Community Benefit Fee of \$1,055,000.

4. Fee Payment Terms

The Developer shall pay the AWSS Community Benefit Fee as a proportion of Gross Square Feet ("GSF") developed in the Project. Based on the Project's total of 1,434,098 GSF, the Developer shall pay the AWSS Community Benefit Fee at a rate of \$.735 per GSF. Payment shall be made to SFPUC on a Building by Building basis and shall be determined by the total GSF of each Building. Payment shall be due prior to and as a condition to the Developer obtaining a temporary Certificate of Occupancy or Certificate of Final Completion for each Building.

10845 Pensen version 10/16/19

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

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)

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND LAUREL HEIGHTS PARTNERS, LLC

FOR PROPERTY LOCATED AT 3333 CALIFORNIA STREET

Block 1032 Lot 003

TABLE OF CONTENTS

			<u>Page</u>
1.	DEFI	NITIONS	4
2.		CTIVE DATE; TERM	
	2.1	Effective Date	
	2.2	Term	13
3.	GENI	ERAL RIGHTS AND OBLIGATIONS	14
	3.1	Development of the Project	14
	3.2	Workforce	14
4.	PUBI	LIC BENEFITS; DEVELOPER OBLIGATIONS AND CONDITIONS TO	
		ELOPER'S PERFORMANCE	14
	4.1	Community Benefits Exceed Those Required by Existing Ordinances and	
		Regulations	
	4.2	Conditions to Performance of Community Benefits	15
	4.3	No Additional CEQA Review Required; Reliance on FEIR for Future	
		Discretionary Approvals	
	4.4	Nondiscrimination	
	4.5	City Cost Recovery	
	4.6	Prevailing Wages	
	4.7	Indemnification of City	19
5.	VEST	TING AND CITY OBLIGATIONS	20
	5.1	Vested Rights	20
	5.2	Existing Standards	20
	5.3	Criteria for Later Approvals	21
	5.4	Strict Building Code Compliance	22
	5.5	Denial of a Later Approval	23
	5.6	New City Laws	23
	5.7	Fees and Exactions	25
	5.8	Changes in Federal or State Laws	26
•	5.9	No Action to Impede Approvals	28
	5.10	Estoppel Certificates	
	5.11	Existing, Continuing Uses and Interim Uses	28
	5.12	Taxes	
6.	NO D	DEVELOPMENT OBLIGATION	29
7.	MUT	UAL OBLIGATIONS	30
	7.1	Notice of Completion, Revocation or Termination	
	7.2	General Cooperation; Agreement to Cooperate	
	7.3	Third-Party Challenge	
	7.4	Good Faith and Fair Dealing	
	7.5	Other Necessary Acts	

8.	PERI	ODIC REVIEW OF DEVELOPER'S COMPLIANCE	31
	8.1	Annual Review	31
	8.2	Review Procedure	32
9.	ENFO	DRCEMENT OF AGREEMENT; DEFAULT; REMEDIES	33
	9.1	Enforcement	33
	9.2	Meet and Confer Process	
	9.3	Default	33
	9.4	Remedies	
	9.5	Time Limits; Waiver; Remedies Cumulative	
	9.6	Attorneys' Fees	36
10.	FINANCING; RIGHTS OF MORTGAGEES		
	10.1	Developer's Right to Mortgage	
	10.2	Mortgagee Not Obligated to Construct	
	10.3	Copy of Notice of Default and Notice of Failure to Cure to Mortgagee	
	10.4	Mortgagee's Option to Cure Defaults	
	10.5	Mortgagee's Obligations with Respect to the Property	
	10.6	No Impairment of Mortgage	39
	10.7	Cured Defaults	
11.	AMENDMENT; TERMINATION; EXTENSION OF TERM		39
	11.1	Amendment or Termination	
	11.2	Early Termination Rights	
	11.3	Termination and Vesting	
	11.4	Amendment Exemptions	
	11.5	Extension Due to Legal Action or Referendum; Excusable Delay	41
12.	TRA	NSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE	42
	12.1	Permitted Transfer of this Agreement	42
	12.2	Notice of Transfer	43
	12.3	Release of Liability	
	12.4	Responsibility for Performance	
	12.5	Constructive Notice	
	12.6	Rights of Developer	44
13.	DEVELOPER REPRESENTATIONS AND WARRANTIES		
	13.1	Interest of Developer; Due Organization and Standing	
	13.2	No Inability to Perform; Valid Execution	
	13.3	Conflict of Interest	
	13.4	Notification of Limitations on Contributions	
	13.5	Other Documents	
	13.6	No Bankruptcy	47
14.	MISC	CELLANEOUS PROVISIONS	
	14.1	Entire Agreement	47
	14.2	Incorporation of Exhibits	

14.3	Binding Covenants; Run With the Land	47
14.4	Applicable Law and Venue	47
14.5	Construction of Agreement	48
14.6	Project Is a Private Undertaking; No Joint Venture or Partnership	48
14.7	Recordation	48
14.8	Obligations Not Dischargeable in Bankruptcy	48
14.9	Survival	
14.10	Signature in Counterparts	49
14.11	Notices	49
14.12	Limitations on Actions	49
14.13	Severability	50
14.14	MacBride Principles	50
14.15	Tropical Hardwood and Virgin Redwood	50
14.16	Sunshine	
14.17	Non-Liability of City Officials and Others	51
14.18	Non-Liability of Developer Officers and Others	51
14.19	No Third Party Beneficiaries	51

EXHIBITS AND SCHEDULES

Exhibits

Α .	Project Site Legal Description
В	Project Description
B-1	Site Plan
С	Project Open Space
C-1	Open Space Plan
C-2	Regulations Regarding Access and Maintenance of Publicly Accessible Private
	Improvements
C-3	Public Access Declaration
D	Affordable Housing Program
D-1	Depiction of Walnut Land
D-2	Baseball Arbitration Appraisal Process
D-3	Form of Grant Deed
D-4	Accepted Conditions of Title
D-5	Form of Deed of Trust
E	List of Approvals
F	MMRP
G	Notice of Completion and Termination
Н	Form of Assignment and Assumption Agreement
I	Workforce Agreement
J	Transportation Exhibit
K	Schedule Template for Later Approvals
L	Child Care Program
M	SUD Ordinance and Conditional Use/Planned Unit Development ExceptionsN Notice
	of Special Restrictions – AB900 Determination Compliance

Schedules

- Community Benefits Linkages and Impact Fees Schedule AWSS Community Benefit Fee 1
- 2

DEVELOPMENT AGREEMENT BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO AND LAUREL HEIGHTS PARTNERS, LLC

THIS DEVELOPMENT AGREEMENT dated for reference purposes only as of this _____ day of _____, 2019, is 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"), pursuant to the authority of Section 65864 *et seq.* of the California Government Code and Chapter 56 of the Administrative Code. The City and Developer are also sometimes referred to individually as a "Party" and together as the "Parties". Capitalized terms not defined when introduced shall have the meanings given in Article 1.

RECITALS

This Agreement is made with reference to the following facts:

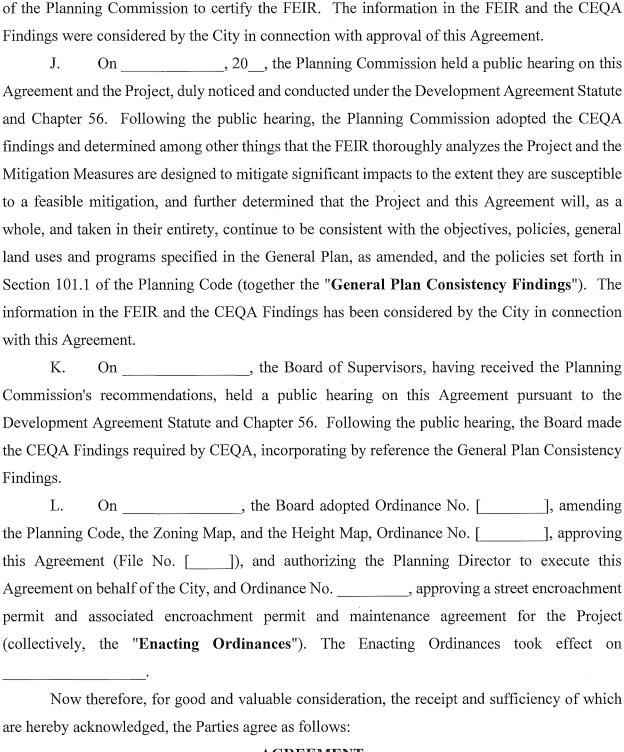
- A. Developer is the owner of an irregularly-shaped parcel comprised of approximately 10.25 acres (approximately 446,468 square feet), generally bounded by California Street, Laurel Street, Euclid Avenue, Masonic Avenue, and Presidio Avenue, and further described on Exhibit A (the "Project Site"). The Project Site is improved with (i) a four-story, approximately 455,000 gross square foot office building with a three-level, partially below-grade garage that has 212 parking spaces and approximately 12,500 gross square feet of storage space, (ii) a one-story, approximately 14,000 gross square foot annex building with building facilities and plant operations, office space for physical plant engineers, and unused laboratory space, (iii) 2 circular garage ramp structures, (iv) 3 surface parking lots that collectively have 331 parking spaces, and (v) approximately 165,200 square feet of landscaping or landscaped open space.
- B. The Developer proposes a mixed use development that will include on-site affordable units and that will include residential, retail, open space, parking, child care and related uses (the "**Project**"). Specifically, the Project includes (i) up to approximately 744 residential units consisting of a mix of market rate and on-site BMR Units, including 185 on-site senior affordable housing units (plus one (1) manager's unit), (ii) approximately 34,496 square feet for retail/restaurant/commercial use, (iii) 10 below-grade parking garages with approximately 857

parking spaces (including approximately ten car share spaces), (iv) an approximately 14,665 square foot space for child care use, and (v) approximately 236,000 square feet of landscaped or open space, which includes approximately 125,226 square feet of privately owned, public open space, more than 71,000 square feet of which is in excess of the open space requirements under the Code, all as more particularly described on Exhibit B.

- C. The Project is anticipated to generate an annual average of approximately 675 construction jobs during construction and, upon completion, approximately 200 net new permanent on-site jobs, an approximate \$10 million annual increase in property taxes, and approximately \$15 million in development impact fees (including transportation, housing linkages, and school fees).
- D. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 *et seq.* (the "Development Agreement Statute"), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property regarding the development of such property. Pursuant to Government Code Section 65865, the City adopted Chapter 56 of the Administrative Code ("Chapter 56") establishing procedures and requirements for entering into a development agreement pursuant to the Development Agreement Statute. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56.
- E. In addition to the significant housing, jobs, and economic benefits to the City from the Project, the City has determined that as a result of the development of the Project in accordance with this Agreement and the Special Use District and the Planned Unit Development approvals attached at Exhibit M, additional clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies. Major additional public benefits to the City from the Project include: (i) an increase in affordable housing that exceeds amounts otherwise required and will equal approximately twenty-five percent (25%) of the total number of housing units for the Project, serving senior households with incomes below 80% of MOHCD AMI with an overall average of not more than 59% of MOCHD AMI; (ii) construction and maintenance of the Publicly Accessible Private Improvements (as defined in Section 1) for a total of approximately 125,226 square feet of public useable open area; (iii) transportation demand management measures that exceed the level otherwise required; (iv) the Child Care Program (as

defined in <u>Section 1</u>); (v) workforce obligations; and (vi) the Streetscape Improvements (as defined in Section 1).

- F. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in a way as to fully comply with the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.; "CEQA"), the CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 et seq.); "CEQA Guidelines"), the Development Agreement Statute, Chapter 56, the Planning Code, the Enacting Ordinances and all other applicable Laws in effect as of the Effective Date. This Agreement does not limit the City's obligation to comply with applicable environmental Laws, including CEQA, before taking any discretionary action regarding the Project, or the Developer's obligation to comply with all applicable Laws in connection with the development of the Project.
- G. Developer submitted its application and initial supporting materials for certification into the Environmental Leadership Development Project Program on August 23, 2018 (the "AB900 Application"), and, on January 30, 2019, the State of California Air Resources Board ("CARB") issued its Executive Order G-18-101 (the "CARB Executive Order") in which it determined, based on the CARB Staff Evaluation of AB 900 Application for 3333 California Street Mixed Use Project ("CARB Staff Evaluation"), dated January 30, 2019, and the AB900 Application that, pursuant California Public Resources Code section 21183(c), the Project would not result in any net additional GHG emissions (the "CARB Executive Order").
- H. On June 7, 2019, the Governor's Office, with the concurrence of the Joint Legislative Budget Committee on July 8, 2019 (the "JLBC Letter"), determined that the Project is an eligible project under the Jobs and Economic Improvement Through Environmental Leadership Act of 2011, Public Resources Code sections 21178 et seq. (the "Determination").



AGREEMENT

1. **DEFINITIONS**

In addition to the definitions set forth in the above preamble paragraph, Recitals and elsewhere in this Agreement, the following definitions shall apply to this Agreement:

- 1.1 "Administrative Code" means the San Francisco Administrative Code.
- 1.2 "**Agreement**" means this Development Agreement, the Exhibits and Schedules that have been expressly incorporated herein, and any amendments thereto.
- 1.3 "AMI" means the unadjusted median income levels derived from the U.S. Department of Housing and Urban Development on an annual basis for the San Francisco area, adjusted solely for household size, but not high housing cost area.
 - 1.4 "Annual Review Date" has the meaning set forth in Section 8.1.
- 1.5 "Applicable Laws" has the meaning set forth in <u>Section 5.2</u> (where not capitalized, "applicable Law" has its plain meaning and refers to Laws as otherwise defined herein).
- 1.6 "**Approvals**" means the City approvals, entitlements, and permits listed on Exhibit E, including any Later Approvals at the time and to the extent they are included pursuant to Section 5.1.
- 1.7 "Assignment and Assumption Agreement" has the meaning set forth in Section 12.2.
 - 1.8 "Associated Community Benefit" is defined in Section 4.1.
 - 1.9 "AWSS Community Benefit Fee" is defined in Schedule 2.
 - 1.10 "BMR Units" has the meaning set forth in the Housing Program.
- 1.11 "Board of Supervisors" or "Board" means the Board of Supervisors of the City and County of San Francisco.
- 1.12 "Building" or "Buildings" means each of the existing, modified and new buildings on the Project Site, as described in the Project description attached as Exhibit B.
 - 1.13 "California Plaza" is described in Section 1.a of Exhibit C.
 - 1.14 "CEQA" has the meaning set forth in Recital F.
 - 1.15 "CEQA Findings" has the meaning set forth in Recital I.
 - 1.16 "CEQA Guidelines" has the meaning set forth in Recital F.
 - 1.17 "Chapter 56" has the meaning set forth in Recital D.
- 1.18 "Child Care Program" means the child care facility program attached as Exhibit L.
- 1.19 "City" means the City as defined in the opening paragraph of this Agreement. Unless the context or text specifically provides otherwise, references to the City

means the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors.

- 1.20 "City Agency" or "City Agencies" means the City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement, or are controlled by persons or commissions that have executed or consented to this Agreement, that have subdivision or other permit, entitlement or approval authority or jurisdiction over development of the Project or any improvement located on or off the Project Site, including, without limitation, the City Administrator, Planning Department, MOHCD, OEWD, SFMTA, PW, DBI, together with any successor City agency, department, board, or commission. Nothing in this Agreement shall affect the jurisdiction under the City's Charter of a City department that has not approved or consented to this Agreement in connection with the issuance of a Later Approval. The City actions and proceedings subject to this Agreement shall be through the Planning Department, as well as affected City Agencies (and when required by applicable Law, the Board of Supervisors).
- 1.21 "City Attorney's Office" means the Office of the City Attorney of the City and County of San Francisco.
- 1.22 "City Costs" means the actual and reasonable costs incurred by a City Agency in preparing, adopting or amending this Agreement, in performing its obligations or defending its actions under this Agreement or otherwise contemplated by this Agreement, as determined on a time and materials basis, including reasonable attorneys' fees and costs but excluding work, hearings, costs or other activities contemplated or covered by Processing Fees; provided, however, City Costs shall not include any costs incurred by a City Agency in connection with a City Default or which are payable by the City under Section 9.6 when Developer is the prevailing party.
 - 1.23 "City Parties" has the meaning set forth in Section 4.7.
 - 1.24 "City Report" has the meaning set forth in Section 8.2.2.
- 1.25 "City-Wide" means all real property within the territorial limits of the City and County of San Francisco, not including any property owned or controlled by the United States or by the State of California and therefore not subject to City regulation.
 - 1.26 "CMA" is defined in Section 12.1.
- 1.27 "Commence Construction", "Commenced Construction" or "Commencement of Construction" means groundbreaking in connection with the

commencement of physical construction of the applicable Building foundation, but specifically excluding the demolition or partial demolition of existing structures.

- 1.28 "Community Benefits" has the meaning set forth in Section 4.1.
- 1.29 "Community Benefits Linkages and Impact Fees Schedule" means the schedule attached to this Agreement as Schedule 1.
- 1.30 "Community Benefits Program" has the meaning set forth in Section 4.1.1.
 - 1.31 "Costa Hawkins Act" has the meaning set forth in Exhibit D.
 - 1.32 "Cypress Square" is described in Section 1.b of Exhibit C.
 - 1.33 "Cypress Stairs" are described in Section 1.b of Exhibit C.
 - 1.34 "**Default**" has the meaning set forth in <u>Section 9.3</u>.
- 1.35 "**DBI**" means the Department of Building Inspection of the City and County of San Francisco.
- 1.36 "**Developer**" has the meaning set forth in the opening paragraph of this Agreement, and shall also include (i) any Transferee as to the applicable Transferred Property, and (ii) any Mortgagee or assignee thereof that acquires title to any Foreclosed Property but only as to such Foreclosed Property.
- 1.37 "**Development Agreement Statute**" has the meaning set forth in <u>Recital D</u>, as in effect as of the Effective Date.
- 1.38 "**Development Parcel**" means a parcel within the Project Site on which a Building or other improvements will be constructed, as set forth in a Subdivision Map.
 - 1.39 "Effective Date" has the meaning set forth in Section 2.1.
 - 1.40 "Enacting Ordinances" has the meaning set forth in Recital L.
 - 1.41 "**Euclid Green**" is described in Section 1.h of <u>Exhibit C</u>.
 - 1.42 "Excusable Delay" has the meaning set forth in Section 11.5.2.
- 1.43 "Existing Mortgage" means the deed of trust recorded in the Official Records of San Francisco County on March 30, 2018 as Instrument Nos. 2018-K595916-00 and 2018-K595918-00, including all modification thereto.
 - 1.44 "Existing Standards" has the meaning set forth in Section 5.2.
- 1.45 "Existing Uses" means all existing lawful uses of the existing Buildings and improvements (and including, without limitation, pre-existing, non-conforming uses under the

Planning Code) on the Project Site as of the Effective Date, as the same may be modified by the Approvals and any Later Approvals.

- 1.46 "Federal or State Law Exception" has the meaning set forth in Section 5.8.1.
 - 1.47 "**FEIR**" has the meaning set forth in <u>Recital I</u>.
- 1.48 "Finally Granted" means (i) any and all applicable appeal periods for the filing of any administrative or judicial appeal challenging the issuance or effectiveness of any of the Approvals, this Agreement or the FEIR shall have expired and no such appeal shall have been filed, or if such an administrative or judicial appeal is filed, the Approvals, this Agreement or the FEIR, as applicable, shall have been upheld by a final decision in each such appeal without adverse effect on the applicable Approval, this Agreement or the FEIR and the entry of a final judgment, order or ruling upholding the applicable Approval, this Agreement or the FEIR and (ii) if a referendum petition relating to this Agreement is timely and duly circulated and filed, certified as valid and the City holds an election, the date the election results on the ballot measure are certified by the Board of Supervisors in the manner provided by the Elections Code reflecting the final defeat or rejection of the referendum.
- 1.49 "First Construction Document" shall be as defined in San Francisco Building Code Section 107A.13.1(a)(8).
 - 1.50 **"Foreclosed Property"** is defined in Section 10.5.
- 1.51 "General Plan Consistency Findings" has the meaning set forth in <u>Recital</u> <u>J</u>.
- 1.52 "Gross Floor Area" has the meaning set forth in the Planning Code as of the applicable date of determination of such area.
- 1.53 "**Housing Program**" means the Affordable Housing Program attached as Exhibit D.
- 1.54 "Impact Fees and Exactions" means any fees, contributions, special taxes, exactions, impositions, and dedications charged by the City, whether as of the date of this Agreement or at any time thereafter during the Term, in connection with the development of Projects, including but not limited to transportation and transit fees, child care requirements or inlieu fees, dedications, housing (including affordable housing) requirements or fees, dedication or

reservation requirements, and obligations for on-or off-site improvements. Impact Fees and Exactions shall not include the Mitigation Measures, Processing Fees, taxes or special assessments or school district fees, SFPUC Capacity Charges, and any fees, taxes, assessments, and impositions imposed by any Non-City Agency, all of which shall be due and payable by Developer as and when due in accordance with applicable Laws.

- 1.55 "Later Approval" means any other land use approvals, entitlements, or permits from the City or any City Agency, other than the Approvals, that are consistent with the Approvals and necessary or advisable for the implementation of the Project, including without limitation, demolition permits, grading permits, site permits, building permits, lot line adjustments, sewer and water connection permits, major and minor encroachment permits, street and sidewalk modifications, street improvement permits, permits to alter, certificates of occupancy, transit stop relocation permits, Subdivision Maps, improvement plans, lot mergers, and lot line adjustments. A Later Approval shall also include any amendment to the foregoing land use approvals, entitlements, or permits, or any amendment to the Approvals that are sought by Developer and approved by the City in accordance with the standards set forth in this Agreement.
- 1.56 "Law(s)" means the Constitution and laws of the United States, the Constitution and laws of the State of California, the laws of the City and County of San Francisco, and any codes, statutes, rules, regulations, or executive mandates thereunder, and any State or Federal court decision (including any order, injunction or writ) thereunder. The term "Laws" shall refer to any or all Laws as the context may require.
 - 1.57 "Law Adverse to City" is defined in Section 5.8.4.
 - 1.58 "Law Adverse to Developer" is defined in Section 5.8.4.
- 1.59 "Life of the Project" shall mean, for each Building that is constructed on the Project Site under this Agreement, the life of that Building.
 - 1.60 "Litigation Extension" has the meaning set forth in Section 11.5.1.
 - 1.61 "Losses" has the meaning set forth in Section 4.7.
- 1.62 "Material Change" means any modification that (a) would materially alter the rights, benefits or obligations of the City or Developer under this Agreement, (b) is not consistent with the Project SUD or a planned unit development authorization made under the Project SUD, (c) extends the Term, (d) changes the uses of the Project Site from those described in this Agreement, (e) decreases the Community Benefits, (f) increases the maximum height,

density, bulk or size of the Project (except to the extent permitted under the Project SUD or a planned unit development authorization for the Project), (g) increases parking ratios, or (h) reduces the Impact Fees and Exactions.

- 1.63 "Mayfair Walk" is described in Section 1.c of Exhibit C.
- 1.64 "**Mitigation Measures**" means the mitigation measures (as defined by CEQA) applicable to the Project as set forth in the MMRP or that are necessary to mitigate adverse environmental impacts identified through the CEQA process as part of a Later Approval.
- 1.65 "MMRP" means that certain mitigation monitoring and reporting program attached as Exhibit F.
- 1.66 "MOHCD" means the Mayor's Office of Housing and Community Development.
 - 1.67 "MOHCD AMI" is defined in Exhibit D (Affordable Housing Program).
- 1.68 "Mortgage" means a mortgage, deed of trust or other lien on all or part of the Project Site to secure an obligation made by the applicable property owner, including the Existing Mortgage.
- 1.69 "Mortgagee" means (i) any mortgagee or beneficiary under a Mortgage, and (ii) a person or entity that obtains title to all or part of the Project Site as a result of foreclosure proceedings or conveyance or other action in lieu thereof, or other remedial action.
- 1.70 "Municipal Code" means the San Francisco Municipal Code. All references to any part of the Municipal Code in this Agreement shall mean that part of the Municipal Code in effect on the Effective Date, as the Municipal Code may be modified by changes and updates that are adopted from time to time in accordance with Section 5.4 or by permitted New City Laws as set forth in Section 5.6.
 - 1.71 "New City Laws" has the meaning set forth in Section 5.6.
- 1.72 "Non-City Agency" means Federal, State, and local governmental agencies that are independent of the City and not parties to this Agreement.
- 1.73 "Non-City Approval" means any permits, agreements, or entitlements from Non-City Agencies as may be necessary for the development of the Project.
- 1.74 "**OEWD**" means the San Francisco Office of Economic and Workforce Development.

- 1.75 "Official Records" means the official real estate records of the City and County of San Francisco, as maintained by the City's Assessor-Recorder's Office.
- 1.76 "Party" and "Parties" has the meaning set forth in the opening paragraph of this Agreement and shall also include any party that becomes a party to this Agreement, such as a Transferee (each during its period of ownership of all or part of the Project Site).
 - 1.77 "Pine Street Steps" are described in Section 1.e of Exhibit C.
 - 1.78 "Planning Code" means the San Francisco Planning Code.
- 1.79 "Planning Commission" means the Planning Commission of the City and County of San Francisco.
- 1.80 "Planning Department" means the Planning Department of the City and County of San Francisco.
- 1.81 "Planning Director" means the Director of Planning of the City and County of San Francisco.
 - 1.82 "**Presidio Overlook**" is described in Section 1.d of Exhibit C.
- 1.83 "**Processing Fees**" means the standard fee imposed by the City upon the submission of an application for a permit or approval, which is not an Impact Fee or Exaction, in accordance with the City practice on a City-Wide basis.
- 1.84 "**Project**" means the project as described in <u>Recital B</u>, <u>Exhibit B</u>, and the Approvals, including, without limitation, the Project variant and Project alternatives described in the Project SUD, together with Developer's rights and obligations under this Agreement.
- 1.85 "**Project Site**" has the meaning set forth in <u>Recital A</u>, and as more particularly described in <u>Exhibit A</u>.
- 1.86 "**Project SUD**" means Planning Code Section 249.[___] as adopted by the Board in Ordinance No. [____].
- 1.87 "Public Health and Safety Exception" has the meaning set forth in Section 5.8.1.
- 1.88 "Publicly Accessible Private Improvements" means the privately-owned and publicly-accessible California Plaza, Cypress Square, Cypress Stairs, Mayfair Walk, Presidio Overlook, Pine Street Steps, Walnut Walk North, Walnut Walk South, Walnut Drive and Walnut Court, and Euclid Green, all as further described and depicted in Exhibit C-1, and Schedule 1 and which exceeds the Required Open Space for the Project.

- 1.89 "PW" means San Francisco Public Works.
- 1.90 "**Required Open Space**" has the meaning given such term in Section 102 of the Planning Code.
 - 1.91 "SFMTA" means the San Francisco Municipal Transportation Agency.
 - 1.92 "SFPUC" means the San Francisco Public Utilities Commission.
- 1.93 "SFPUC Capacity Charges" means all water and sewer capacity and connection fees and charges payable to the SFPUC, as and when due in accordance with theapplicable City requirements.
- 1.94 "Streetscape Improvements" means the following improvements, all as further described and depicted in Exhibit C, Exhibit C-1, and Schedule 1: (i) reconfiguring portions of the curb lines at Presidio Avenue and Masonic Avenue; (ii) reconfiguring the triangular-shaped pedestrian island and the right-most travel lane for southbound traffic on Presidio Avenue merging onto Masonic and incorporating it into the Pine Street Steps, (iii) reconfiguring the triangularshaped pedestrian island and the right-most travel lane for southbound traffic on Masonic Avenue merging onto Euclid Avenue and incorporating it into Walnut Walk South (iv) constructing corner bulb-outs on the west side of the Masonic Avenue/Presidio Avenue/Pine Street intersection, the northeast corner of Laurel Street/Mayfair Drive, the southwest corner of the California Street/Laurel Street intersection, the southeast and southwest corners of the California Street/Walnut Street intersection, and the northeast corner of the Laurel Street/Euclid Avenue intersection; (v) installing a continental crosswalk crossing Presidio Avenue to Pine Street and an eastside crosswalk at the three-way intersection at Laurel Street crossing Mayfair Drive; and (vi) widening sidewalks on portions of Presidio Avenue, Masonic Avenue, Euclid Avenue, and Laurel Street.
 - 1.95 "Subdivision Code" means the San Francisco Subdivision Code.
- 1.96 "Subdivision Map" means any map that Developer submits for the Project Site with respect to the Project under the Subdivision Map Act and the Subdivision Code, which may include, but not be limited to, tentative or vesting tentative subdivision maps, final or vesting final subdivision maps and any tentative or final parcel map, or transfer map, including phased final maps to the extent authorized under an approved tentative subdivision map, but excluding the Tentative Map.

- 1.97 "Subdivision Map Act" means the California Subdivision Map Act, California Government Code Section 66410 et seq.
- 1.98 "**Tentative Map**" means the tentative map for the Project Site approved by PW on _______, 2019.
 - 1.99 "**Term**" has the meaning set forth in <u>Section 2.2</u>.
- 1.100 "Third-Party Challenge" means any administrative, legal or equitable action or proceeding instituted by any party other than the City or Developer challenging the validity or performance of any provision of this Agreement, the Project, the Approvals or Later Approvals, the adoption or certification of the FEIR or other actions taken pursuant to CEQA, or other approvals under Laws relating to the Project, any action taken by the City or Developer in furtherance of this Agreement, or any combination thereof relating to the Project or any portion thereof.
- 1.101 "Transfer," "Transferee" and "Transferred Property" have the meanings set forth in Section 12.1, and in all events excludes (1) a transfer of ownership or membership interests in Developer or any Transferee, (2) grants of easement or of occupancy rights for existing or completed Buildings or other improvements (including, without limitation, space leases in Buildings), and (3) the placement of a Mortgage on the Project Site.
- 1.102 "**Transportation Demand Management**" benefits are described in <u>Exhibit</u>
 J.
 - 1.103 "Vested Elements" has the meaning set forth in Section 5.1.
 - 1.104 "Walnut Walk North" is described in Section 1.f of Exhibit C.
 - 1.105 "Walnut Walk South" is described in Section 1.f of Exhibit C.
- 1.106 "Workforce Agreement" means the Workforce Agreement attached as Exhibit I.

2. EFFECTIVE DATE; TERM

- 2.1 <u>Effective Date</u>. This Agreement shall take effect upon the later of (i) the full execution and delivery of this Agreement by the Parties and (ii) the date the Enacting Ordinances are effective and operative ("Effective Date").
- 2.2 <u>Term.</u> The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for fifteen (15) years thereafter unless extended or earlier terminated as provided herein ("**Term**"); provided, however, that (i) the Term shall be

extended for each day of a Litigation Extension and (ii) Developer shall have the right to terminate this Agreement with respect to a Development Parcel upon completion of the Building within that Development Parcel and the Associated Community Benefits for that Building, as set forth in Section 7.1. The term of any conditional use permit or planned unit development shall be for the longer of the Term (as it relates to the applicable parcel) or the term otherwise allowed under the conditional use or planned unit development approval, as applicable. The term of the Tentative Map and any Subdivision Map shall be for the longer of the Term (as it relates to the applicable parcel) or the term otherwise allowed under the Subdivision Map Act.

3. GENERAL RIGHTS AND OBLIGATIONS

- 3.1 <u>Development of the Project</u>. Developer shall have the vested right to develop the Project in accordance with and subject to the provisions of this Agreement, and the City shall consider and process all Later Approvals for development of the Project in accordance with and subject to the provisions of this Agreement. The Parties acknowledge that Developer (i) has obtained all Approvals from the City required to Commence Construction of the Project, other than any required Later Approvals, and (ii) may proceed in accordance with this Agreement with the construction and, upon completion, use and occupancy of the Project as a matter of right, subject to the attainment of any required Later Approvals and any Non-City Approvals.
- 3.2 <u>Workforce</u>. Developer shall require project sponsors, contractors, consultants, subcontractors and subconsultants, as applicable, to undertake workforce development activities in accordance with the Workforce Agreement attached as <u>Exhibit I</u>.

4. PUBLIC BENEFITS; DEVELOPER OBLIGATIONS AND CONDITIONS TO DEVELOPER'S PERFORMANCE

Regulations. The Parties acknowledge and agree that the development of the Project in accordance with this Agreement provides a number of public benefits to the City beyond those achievable through existing Laws, including, but not limited to, those set forth in this Article 4 (the "Community Benefits"). The City acknowledges and agrees that a number of the Community Benefits would not be otherwise achievable without the express agreement of Developer under this Agreement. Developer acknowledges and agrees that, as a result of the benefits to Developer under this Agreement, Developer has received good and valuable consideration for its provision of the Community Benefits, and the City would not be willing to enter into this Agreement without

the Community Benefits. Payment or delivery of each of the Community Benefits is tied to a specific Building or the number of constructed residential units as described in the Community Benefits Linkages and Impact Fees Schedule attached as <u>Schedule 1</u> to this Agreement or as described elsewhere in this Agreement (each, an "Associated Community Benefit"). Upon Developer's Commencement of Construction of a Building, the Associated Community Benefits tied to that Building shall survive the expiration or termination of this Agreement to the date of completion of the Associated Community Benefit. Time is of the essence with respect to the completion of the Associated Community Benefits.

- 4.1.1 <u>Community Benefits</u>. Developer shall provide the following Community Benefits (collectively, the "**Community Benefits Program**") at the times specified in the Community Benefits Linkages and Impact Fees Schedule:
- (a) the Publicly Accessible Private Improvements, as further described in Exhibit C, Exhibit C-1, Exhibit C-2 and Schedule 1;
- (b) the Streetscape Improvements, as further described in, Exhibit C, Exhibit C-1 and Schedule 1;
- (c) the Housing Program benefits, as further described in Exhibit D and Schedule 1;
 - (d) the AWSS Community Benefit Fee as further described in
- (e) the Workforce Agreement benefits, as further described in Exhibit I;

Schedule 2;

- (f) the Transportation Demand Management benefits, as further described in Exhibit J; and
- (g) the Child Care Program benefits, as further described in Exhibit L.
- 4.2 <u>Conditions to Performance of Community Benefits</u>. Developer's obligation to perform each Associated Community Benefit tied to a specific Building is expressly conditioned upon each and all of the following conditions precedent:
- (a) All Approvals for the applicable Building to which the Associated Community Benefit is tied shall have been Finally Granted;
 - (b) Developer shall have obtained all Later Approvals necessary

to Commence Construction of the applicable Building to which the Associated Community Benefit is tied, and the same shall have been Finally Granted, except to the extent that such Later Approvals have not been obtained or Finally Granted due to the failure of Developer to timely initiate and then diligently and in good faith pursue such Later Approvals. Whenever this Agreement requires completion of an Associated Community Benefit at or before the completion of or receipt of first certificate of occupancy for a Building, the City may withhold a certificate of occupancy for that Building until the required Associated Community Benefit is completed except as otherwise expressly set forth in Exhibit C, Exhibit D, Exhibit L, Schedule 1 or elsewhere in this Agreement or any Approvals; and

- (c) Developer shall have Commenced Construction of the Building to which the Associated Community Benefit applies.
- No Additional CEQA Review Required; Reliance on FEIR for Future 4.3 Discretionary Approvals. The Parties acknowledge that the FEIR prepared for the Project complies with CEQA. The Parties further acknowledge that (a) the FEIR contains a thorough analysis of the Project and possible alternatives, (b) the Mitigation Measures have been adopted to eliminate or reduce to an acceptable level certain adverse environmental impacts of the Project, and (c) the Board of Supervisors adopted CEQA Findings, including a statement of overriding considerations in connection with the Approvals, pursuant to CEQA Guidelines Section 15093, for those significant impacts that could not be mitigated to a less than significant level. Accordingly, the City does not intend to conduct any further environmental review or mitigation under CEQA for any aspect of the Project vested under this Agreement. The City shall rely on the FEIR, to the greatest extent possible in accordance with applicable Laws, in all future discretionary actions related to the Project; provided, however, that nothing shall prevent or limit the discretion of the City to conduct additional environmental review in connection with any Later Approvals to the extent that such additional environmental review is required by applicable Laws, including CEQA.

4.3.1 <u>Compliance with CEQA Mitigation Measures; AB900 Compliance.</u> Developer shall comply with all Mitigation Measures imposed as applicable to the Project except for any Mitigation Measures that are expressly identified as the responsibility of a different party or entity. Without limiting the foregoing, Developer shall be responsible for the completion of all Mitigation Measures identified as the responsibility of the "owner" or the "project sponsor". The

Parties expressly acknowledge that the FEIR and the associated MMRP are intended to be used in connection with each of the Later Approvals to the extent appropriate and permitted under applicable Law. Nothing in this Agreement shall limit the ability of the City to impose conditions on any new, discretionary permit resulting from Material Changes as such conditions are determined by the City to be necessary to mitigate adverse environmental impacts identified through the CEQA process and associated with the Material Changes or otherwise to address significant environmental impacts as defined by CEQA created by an approval or permit; provided, however, any such conditions must be in accordance with applicable Law. In addition to complying with all Mitigation Measures, Developer shall cause the Notice of Special Restrictions attached hereto as Exhibit N to be recorded in the Official Records at the same, or substantially the same, time as Developer records any other notices of special restrictions with respect to the Project and in any event prior to the issuance of a permit (including site or building permit) for grading related to the construction of any phase of of the Project, and Developer shall comply with the requirements of such Notice of Special Restrictions as more specifically set forth therein.

4.4 <u>Nondiscrimination</u>. In the performance of this Agreement, Developer agrees not to discriminate against any employee, City employee working with Developer's contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

4.5 City Cost Recovery.

- 4.5.1 Developer shall timely pay to the City all Impact Fees and Exactions applicable to the Project or the Project Site as set forth in <u>Section 5.7</u>.
- 4.5.2 Developer shall timely pay to the City all Processing Fees applicable to the processing or review of applications for the Approvals and Later Approvals.
- 4.5.3 Developer shall pay to the City all City Costs incurred in connection with the drafting and negotiation of this Agreement, defending the Approvals and Later Approvals,

and in processing and issuing any Later Approvals or administering this Agreement (except for the costs that are covered by Processing Fees), within sixty (60) days following receipt of a written invoice complying with <u>Section 4.5.4</u> from the City.

- 4.5.4 OEWD shall provide Developer on a quarterly basis (or such alternative period as agreed to by the Parties) a reasonably detailed statement showing costs incurred by OEWD, the City Agencies and the City Attorney's Office, including the hourly rates for each City staff member at that time, the total number of hours spent by each City staff member during the invoice period, any additional costs incurred by the City Agencies and a brief nonconfidential description of the work completed (provided, for the City Attorney's Office, the billing statement will be reviewed and approved by OEWD but the cover invoice forwarded to Developer will not include a description of the work). OEWD will use reasonable efforts to provide an accounting of time and costs from the City Attorney's Office and each City Agency in each invoice; provided, however, if OEWD is unable to provide an accounting from one or more of such parties, then OEWD may send an invoice to Developer that does not include the charges of such party or parties without losing any right to include such charges in a future or supplemental invoice but subject to the eighteen (18) month deadline set forth below in this Section 4.5.4. Developer's obligation to pay the City Costs shall survive the termination of this Agreement. Developer shall have no obligation to reimburse the City for any City Cost that is not invoiced to Developer within eighteen (18) months from the date the City Cost was incurred. The City will maintain records, in reasonable detail, with respect to any City Costs and upon written request of Developer, and to the extent not confidential, shall make such records available for inspection by Developer.
- 4.5.5 If Developer in good faith disputes any portion of an invoice, then within sixty (60) days following receipt of the invoice Developer shall provide notice of the amount disputed and the reason for the dispute, and the Parties shall use good faith efforts to reconcile the dispute as soon as practicable. Developer shall have no right to withhold the disputed amount. If any dispute is not resolved within ninety (90) days following Developer's notice to the City of the dispute, Developer may pursue all remedies at law or in equity to recover the disputed amount.
- 4.6 <u>Prevailing Wages</u>. Developer agrees that all persons performing labor in the construction of the Streetscape Improvements and the Publicly Accessible Private Improvements shall be paid not less than the highest prevailing rate of wages for the labor so performed consistent

with the requirements of Section 6.22(e) of the Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California, and Developer shall include this requirement in any construction contract entered into by Developer for any such improvements. Upon request, Developer and its contractors will provide to City any workforce payroll records as needed to confirm compliance with this Section. Without limiting the foregoing, Developer shall comply with all applicable state law requirements relating to the payment of prevailing wages, and to the extent there is any difference between the requirements of such state law requirements and Section 6.22(e) of the Administrative Code, the stricter requirements shall apply to the construction of the Streetscape Improvements and the Publicly Accessible Private Improvements.

4.7 Indemnification of City. Developer shall indemnify, reimburse, and hold harmless the City and its officers, agents and employees (the "City Parties") from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims ("Losses") arising or resulting directly or indirectly from (i) any third party claim arising from a Default by Developer under this Agreement, (ii) Developer's failure to comply with any Approval, Later Approval or Non-City Approval, (iii) the failure of any improvements constructed pursuant to the Approvals or Later Approvals to comply with any Federal or State Laws, the Existing Standards or any permitted New City Laws, (iv) any accident, bodily injury, death, personal injury, or loss of or damage to property occurring on the Project Site (or the public right of way adjacent to the Project Site) in connection with the construction by Developer or its agents or contractors of any improvements pursuant to the Approvals, Later Approvals or this Agreement, (v) a Third-Party Challenge instituted against the City or any of the City Parties, (vi) any dispute between Developer, its contractors or subcontractors relating to the construction of any part of the Project, and (vii) any dispute between Developer and any Transferee or any subsequent owner of any of the Project Site relating to any assignment of this Agreement or the obligations that run with the land, or any dispute between Developer and any Transferee or other person relating to which party is responsible for performing certain obligations under this Agreement, each regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed on the City or any of the City Parties, except to the extent that any of the foregoing indemnification obligations is void or otherwise unenforceable under applicable Law, and except to the extent such Loss is the result of the negligence or willful misconduct of the City Parties. The foregoing

indemnity shall include, without limitation, reasonable attorneys' fees and costs and the City's reasonable cost of investigating any claims against the City or the City Parties. All indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement, to the extent such indemnification obligation arose from an event occurring before the expiration or termination of this Agreement. To the extent the indemnifications relate to Developer's obligations that survive the expiration or termination of this Agreement, the indemnifications shall survive for the term of the applicable obligation plus four (4) years.

5. VESTING AND CITY OBLIGATIONS

- 5.1 <u>Vested Rights.</u> By the Approvals, the City has made a policy decision that the Project, as described in and as may be modified in accordance with the Approvals, is in the best interests of the City and promotes the public health, safety and welfare. Developer shall have the vested right to develop the Project as set forth in this Agreement and the Project SUD, including without limitation with the following vested elements: the locations and numbers of Buildings proposed, the land uses, height and bulk limits, including the maximum density, intensity and gross square footages, the permitted uses, the provisions for open space, vehicular access, and parking (collectively, the "Vested Elements"; provided the Existing Uses on the Project Site shall also be included as Vested Elements). The Vested Elements are subject to and shall be governed by Applicable Laws. The expiration of any building permit or Approval shall not limit the Vested Elements, and Developer shall have the right to seek and obtain subsequent building permits or approvals, including Later Approvals, at any time during the Term, any of which shall be governed by Applicable Laws. Each Later Approval, once granted, shall be deemed an Approval for purposes of this Section 5.1.
- 5.2 <u>Existing Standards</u>. The City shall process, consider, and review all Later Approvals in accordance with (i) the Approvals, (ii) the San Francisco General Plan, the Municipal Code (including the Subdivision Code), and all other applicable City policies, rules and regulations, as each of the foregoing is in effect on the Effective Date ("**Existing Standards**"), as the same may be amended or updated in accordance with <u>Section 5.4</u> or with permitted New City Laws as set forth in <u>Section 5.6</u>, (iii) California and Federal law, as applicable, and (iv) this Agreement (collectively, "**Applicable Laws**"). The Enacting Ordinances contain express waivers and amendments to Chapter 56 consistent with this Development Agreement.

- 5.2.1 <u>No Implied Waiver of Codes</u>. Nothing in this Agreement constitutes an implied waiver or exemption of the Subdivision Code or the Public Works Code. For any waiver or exemption, Developer shall comply with the City's existing processes to seek any necessary waivers or exemptions. The City's failure to enforce any part of the Subdivision Code or Public Works Code shall not be deemed a waiver of its right to do so thereafter, but it shall not override the Approvals standards set forth in <u>Sections 5.2</u>, <u>5.3</u>, and <u>5.4</u>.
- 5.2.2 <u>General Plan Consistency Findings</u>. The Parties acknowledge the Project is consistent with the City's General Plan and the General Plan Consistency Findings are intended to support all Later Approvals that are consistent with the Approvals. To the maximum extent practicable, the Planning Department shall rely exclusively on the General Plan Consistency Findings when processing and reviewing all Later Approvals, including proposed Subdivision Maps and any other actions related to the Project requiring General Plan determinations; provided Developer acknowledges that the General Plan Consistency Findings do not limit the City's discretion in connection with any Later Approval that (a) requires new or revised General Plan consistency findings because of Material Changes or amendments to any of the Approvals or (b) is analyzed in the context of a future General Plan amendment that is a non-conflicting New City Law.
- S.3 Criteria for Later Approvals. Developer shall be responsible for obtaining all required Later Approvals before the start of any construction and timely providing project schedules to OEWD as described in Exhibit K. The City, in granting the Approvals and vesting the Project through this Agreement, is limiting its future discretion with respect to Later Approvals to the extent that they are consistent with the Approvals and this Agreement. The City shall not disapprove applications for Later Approvals based upon an item or element that is consistent with the Approvals, and shall consider all such applications in accordance with its customary practices (subject to the requirements of this Agreement). Subject to the requirements of this Agreement, the City shall not impose any new condition for a Later Approval that conflicts with the Approvals except when such condition is necessary to bring the Later Approval into compliance with Applicable Laws. For any part of a Later Approval request that has not been previously reviewed or considered by the applicable City Agency (such as additional details or plans), the City Agency shall exercise its discretion consistent with the Municipal Code and the Approvals and otherwise in accordance with the City's customary practice (but subject to the requirements of this

Agreement). Nothing in this Agreement shall preclude the City from applying New City Laws for any development not within the definition of the "Project" under this Agreement.

5.4 Strict Building Code Compliance.

5.4.1 <u>City-Wide Building Codes</u>. Notwithstanding anything in this Agreement to the contrary, except as otherwise provided in <u>Section 5.4.2</u>, when considering any application for a Later Approval, the City or the applicable City Agency shall apply the then-applicable provisions, requirements, rules, or regulations (including any applicable exceptions) that are contained in the San Francisco Building Codes, including the Public Works Code (which includes the Stormwater Management Ordinance), Subdivision Code, Mechanical Code, Electrical Code, Housing Code, Plumbing Code, Fire Code, or other uniform construction codes applicable on a City-Wide basis.

5.4.2 Sidewalks, Streets and Infrastructure. By entering into this Agreement, the City's Board of Supervisors and the City Agencies have reviewed and approved (i) the Streetscape Improvements and the Publicly Accessible Private Improvements, including sidewalk, pathway, street widths, and general right of way configurations with respect to location and relationship of major elements, curbs, bicycle facilities, parking, loading areas, and landscaping, including the general location and number of new Street Trees (as defined in San Francisco Public Works Code Section 802) and the removal of certain existing Street Trees and Significant Trees (as defined in San Francisco Public Works Code Section 810A), as set forth in the Approvals described in Exhibit E (including the plans incorporated in such Approvals) and the Project SUD, as consistent with the City's central policy objective to ensure street safety for all users while maintaining adequate clearances, including for fire apparatus vehicles. No City Agency with jurisdiction may object to a Later Approval for any of the Buildings, Streetscape Improvements, or Publicly Accessible Private Improvements due to the proposed width of a sidewalk, pathway, or street, unless such objection is based upon the applicable City Agency's reserved authority to review engineering design for compliance with Applicable Laws or other authority under State law. In the case of such objection, then within five (5) business days of the objection being raised (whether raised formally or informally), representatives from Developer, PW, the Planning Department and the objecting City Agency shall meet and confer in good faith to attempt to find a mutually satisfactory resolution to the objection. If the matter is not resolved within fourteen (14) days following the objection, then the Planning Director shall notify the Clerk

of the Board of Supervisors and the members of the Board of Supervisors' Land Use and Transportation Committee. The City Agencies and Developer agree to act in good faith to resolve the matter quickly and in a manner that does not conflict with the City policy, Approvals, this Agreement, or applicable Law. For purposes of this Section, "engineering design" shall mean professional engineering work as set forth in the Professional Engineers Act, California Business and Professions Code Sections 6700 *et seq*.

- 5.5 <u>Denial of a Later Approval</u>. If the City denies any application for a Later Approval that implements a Building, such denial must be consistent with Applicable Laws, and the City must specify in writing the reasons for such denial and shall suggest modifications required for approval of the application. Any such specified modifications shall be consistent with Applicable Laws and City staff shall approve the application if it is subsequently resubmitted for City review and corrects or mitigates, to the City's reasonable satisfaction, the stated reasons for the earlier denial in a manner that is consistent and compliant with Applicable Laws and does not include new or additional information or materials that give the City a reason to object to the application under the standards set forth in this Agreement.
- 5.6 New City Laws. All future changes to Existing Standards and any other Laws, plans or policies adopted by the City or adopted by voter initiative after the Effective Date ("New City Laws") shall apply to the Project and the Project Site except to the extent they conflict with this Agreement or the terms and conditions of the Approvals. In the event of such a conflict, the terms of this Agreement and the Approvals shall prevail, subject to the terms of Section 5.8.
- 5.6.1 New City Laws shall be deemed to conflict with this Agreement and the Approvals if they:
- (a) limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the square footage or number of proposed Buildings or change the location of proposed Buildings or change or reduce other improvements from that permitted under the Approvals;
- (b) limit or reduce the height or bulk of the Project, or any part thereof, or otherwise require any reduction in the height or bulk of individual Buildings or other improvements that are part of the Project under the Approvals;
- (c) limit, reduce or change the location of vehicular access, parking or loading for the Project from that permitted under the Approvals;

- (d) limit any land uses for the Project from that permitted under the Approvals or the Existing Uses;
 - (e) change or limit the Approvals or Existing Uses;
- (f) materially delay, limit or control the rate, timing, phasing, or sequencing of the Project, including the demolition of existing buildings at the Project Site, except as expressly set forth in this Agreement;
- (g) require the issuance of permits or approvals for the Project by the City other than those required under the Existing Standards, except for (i) permits or approvals that are required on a City-Wide basis, relate to the construction of improvements, and do not prevent construction of the applicable aspects of the Project that would be subject to such permits or approvals as and when intended by this Agreement or (ii) permits that replace (but do not expand the scope or purpose of) existing permits;
- (h) limit or control the availability of public utilities, services or facilities, or any privileges or rights to public utilities, services, or facilities for the Project;
- (i) materially and adversely limit the processing or procuring of applications and approvals of Later Approvals that are consistent with Approvals;
- (j) increase the percentage of required affordable or BMR Units, change the AMI percentage levels for the affordable housing pricing or income eligibility, change the requirements regarding unit size or unit type, control or limit homeowner association or common area dues or amenity charges, or place restrictions on the right to alienate, transfer or otherwise dispose of property, or increase the amount or change the configuration of required open space for the Project;
- (k) designate any existing tree on the Project Site as a Landmark Tree (as defined in San Francisco Public Works Code Section 802) if such designation would interfere with the construction of the Project; or
- (l) impose new or modified Impact Fees and Exactions on the Project that are expressly prohibited in <u>Section 5.7.2</u>.
- 5.6.2 Developer shall have the right, from time to time and at any time, to file Subdivision Map applications (including phased final map applications and development-specific condominium map or plan applications) with respect to some or all of the Project Site and subdivide (including reconfiguring or merging parcels, subject to Developer's obligations under

the Housing Program and the Child Care Program) the Project Site as may be necessary or desirable in order to develop a particular part of the Project as shown generally in Exhibit B-1. The specific boundaries of Development Parcels shall be set by Developer and approved by the City during the subdivision process. Nothing in this Agreement shall authorize Developer to subdivide or use any of the Project Site for purposes of sale, lease or financing in any manner that conflicts with the Subdivision Map Act or with the Subdivision Code. Nothing in this Agreement shall prevent the City from enacting or adopting changes in the methods and procedures for processing subdivision and parcel maps so long as such changes do not conflict with the provisions of this Agreement or with the Approvals. Prior to recording any final Subdivision Map with respect to the Project, Developer shall cause any then-existing Mortgagee to provide its authorized signature on such final Subdivision Map (or any other written approval permitted under Applicable Law), which shall include consent and acknowledgement of the BMR Units requirements with specified AMI levels for the life of the Project, in accordance with this Agreement.

5.7 Fees and Exactions.

5.7.1 <u>Generally.</u> The Project shall only be subject to the Processing Fees and Impact Fees and Exactions as set forth in this <u>Section 5.7</u>, and the City shall not impose any new Processing Fees or Impact Fees and Exactions on the development of the Project or impose new conditions or requirements for the right to develop the Project (including required contributions of land, public amenities or services) except as set forth in this Agreement. The Parties acknowledge that the provisions contained in this <u>Section 5.7</u> are intended to implement the intent of the Parties that Developer have the right to develop the Project pursuant to specified and known criteria and rules, and that the City receive the benefits which will be conferred as a result of such development without abridging the right of the City to act in accordance with its powers, duties and obligations, except as specifically provided in this Agreement.

5.7.2 <u>Impact Fees and Exactions</u>. During the Term, as extended by any Litigation Extensions, no Impact Fees and Exactions shall apply to the Project or components thereof except for (i) those Impact Fees and Exactions specifically set forth on <u>Schedule 1</u>, <u>Schedule 2</u>, <u>Exhibit D</u> and <u>Exhibit L</u>, (ii) the SFPUC Capacity Charges, (iii) New City Laws that do not conflict with this Agreement as set forth in <u>Section 5.6</u>, and (iv) as expressly set forth below in this Section. The Impact Fees and Exactions and SFPUC Capacity Charges shall be calculated and determined at the time payable in accordance with the City requirements on that date, and the

parties acknowledge and agree that the Impact Fees and Exactions shall be subject to the Planning Department's final confirmation once the applicable final land uses and Gross Floor Area are determined. Accordingly, Developer shall be subject to any increase or decrease in the fee amount payable and any changes in methodology of calculation (e.g., use of a different index to calculate annual increases) but will not be subject to any new types of Impact Fees and Exactions or modification to existing Impact Fees and Exactions after the Effective Date except as described in Section 5.6 and this Section. Developer agrees that any new or reduced impact fee or exaction enacted after the Effective Date that (i) is of City-Wide applicability (e.g., applies to all retail development in the City), (ii) does not pertain to affordable housing, open space or community improvements (for which this Agreement reflects the required Developer contributions), and (iii) would otherwise apply to the Project, shall apply to the Project or the applicable portion thereof.

5.7.3 <u>Processing Fees</u>. Developer shall pay all Processing Fees in effect, on a City-Wide basis, at the time that Developer applies for a Later Approval for which such Processing Fee is payable in connection with the applicable part of the Project.

5.8 Changes in Federal or State Laws.

5.8.1 City's Exceptions. Notwithstanding any provision in this Agreement to the contrary, each City Agency having jurisdiction over the Project shall exercise its discretion under this Agreement in a manner that is consistent with the public health and safety and shall at all times retain its respective authority to take any action that is necessary to protect the physical health and safety of the public (the "Public Health and Safety Exception") or reasonably calculated and narrowly drawn to comply with applicable changes in Federal or State Law affecting the physical environment (the "Federal or State Law Exception"), including the authority to condition or deny a Later Approval or to adopt a new Law applicable to the Project so long as such condition or denial or new regulation (i)(a) is limited solely to addressing a specific and identifiable issue in each case required to protect the physical health and safety of the public, or (b) is required to comply with a Federal or State Law and in each case not for independent discretionary policy reasons that are inconsistent with the Approvals or this Agreement and (ii) is applicable on a City-Wide basis to the same or similarly situated uses and applied in an equitable and non-discriminatory manner. Developer retains the right to dispute any City reliance on the Public Health and Safety Exception or the Federal or State Law Exception. If the Parties are not

able to reach agreement on such dispute following a reasonable meet and confer period, then Developer or City may seek judicial relief with respect to the matter.

- 5.8.2 <u>Changes in Federal or State Laws</u>. If Federal or State Laws issued, enacted, promulgated, adopted, passed, approved, made, implemented, amended, or interpreted after the Effective Date have gone into effect and (i) preclude or prevent compliance with one or more provisions of the Approvals or this Agreement, or (ii) materially and adversely affect Developer's or the City's rights, benefits or obligations under this Agreement, then such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal or State Law. In such event, this Agreement shall be modified only to the extent necessary or required to comply with such Law, subject to the provisions of Section 5.8.4, as applicable.
- 5.8.3 <u>Changes to Development Agreement Statute</u>. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute. No amendment of or addition to the Development Agreement Statute that would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights of Developer hereunder, or increase the obligations or diminish the benefits to the City hereunder shall be applicable to this Agreement unless such amendment or addition is specifically required by Law or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected.
- 5.8.4 Effect on Agreement. If any of the modifications, amendments or additions described in this Section 5.8 would materially and adversely affect the construction, development, use, operation, or occupancy of the Project as currently contemplated by the Approvals, or any material portion thereof, such that the Project, or the applicable portion thereof, becomes economically infeasible (a "Law Adverse to Developer"), then Developer shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. If any of the modifications, amendments or additions described in Section 5.8 would materially and adversely affect or limit the Community Benefits (a "Law Adverse to the City"), then the City shall notify Developer and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. Upon receipt of a notice under this Section 5.8.4, the Parties agree to meet and confer in good faith for a period of not less than ninety (90) days in an attempt to resolve the issue. If the Parties cannot resolve the issue in ninety (90) days or such longer period as may be agreed to by the Parties, then

the Parties shall mutually select a mediator at JAMS in San Francisco for nonbinding mediation for a period of not less than thirty (30) days. If the Parties remain unable to resolve the issue following such mediation, then either party shall have the right to seek available remedies at law or in equity to maintain the benefit of the bargain or alternatively to seek termination of this Agreement if the benefit of the bargain cannot be maintained in light of the Law Adverse to Developer or Law Adverse to the City.

- 5.9 No Action to Impede Approvals. Except and only as required under Section 5.8, the City shall take no action under this Agreement nor impose any condition on the Project that would conflict with this Agreement or the Approvals. An action taken or condition imposed shall be deemed to be in conflict with this Agreement or the Approvals if such actions or conditions result in the occurrence of one or more of the circumstances identified in Section 5.6.1.
- 5.10 Estoppel Certificates. Developer may, at any time, and from time to time, deliver notice to the Planning Director requesting that the Planning Director certify to Developer, a potential Transferee, or a potential lender to Developer, in writing that to the best of the Planning Director's knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified, and if so amended or modified, identifying the amendments or modifications and stating their date and providing a copy or referring to the recording information; (iii) Developer is not in Default in the performance of its obligations under this Agreement, or if in Default, to describe therein the nature and amount of any such Defaults; and (iv) the findings of the City with respect to the most recent annual review performed pursuant to Section 8. The Planning Director, acting on behalf of the City, shall execute and return such certificate within twenty (20) days following receipt of the request.
- 5.11 Existing, Continuing Uses and Interim Uses. The Parties acknowledge that the Existing Uses are lawfully authorized uses and may continue as such uses may be modified by the Project, provided that any modification thereof not a component of or contemplated by the Project is subject to Planning Code Section 178 and the applicable provisions of Section 5. Developer may install interim or temporary uses on the Project Site, which uses must be consistent with those uses allowed under the Project Site's zoning, the Approvals, the Project SUD, or any planned unit development authorization granted under the Project SUD, as applicable.
- 5.12 <u>Taxes</u>. Nothing in this Agreement limits the City's ability to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment, provided

(i) the City shall not institute, on its own initiative, proceedings for any new or increased special tax or special assessment for a land-secured financing district (including the special taxes under the Mello-Roos Community Facilities Act of 1982 (Government Code Section 53311 *et seq.*) but not including business improvement districts or community benefit districts formed by a vote of the affected property owners) that includes the Project Site unless the new district is City-Wide or Developer gives its prior written consent to or requests such proceedings, and (ii) no such tax or assessment shall be targeted or directed at the Project, including, without limitation, any tax or assessment targeted solely at all or any part of the Project Site. Nothing in the foregoing prevents the City from imposing any tax or assessment against the Project Site, or any portion thereof, that is enacted in accordance with Law and applies to all similarly-situated property on a City-Wide basis.

6. NO DEVELOPMENT OBLIGATION

There is no requirement under this Agreement that Developer initiate or complete development of the Project, or any portion thereof. There is also no requirement that development be initiated or completed within any period of time or in any particular order, subject to the requirement to complete Associated Community Benefits for each Building (or for any market rate residential unit in excess of three hundred eighty-six (386), as applicable) commenced by Developer as set forth in Section 4.1. The development of the Project is subject to numerous factors that are not within the control of Developer or the City, such as availability of financing, interest rates, access to capital, and similar factors. In Pardee Construction Co. v. City of Camarillo, 37 Cal.3d 465 (1984), the California Supreme Court ruled that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development and controlling the parties' agreement. It is the intent of the Parties to avoid such a result by acknowledging and providing for the timing of development of the Project in the manner set forth herein. Accordingly, the Parties agree that except as expressly set forth in this Agreement and any express construction dates set forth in a Later Approval, (i) Developer shall have the right to develop the Project in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment, (ii) such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement, and (iii) without such a right, Developer's development of the Project would be subject to the

uncertainties sought to be avoided by the Development Agreement Statute, Chapter 56 and this Agreement.

7. MUTUAL OBLIGATIONS

- 7.1 Notice of Completion, Revocation or Termination. Within thirty (30) days after any early revocation or termination of this Agreement (as to all or any part of the Project Site), the Parties agree to execute a written statement acknowledging such revocation or termination, signed by the appropriate agents of the City and Developer, and record such instrument in the Official Records. In addition, within thirty (30) days after Developer's request, when a Building and all of the Associated Community Benefits tied to that Building have been completed, the City and Developer shall execute and record a notice of completion in the form attached as Exhibit G for the applicable Building property.
- 7.2 <u>General Cooperation; Agreement to Cooperate</u>. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with the Approvals, any Later Approvals and this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of this Agreement, the Approvals and any Later Approvals are implemented. Except for ordinary administrative costs of the City, nothing in this Agreement obligates the City to spend any sums of money or incur any costs other than City Costs or costs that Developer reimburses through the payment of Processing Fees. The Parties agree that the Planning Department will act as the City's lead agency to facilitate coordinated City review of applications for the Project.
- 7.3 Third-Party Challenge. Developer shall assist and cooperate with the City at Developer's own expense in connection with any Third-Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney's sole discretion. Developer shall reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney's Office (at the non-discounted rates then charged by the City Attorney's Office) and any consultants; provided, however, Developer shall have the right to monthly invoices for all such costs.
- 7.3.1 To the extent that any such action or proceeding challenges or a judgment is entered limiting Developer's right to proceed with the Project or any material portion thereof under this Agreement (whether the Project commenced or not), including the City's actions

taken pursuant to CEQA, Developer may elect to terminate this Agreement. Upon any such termination (or, upon the entry of a judgment terminating this Agreement, if earlier), the City and Developer shall jointly seek to have the Third-Party Challenge dismissed and Developer shall have no obligation to reimburse City defense costs that are incurred after the dismissal (other than, in the case of a partial termination by Developer, any defense costs with respect to the remaining portions of the Project). Notwithstanding the foregoing, if Developer conveys or transfers some but not all of the Project, or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore, there is more than one party that assumes obligations of "Developer" under this Agreement, then only the Party holding the interest in such portion of the Project shall have the right to terminate this Agreement as to such portion of the Project (and only as to such portion), and no termination of this Agreement by such Party as to such Party's portion of the Project shall effect a termination of this Agreement as to any other portion of the Project.

- 7.3.2 The filing of any Third Party Challenge shall not delay or stop the development, processing or construction of the Project or the issuance of Later Approvals unless the third party obtains a court order preventing the activity.
- 7.4 <u>Good Faith and Fair Dealing</u>. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement and implementing the Approvals and any Later Approvals.
- 7.5 Other Necessary Acts. Each Party shall use good faith efforts to take such further actions as may be reasonably necessary to carry out this Agreement, the Approvals and any Later Approvals, in accordance with the terms of this Agreement (and subject to all applicable Laws) in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

8. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

8.1 <u>Annual Review.</u> Pursuant to Section 65865.1 of the Development Agreement Statute and Section 56.17 of the Administrative Code (as of the Effective Date), at the beginning of the second week of each January following final adoption of this Agreement and for so long as the Agreement is in effect (the "**Annual Review Date**"), the Planning Director shall commence a review to ascertain whether Developer has, in good faith, complied with the Agreement. The failure to commence such review in January in any calendar year shall not waive the Planning Director's right to do so later in the calendar year. The Planning Director may elect

to forego an annual review if no significant construction work occurred on the Project Site during that year, or if such review is otherwise not deemed necessary.

- 8.2 <u>Review Procedure</u>. In conducting the required initial and annual reviews of Developer's compliance with this Agreement, the Planning Director shall follow the process set forth in this Section 8.2.
- 8.2.1 Required Information from Developer. Within sixty (60) days following request by the Planning Director, Developer shall provide a letter to the Planning Director explaining, with appropriate backup documentation, Developer's compliance with this Agreement for the preceding calendar year, including, but not limited to, compliance with the requirements regarding Community Benefits. The burden of proof, by substantial evidence, of compliance is upon Developer. The Planning Director shall post a copy of Developer's submittals on the Planning Department's website.
- 8.2.2 <u>City Report</u>. Within sixty (60) days after Developer submits such letter, the Planning Director shall review the information submitted by Developer and all other available evidence regarding Developer's compliance with this Agreement, and shall consult with applicable City Agencies as appropriate. All such available evidence, including final staff reports, shall, upon receipt by the City, be made available as soon as possible to Developer. The Planning Director shall notify Developer in writing whether Developer has complied with the terms of this Agreement (the "City Report"), and post the City Report on the Planning Department's website. If the Planning Director finds Developer not in compliance with this Agreement, then the City may pursue available rights and remedies in accordance with this Agreement and Chapter 56. The City's failure to initiate or to timely complete the annual review shall not be a Default and shall not be deemed to be a waiver of the right to do so at a later date. All costs incurred by the City under this Section shall be included in the City Costs.
- 8.2.3 Effect on Transferees. If a Developer has effected a Transfer so that its interest in the Project Site is divided among multiple Developers at the time of an annual review, then that annual review shall be conducted separately with respect to each Developer, each Developer shall submit the materials required by this Article 8 with respect to the portion of the Project Site owned by such Developer, and the City review process will proceed as one for the whole Project. Notwithstanding the foregoing, the Planning Commission and Board of Supervisors shall make its determinations and take its action separately with respect to each Developer pursuant

to Chapter 56. If there are multiple Developers and the Board of Supervisors terminates, modifies or takes such other actions as may be specified in Chapter 56 and this Agreement in connection with a determination that a Developer has not complied with the terms and conditions of this Agreement, such action by the Planning Director, Planning Commission, or Board of Supervisors shall be effective only as to the Party to whom the determination is made and the portions of the Project Site in which such Party has an interest. In other words, even when the review process is bundled for multiple Developers, any action determination of noncompliance or default will be made only against the defaulting Party and not against any of the other Developers.

8.2.4 <u>Default</u>. The rights and powers of the City under this <u>Section 8.2</u> are in addition to, and shall not limit, the rights of the City to terminate or take other action under this Agreement on account of a Default by Developer.

9. ENFORCEMENT OF AGREEMENT; DEFAULT; REMEDIES

- 9.1 <u>Enforcement</u>. As of the date of this Agreement, the only Parties to this Agreement are the City and Developer. Except as expressly set forth in this Agreement (for successors, Transferees and Mortgagees), this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.
- Meet and Confer Process. Before sending a notice of default in accordance with Section 9.3, the Party which may assert that the other Party has failed to perform or fulfill its obligations under this Agreement shall first attempt to meet and confer with the other Party to discuss the alleged failure and shall permit such Party a reasonable period, but not less than ten (10) days, to respond to or cure such alleged failure; provided, however, the meet and confer process shall not be required (i) for any failure to pay amounts due and owing under this Agreement, or (ii) if a delay in sending a notice pursuant to Section 9.3 would impair, prejudice or otherwise adversely affect a Party or its rights under this Agreement. The Party asserting such failure shall request that such meeting and conference occur within three (3) business days following the request and if, despite the good faith efforts of the requesting Party, such meeting has not occurred within seven (7) business days of such request, then such Party shall be deemed to have satisfied the requirements of this Section and may proceed in accordance with the issuance of a notice of default under Section 9.3.
- 9.3 <u>Default</u>. The following shall constitute a "**Default**" under this Agreement: (i) the failure to make any payment within sixty (60) days following notice that such payment was

not made when due and demand for compliance; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant of this Agreement and the continuation of such failure for a period of sixty (60) days following notice and demand for compliance. Notwithstanding the foregoing, if a failure can be cured but the cure cannot reasonably be completed within sixty (60) days, then it shall not be considered a Default if a cure is commenced within said 60-day period and diligently prosecuted to completion thereafter. Any notice of default given by a Party shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured (if at all). Notwithstanding any other provision in this Agreement to the contrary, if Developer conveys or transfers some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore there is more than one Party that assumes obligations of "Developer" under this Agreement, there shall be no cross-default between the separate Parties that assumed Developer obligations. Accordingly, a default by one "Developer" shall not be a Default by any other "Developer" that owns or controls a different portion of the Project Site.

9.4 Remedies.

- 9.4.1 <u>Specific Performance</u>. Subject to, and as limited by, the provisions of <u>Sections 9.4.3</u>, <u>9.4.4</u>, and <u>9.5</u>, in the event of a Default, the remedies available to a Party shall include specific performance of this Agreement in addition to any other remedy available at law or in equity.
- 9.4.2 <u>Termination</u>. Subject to the limitation set forth in <u>Section 9.4.4</u>, in the event of a Default, the non-defaulting Party may elect to terminate this Agreement by sending a notice of termination to the other Party, which notice of termination shall state the Default. Any such termination shall be effective upon the date set forth in the notice of termination, which shall in no event be earlier than sixty (60) days following delivery of the notice. Consistent with <u>Sections 9.3</u> and <u>12.3</u>, there are no cross-defaults under this Agreement, and therefore if there is more than one "Developer" (as it relates to different parts of the Project Site), then any termination of this Agreement for Default will be limited to the Developer that sent or received the termination notice.
- 9.4.3 <u>Limited Damages</u>. The Parties have determined that except as set forth in this <u>Section 9.4.3</u>, (i) monetary damages are generally inappropriate, (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by a Party as a

result of a Default hereunder, and (iii) equitable remedies and remedies at law, not including damages but including specific performance and termination, are particularly appropriate remedies for enforcement of this Agreement. Consequently, Developer agrees that the City shall not be liable to Developer for damages under this Agreement, and the City agrees that Developer shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) either Party shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for a Party's failure to pay sums to the other Party as and when due under this Agreement, (2) the City shall have the right to recover actual damages for Developer's failure to make any payment due under any indemnity in this Agreement, (3) to the extent a court of competent jurisdiction determines that specific performance is not an available remedy with respect to an unperformed Associated Community Benefit, the City shall have the right to monetary damages equal to the costs that the City incurs or will incur to complete the Associated Community Benefit as determined by the court, (4) either Party shall have the right to recover reasonable attorneys' fees and costs as set forth in Section 9.6, and (5) the City shall have the right to administrative penalties or liquidated damages if and only to the extent expressly stated in an Exhibit to this Agreement or in the applicable portion of the San Francisco Municipal Code incorporated into this Agreement. For purposes of the foregoing, "actual damages" means the actual amount of the sum due and owing under this Agreement, with interest as provided by Law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

9.4.4 <u>City Processing/Certificates of Occupancy</u>. The City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which payments due the City from Developer are past due; provided, however, if Developer has conveyed or transferred some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore, there is more than one party that assumes obligations of "Developer" under this Agreement, then the City shall continue to process requests and take other actions as to the other portions of the Project so long as the applicable Developer as to those portions is current on payments due the City. The City shall have the right to withhold a final certificate of occupancy for a Building until all of the

Associated Community Benefits tied to that Building have been completed. For a Building to be deemed completed, Developer shall have completed all of the streetscape and open space improvements described in <u>Exhibit C</u> and <u>Exhibit J</u>, or a Later Approval, for that Building; provided, if the City issues a final certificate of occupancy before such items are completed, then Developer shall promptly complete such items following issuance.

- 9.5 Time Limits; Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict or timely performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of any condition or failure of performance, including a Default, shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such failure. No express written waiver shall affect any other condition, action or inaction, or cover any other period of time, other than any condition, action or inaction and/or period of time specified in such express waiver. One or more written waivers under any provision of this Agreement shall not be deemed to be a waiver of any subsequent condition, action or inaction, and the performance of the same or any other term or provision contained in this Agreement. Nothing in this Agreement shall limit or waive any other right or remedy available to a Party to seek injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm.
- Attorneys' Fees. Should legal action be brought by either Party against the other for a Default under this Agreement or to enforce any provision herein, the prevailing Party in such action shall be entitled to recover its reasonable attorneys' fees and costs. For purposes of this Agreement, "reasonable attorneys' fees and costs" means the reasonable fees and expenses of counsel to the Party, which may include printing, duplicating and other expenses, air freight charges, hiring of experts and consultants, and fees billed for law clerks, paralegals, librarians, and others not admitted to the bar but performing services under the supervision of an attorney. The term "reasonable attorneys' fees and costs" shall also include, without limitation, all such reasonable fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Agreement, the reasonable fees of attorneys of City Attorney's Office shall be based on the fees regularly charged by private

attorneys with the equivalent number of years of experience in the subject matter area of the Law for which the City Attorney's Office's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

10. FINANCING; RIGHTS OF MORTGAGEES

- 10.1 <u>Developer's Right to Mortgage</u>. Nothing in this Agreement limits the right of Developer to mortgage or otherwise encumber all or any portion of the Project Site for the benefit of any Mortgagee as security for one or more loans. Developer represents that, as of the Effective Date, there are no Mortgages on the Project Site other than the Existing Mortgage. Prior to commencing construction under the First Construction Document for the Project, Developer shall cause the Existing Mortgage, if then still in effect, and any other then-existing Mortgage(s), to be subordinated to this Agreement.
- 10.2 Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement (except as set forth in this Section and Section 10.5), a Mortgagee, including any Mortgagee who obtains title to the Project Site or any part thereof as a result of foreclosure proceedings, conveyance or other action in lieu thereof, or other remedial action shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or any part thereof or to guarantee such construction or completion. The foregoing provisions shall not be applicable to any party who, after a foreclosure, conveyance or other action in lieu thereof, or other remedial action obtains title to some or all of the Project Site from or through the Mortgagee, or any other purchaser at a foreclosure sale other than the Mortgagee itself, on which certain Associated Community Benefits must be completed as set forth in <u>Section 4.1</u>. Nothing in this Section or any other Section or provision of this Agreement shall be deemed or construed to permit or authorize any Mortgagee or any other person or entity to devote the Project Site or any part thereof to any uses other than uses consistent with this Agreement and the Approvals, and nothing in this Section shall be deemed to give any Mortgagee or any other person or entity the right to construct any improvements under this Agreement (other than as set forth above for required Community Benefits or as needed to conserve or protect improvements or construction already made) unless or until such person or entity assumes Developer's obligations under this Agreement.
 - 10.3 Copy of Notice of Default and Notice of Failure to Cure to Mortgagee.

Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations under this Agreement, the City shall at the same time forward a copy of such notice or demand to each Mortgagee having a Mortgage on the real property which is the subject of the breach or default who has previously made a written request to the City therefor, at the last address of such Mortgagee specified by such Mortgagee in such notice. In addition, if such breach or default remains uncured for the period permitted with respect thereto under this Agreement, the City shall deliver a notice of such failure to cure such breach or default to each such Mortgagee at such applicable address. A delay or failure by the City to provide such notice required by this Section shall extend for the number of days until notice is given, the time allowed to the Mortgagee for cure. In accordance with Section 2924b of the California Civil Code, the City requests that a copy of any notice of default and a copy of any notice of sale under any Mortgage be mailed to the City at the address for notices under this Agreement. Any Mortgagee relying on the protections set forth in this Article 10 shall send to the City a copy of any notice of default and notice of sale.

10.4 Mortgagee's Option to Cure Defaults. After receiving any notice of failure to cure referred to in Section 10.3, each Mortgagee shall have the right, at its option, to commence within the same period as the Developer to remedy or cause to be remedied any Default, plus an additional period of: (a) sixty (60) days to cure a monetary Default; and (b) one hundred twenty (120) days to cure a non-monetary event of default which is susceptible of cure by the Mortgagee without obtaining title to the applicable property. If an event of default is not cured within the applicable cure period, the City nonetheless shall refrain from exercising any of its remedies with respect to the event of default if, within the Mortgagee's applicable cure period: (i) the Mortgagee notifies the City that it intends to proceed with due diligence to foreclose the Mortgage or otherwise obtain title to the subject property; and (ii) the Mortgagee commences foreclosure proceedings within sixty (60) days after giving such notice, and thereafter diligently pursues such foreclosure to completion; and (iii) after obtaining title, the Mortgagee diligently proceeds to cure those events of default: (A) which are required to be cured by the Mortgagee and are susceptible of cure by the Mortgagee, and (B) of which the Mortgagee has been given notice by the City. Any such Mortgagee or Transferee of a Mortgagee who shall properly complete the improvements relating to the Project Site or applicable part thereof shall be entitled, upon written request made to the Agency, to a Certificate of Completion.

- anything to the contrary in this Agreement, no Mortgagee shall have any obligations or other liabilities under this Agreement unless and until it acquires title by any method to all or some portion of the Project Site (referred to hereafter as "Foreclosed Property"). A Mortgagee that, by foreclosure under a Mortgage, acquires title to any Foreclosed Property shall take title subject to all of the terms and conditions of this Agreement, to the extent applicable to the Foreclosed Property, including any claims for payment or performance of obligations which are due as a condition to enjoying the benefits of this Agreement and shall have all of the rights and obligations of Developer under this Agreement as to the applicable Foreclosed Property, including completion of the Associated Community Benefits under Section 4.1. Upon the occurrence and continuation of an uncured default by a Mortgagee or Transferee in the performance of any of the obligations to be performed by such Mortgagee or Transferee pursuant to this Agreement, the City shall be afforded all its remedies for such uncured default as provided in this Agreement.
- 10.6 <u>No Impairment of Mortgage</u>. No default by Developer under this Agreement shall invalidate or defeat the lien of any Mortgagee. No foreclosure of any Mortgage or other lien shall defeat, diminish, render invalid or unenforceable or otherwise impair Developer's rights or obligations under this Agreement or constitute a default under this Agreement.
- 10.7 <u>Cured Defaults</u>. Upon the curing of any event of default by any Mortgagee within the time provided in this Article 10 the City's right to pursue any remedies with respect to the cured event of default shall terminate.

11. AMENDMENT; TERMINATION; EXTENSION OF TERM

Amendment or Termination. This Agreement may only be amended with the mutual written consent of the City and Developer; provided, however, that following a Transfer, the City and Developer or any Transferee may amend this Agreement as it affects Developer or the Transferee and the portion of the Project Site owned by Developer or the Transferee without affecting other portions of the Project Site or other Transferees. Other than upon the expiration of the Term and except as provided in Sections 2.2, 7.3, 9.4.2, and 11.2, this Agreement may only be terminated with the mutual written consent of the Parties. Any amendment to this Agreement that does not constitute a Material Change may be agreed to by the Planning Director (and, to the extent it affects any rights or obligations of a City department, with

the approval of that City department). Any amendment that is a Material Change will require the approval of the Planning Director, the Planning Commission and the Board of Supervisors (and, to the extent it affects any rights or obligations of a City department, after consultation with that City Department). The determination of whether a proposed change constitutes a Material Change shall be made, on City's behalf, by the Planning Director following consultation with the City Attorney and any affected City Agency.

- 11.2 Early Termination Rights. Developer shall, upon thirty (30) days prior notice to the City, have the right, in its sole and absolute discretion, to terminate this Agreement in its entirety at any time if Developer does not Commence Construction on any part of the Project Site by the date which is five (5) years following the Effective Date as such five (5) year date may be extended by any Litigation Extension. Thereafter, the City shall, upon sixty (60) days prior notice to Developer, have the right, in its sole and absolute discretion, to terminate this Agreement if the Developer has not Commenced Construction; provided Developer can prevent any such termination by the City by providing to the City notice, within the above sixty (60) day period, of Developer's intent to start construction and the Developer thereafter Commences Construction within one hundred twenty (120) days following delivery of Developer's notice to the City, or, if unable to actually Commence Construction within said time period, demonstrates reasonable, good faith and continuing efforts to Commence Construction, such as by pursuing all necessary Later Approvals, and thereafter promptly Commences Construction upon receipt of the Later Approvals.
- 11.3 Termination and Vesting. Any termination under this Agreement shall concurrently effect a termination of the Approvals with respect to the terminated portion of the Project Site, except as to any Approval pertaining to a Building that has Commenced Construction in reliance thereon. In the event of any termination of this Agreement by Developer resulting from a Default by the City and except to the extent prevented by such City Default, Developer's obligation to complete the Associated Community Benefits shall continue as to the Building that has Commenced Construction and all relevant and applicable provisions of this Agreement shall be deemed to be in effect as such provisions are reasonably necessary in the construction, interpretation or enforcement to this Agreement as to any such surviving obligations. The City's and Developer's rights and obligations under this Section 11.3 shall survive the termination of this Agreement.
 - 11.4 <u>Amendment Exemptions</u>. No issuance of a Later Approval, or amendment

of an Approval or Later Approval, shall by itself require an amendment to this Agreement. And no change to the Project that is permitted under the Project SUD or a planned unit development authorization issued under the Project SUD shall by itself require an amendment to this Agreement. Upon issuance or approval, any such matter shall be deemed to be incorporated automatically into the Project and vested under this Agreement (subject to any conditions set forth in the amendment or Later Approval). Notwithstanding the foregoing, if there is any direct conflict between the terms of this Agreement and a Later Approval, or between this Agreement and any amendment to an Approval or Later Approval, then the Parties shall concurrently amend this Agreement (subject to all necessary approvals in accordance with this Agreement) in order to ensure the terms of this Agreement are consistent with the proposed Later Approval or the proposed amendment to an Approval or Later Approval. The Planning Department and the Planning Commission, as applicable, shall have the right to approve changes to the Project as described in the Exhibits in keeping with its customary practices and the Project SUD, and any such changes shall not be deemed to conflict with or require an amendment to this Agreement or the Approvals so long as they do not constitute a Material Change. If the Parties fail to amend this Agreement as set forth above when required, however, then the terms of this Agreement shall prevail over any Later Approval or any amendment to an Approval or Later Approval that conflicts with this Agreement.

11.5 Extension Due to Legal Action or Referendum; Excusable Delay.

challenging this Agreement or any of the Approvals described on Exhibit E (the "Initial Approvals") and it directly or indirectly delays this Agreement or such Initial Approval, or if this Agreement or any of the Initial Approvals is suspended pending the outcome of an electoral vote on a referendum, then the Term of this Agreement and the effectiveness of the Initial Approvals (starting from the date of the initial grant of the Initial Approval) shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension to the end of such litigation or suspension (a "Litigation Extension"). The Parties shall document the start and end of a Litigation Extension in writing within thirty (30) days from the applicable dates.

11.5.2 "Excusable Delay" means the occurrence of an event beyond a Party's reasonable control which causes such Party's performance of an obligation to be delayed, interrupted or prevented, including, but not limited to: changes in Federal or State Laws; strikes or

the substantial interruption of work because of labor disputes; inability to obtain materials; freight embargoes; civil commotion, war or acts of terrorism; inclement weather, fire, floods, earthquakes, or other acts of God; epidemics or quarantine restrictions; litigation; unforeseen site conditions (including archaeological resources or the presence of hazardous materials); or the failure of any governmental agency, public utility or communication service provider to issue a permit, authorization, consent or approval required to permit construction within the standard or customary time period for such issuing authority following Developer's submittal of a complete application for such permit, authorization, consent or approval, together with any required materials. Excusable Delay shall not include delays resulting from failure to obtain financing or have adequate funds, changes in market conditions, or the rejection of permit, authorization or approval requests based upon Developer's failure to satisfy the substantive requirements for the permit, authorization or approval request. In the event of Excusable Delay, the Parties agree that (i) the time periods for performance of the delayed Party's obligations impacted by the Excusable Delay shall be strictly limited to the period of such delay, interruption or prevention and the delayed Party shall, to the extent commercially reasonable, act diligently and in good faith to remove the cause of the Excusable Delay or otherwise complete the delayed obligation, and (ii) following the Excusable Delay, a Party shall have all rights and remedies available under this Agreement, if the obligation is not completed within the time period as extended by the Excusable Delay. If an event which may lead to an Excusable Delay occurs, the delayed Party shall notify the other Party in writing of such occurrence as soon as possible after becoming aware that such event may result in an Excusable Delay, and the manner in which such occurrence is likely to substantially interfere with the ability of the delayed Party to perform under this Agreement.

12. TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE

12.1 <u>Permitted Transfer of this Agreement</u>. At any time, Developer shall have the right to convey, assign or transfer all of its right, title and interest in and to all or part of the Project Site (a "**Transfer**") to a party (including any Mortgagee) without the City's consent, provided that it also transfers to such party (the "**Transferee**") all of its interest, rights or obligations under this Agreement with respect to such portion of the Project Site together with any portion required to complete the Associated Community Benefits for such portion (the "**Transferred Property**"). Developer shall not, by Transfer, separate a portion of the Project Site from the Associated Community Benefits tied to that portion of the Project Site without the prior

written consent of the Planning Director. Notwithstanding anything to the contrary in this Agreement, if Developer Transfers one or more parcels such that there are separate Developers within the Project Site, then the obligation to perform and complete the Associated Community Benefits for a Building shall be the sole responsibility of the applicable Developer (*i.e.*, the person or entity that is the Developer for the Development Parcel on which the Building is located); provided, however, that any ongoing obligations (such as open space operation and maintenance) may be transferred to a residential, commercial or other management association ("CMA") on commercially reasonable terms so long as the CMA has the financial capacity and ability to perform the obligations so transferred.

Notice of Transfer. Developer shall provide not less than ten (10) days' notice to the City before any proposed Transfer of its interests, rights and obligations under this Agreement, together with a copy of the assignment and assumption agreement for that parcel (the "Assignment and Assumption Agreement"). The Assignment and Assumption Agreement shall be in recordable form, in substantially the form attached as Exhibit H (including the indemnifications, the agreement and covenant not to challenge the enforceability of this Agreement, and not to sue the City for disputes between Developer and any Transferee) and any material changes to the attached form will be subject to the review and approval of the Director of Planning, not to be unreasonably withheld or delayed. The Director of Planning shall use good faith efforts to complete such review and grant or withhold approval within thirty (30) days after the Director of Planning's receipt of such material changes. Notwithstanding the foregoing, any Transfer of Community Benefit obligations to a CMA as set forth in Section 12.1 shall not require the transfer of land or any other real property interests to the CMA.

Agreement (following the City's approval of any material changes thereto if required pursuant to Section 12.2 above), the assignor shall be released from any prospective liability or obligation under this Agreement related to the Transferred Property, as specified in the Assignment and Assumption Agreement, and the assignee/Transferee shall be deemed to be "Developer" under this Agreement with all rights and obligations related thereto with respect to the Transferred Property. Notwithstanding anything to the contrary contained in this Agreement, if a Transferee Defaults under this Agreement, such default shall not constitute a Default by Developer or any other Transferee with respect to any other portion of the Project Site and shall not entitle the City

to terminate or modify this Agreement with respect to such other portion of the Project Site, except as otherwise provided herein. Additionally, the annual review provided by <u>Section 8</u> shall be conducted separately as to Developer and each Transferee and only as to those obligations that Developer or such Transferee has under this Agreement.

- 12.4 Responsibility for Performance. The City is entitled to enforce each and every such obligation assumed by each Transferee directly against the Transferee as if the Transferee were an original signatory to this Agreement with respect to such obligation. Accordingly, in any action by the City against a Transferee to enforce an obligation assumed by the Transferee, the Transferee shall not assert as a defense against the City's enforcement of performance of such obligation that such obligation (i) is attributable to Developer's breach of any duty or obligation to the Transferee arising out of the Transfer or the Assignment and Assumption Agreement or any other agreement or transaction between Developer and the Transferee, or (ii) relates to the period before the Transfer. The foregoing notwithstanding, the Parties acknowledge and agree that a failure to complete a Mitigation Measure may, if not completed, delay or prevent a different party's ability to start or complete a specific Building or improvement under this Agreement if and to the extent the completion of the Mitigation Measure is a condition to the other party's right to proceed, as specifically described in the Mitigation Measure, and Developer and all Transferees assume this risk.
- 12.5 <u>Constructive Notice</u>. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Site is, and shall be, constructively deemed to have consented to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Site and undertakes any development activities at the Project Site, is, and shall be, constructively deemed to have consented and agreed to, and is obligated by all of the terms and conditions of this Agreement (as such terms and conditions apply to the Project Site or applicable portion thereof), whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site.
- 12.6 <u>Rights of Developer</u>. The provisions in this <u>Section 12</u> shall not be deemed to prohibit or otherwise restrict Developer from (i) granting easements or licenses to facilitate

development of the Project Site, (ii) encumbering the Project Site or any portion of the improvements thereon by any Mortgage, (iii) granting an occupancy leasehold interest in portions of the Project Site, (iv) entering into a joint venture agreement or similar partnership agreement to fulfill its obligations under this Agreement, or (v) transferring all or a portion of the Project Site pursuant to a foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a Mortgage, and none of the foregoing shall constitute a Transfer for which the City's consent is required.

13. DEVELOPER REPRESENTATIONS AND WARRANTIES

- 13.1 Interest of Developer; Due Organization and Standing. Developer represents that it is the sole owner of the Project Site, with the right and authority to enter into this Agreement. Developer is a limited liability company, duly organized and validly existing and in good standing under the Laws of the State of Delaware. Developer has all requisite power to own its property and authority to conduct its business as presently conducted. Developer represents and warrants that there is no Mortgage, existing lien or encumbrance recorded against the Project Site that, upon foreclosure or the exercise of remedies, would permit the beneficiary of the Mortgage, lien or encumbrance to eliminate or wipe out the obligations set forth in this Agreement that run with applicable land.
- 13.2 <u>No Inability to Perform; Valid Execution</u>. Developer represents and warrants that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement and it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated hereby by Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.
- 13.3 <u>Conflict of Interest</u>. Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 *et seq*. and Section 1090 *et seq*. of the California Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the Term.
 - 13.4 <u>Notification of Limitations on Contributions</u>. Through its execution of this

Agreement, Developer acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for that contract or twelve (12) months after the date that contract is approved. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

Developer acknowledges that (i) the prohibition on contributions applies to Developer, each member of Developer's board of directors, Developer's chief executive officer, chief financial officer and chief operating officer, any person with an ownership interest of more than ten percent (10%) in Developer, any subcontractor listed in the contract, and any committee that is sponsored or controlled by Developer, and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department seeking to enter into the contract must notify the Ethics Commission of the parties and any subcontractor to the contract. Additionally, Developer certifies it has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract to the City, and has provided the names of the persons required to be informed to the City department seeking to enter into that contract within thirty (30) days of submitting its contract proposal to the City department receiving that submittal, and acknowledges the City department receiving that submittal was required to notify the Ethics Commission of those persons.

13.5 Other Documents. To the current, actual knowledge of Dan Safier, after reasonable inquiry, no document furnished by Developer to the City with its application for this Agreement nor this Agreement contains any untrue statement of material fact or omits a material

fact necessary to make the statements contained therein, or herein, not misleading under the circumstances under which any such statement shall have been made.

13.6 <u>No Bankruptcy</u>. Developer represents and warrants to the City that Developer has neither filed nor is the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or Laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Developer's knowledge, no such filing is threatened.

14. MISCELLANEOUS PROVISIONS

- 14.1 <u>Entire Agreement</u>. This Agreement, including the preamble paragraph, Recitals and Exhibits, and the agreements between the Parties specifically referenced in this Agreement, constitutes the entire agreement between the Parties with respect to the subject matter contained herein.
- 14.2 <u>Incorporation of Exhibits</u>. Except for the Approvals which are listed solely for the convenience of the Parties, each Exhibit to this Agreement is incorporated herein and made a part hereof as if set forth in full. Each reference to an Exhibit in this Agreement shall mean that Exhibit as it may be updated or amended from time to time in accordance with the terms of this Agreement.
- Binding Covenants; Run With the Land. Pursuant to Section 65868 of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to the provisions of this Agreement, including without limitation Section 12, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. Subject to the provisions of this Agreement, including without limitation Section 12, all provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable Law, including but not limited to California Civil Code Section 1468.
- 14.4 <u>Applicable Law and Venue</u>. This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the Laws of the

State of California. All rights and obligations of the Parties under this Agreement are to be performed in the City and County of San Francisco, and the City and County of San Francisco shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

- 14.5 <u>Construction of Agreement</u>. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both the City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement to this Agreement or any of the Approvals shall be deemed to refer to this Agreement or the Approvals as amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. In the event of a conflict between the provisions of this Agreement and Chapter 56, the provisions of this Agreement will govern and control.
- 14.6 <u>Project Is a Private Undertaking; No Joint Venture or Partnership</u>. The development proposed to be undertaken by Developer on the Project Site is a private development. The City has no interest in, responsibility for, or duty to third persons concerning any of said improvements. Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement. Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and Developer. Neither Party is acting as the agent of the other Party in any respect hereunder. Developer is not a state or governmental actor with respect to any activity conducted by Developer hereunder.
- 14.7 <u>Recordation</u>. Pursuant to the Development Agreement Statute and Chapter 56, the Clerk of the Board of Supervisors shall have a copy of this Agreement recorded in the Official Records within ten (10) days after the Effective Date of this Agreement or any amendment thereto, with costs to be borne by Developer.
- 14.8 <u>Obligations Not Dischargeable in Bankruptcy</u>. Developer's obligations under this Agreement are not dischargeable in bankruptcy.

14.9 <u>Survival</u>. Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provision which, by its express terms, survive the expiration or termination of this Agreement.

14.10 <u>Signature in Counterparts</u>. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

Agreement shall be in writing and may be delivered personally or by registered mail, return receipt requested. Notice, whether given by personal delivery or registered mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon notice to the other Party, designate any other person or address in substitution of the person and address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:

John Rahaim

Director of Planning

San Francisco Planning Department 1650 Mission Street, Suite 400 San Francisco, California 94102

with a copy to:

Dennis J. Herrera, Esq.

City Attorney

City Hall, Room 234

1 Dr. Carlton B. Goodlett Place

San Francisco, CA 94102

Attn: Real Estate/Finance, 3333 California Project

To Developer:

c/o The Prado Group, Inc. 150 Post Street, Suite 320 San Francisco, CA 94108

Attn: Dan Safier

14.12 <u>Limitations on Actions</u>. Pursuant to Section 56.19 of the Administrative Code, any decision of the Board of Supervisors made pursuant to Chapter 56 shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the Board of Supervisors shall be commenced within ninety (90) days after such

decision or determination is final and effective. Any court action or proceeding to attack, review, set aside, void or annul any final decision by (i) the Planning Director made pursuant to Administrative Code Section 56.15(d)(3) or (ii) the Planning Commission pursuant to Administrative Code Section 56.17(e) shall be commenced within ninety (90) days after said decision is final.

- 14.13 <u>Severability</u>. Except as is otherwise specifically provided for in this Agreement with respect to any Laws which conflict with this Agreement, if any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of this Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.
- 14.14 <u>MacBride Principles</u>. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 *et seq.* The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Developer acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.
- 14.15 <u>Tropical Hardwood and Virgin Redwood</u>. The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code Section 250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that Developer in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other Laws, Developer shall mark any such materials as such. When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.

14.17 <u>Non-Liability of City Officials and Others</u>. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, commissioner, officer, employee, official or agent of City or other City Parties shall be personally liable to Developer, its successors and assigns, in the event of any Default by City, or for any amount which may become due to Developer, its successors and assigns, under this Agreement.

14.18 <u>Non-Liability of Developer Officers and Others</u>. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, officer, employee, official, partner, employee, or agent of Developer or any affiliate of Developer shall be personally liable to City, its successors and assigns, in the event of any Default by Developer, or for any amount which may become due to City, its successors and assigns, under this Agreement.

14.19 <u>No Third Party Beneficiaries</u>. There are no third party beneficiaries to this Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

and year first above written. CITY: Approved as to form: CITY AND COUNTY OF SAN FRANCISCO, DENNIS J. HERRERA, City Attorney a municipal corporation By: By: Carol Wong, Deputy City Attorney John Rahaim Director of Planning RECOMMENDED: By: [Name] Director, MOHCD By: Mohammed Nuru Director of Public Works

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day

[DEVELOPER'S SIGNATURE ON FOLLOWING PAGE]

Approved on _____, 20_

Board of Supervisors Ordinance No.

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: _____

Name: Dan Safier
Title: Manager

State of California))	÷		
County of San Francisco))			
On	that he/she/they s/her/their signatu son(s) acted, exec OF PERJURY u	e name(s) is/are executed the are(s) on the incuted the instru	who prove e subscribed e same in astrument the ament.	his/her/their authe person(s), or the	asis of rument norized e entity
WITNESS my hand and offic	cial seal.				
Signature					

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.

		erifies only the identity of the individual who signed the athfulness, accuracy, or validity of that document.
State of California County of San Francisco)	
and acknowledged to me	that he/she/they exes/her/their signature(s)	, a Notary Public, , who proved to me on the basis of me(s) is/are subscribed to the within instrument ecuted the same in his/her/their authorized) on the instrument the person(s), or the entity I the instrument.
I certify under PENALTY foregoing paragraph is true a		r the laws of the State of California that the
WITNESS my hand and offic	cial seal.	
Signature		

Exhibit A

Project Site Legal Description

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

Project Description

The Project Site is an approximately 446,490-square-foot, or 10.25-acre, parcel bounded by California Street to the north, Presidio Avenue to the east, Masonic Avenue to southeast, Euclid Avenue to the south, and Laurel Street/Mayfair Drive to the west, at the southern edge of San Francisco's Presidio Heights neighborhood in the northwest portion of San Francisco. The project sponsor, Laurel Heights Partners, LLC, owns the site and temporarily leases it to the Regents of the University of California, which uses the Project Site for its University of California San Francisco (UCSF) Laurel Heights Campus. The Project Site does not include the San Francisco Fireman's Credit Union (now called the SF Fire Credit Union) at the southwest corner of California Street and Presidio Avenue, which is on a separate parcel.

The Project Site is currently used as office and related research, child care, and parking. It is developed with a four-story, approximately 455,000-gross-square-foot office building including a three-level, 212-space, an approximately 93,000-gross-square-foot partially below-grade parking garage at the center of the site; a one-story, approximately 14,000-gross-square-foot annex building at the corner of California and Laurel streets; three surface parking lots with a total of 331 spaces connected by internal roadways; two circular garage ramp structures leading to below-grade parking levels; and landscaping or landscaped open space for the USCF Laurel Heights Campus occupants.

The proposed project includes approximately 1,427,832 gross square feet of new and rehabilitated space, comprising approximately 977,437 gross square feet of residential floor area with approximately 744 dwelling units; approximately 34,496 gross square feet of retail floor area; and an approximately 14,665 gross-square-foot child care center use. The proposed project would provide approximately 857 off-street parking spaces (including approximately 10 car share spaces), approximately 762 Class One bicycle spaces, and 77 Class Two bicycle spaces. These proposed uses would be located in 13 new buildings (known as Plaza A, Plaza B, Walnut, Mayfair, Laurel Townhomes, Euclid and Masonic) and in the adaptively reused office building (known as Center A and Center B), which would be divided into two separate buildings and converted to residential use.

25% of the proposed project's units will be deed-restricted, on-site affordable units designated for low-income senior households. These affordable units will be located in the proposed Walnut Building on California Street and consist of 185 studios and 1-bedrooms for seniors plus one (1) on-site manager's unit. The Walnut Building would also include an approximately 175-seat child care facility, including a contiguous outdoor activity area. The project includes approximately 34,496 square feet of neighborhood-serving retail located in the buildings fronting onto California Street (Plaza A, Plaza B and the Walnut Building). This retail

corridor is aligned with the existing Laurel Village shopping center on California Street and will be designed to enhance the retail offerings for the neighborhood.

The proposed project would contain approximately 52 percent of the overall lot area (approximately 236,000 square feet – excluding green roofs) as open area, with portions to be developed with a combination of public open space, common open space (some of which would be open to the public) and private open space for residents. The proposed project would include **2.87 acres of publicly accessible landscaped open space** with multi-purpose plazas, lawns, pathways and streetscape improvements as further described in <u>Exhibit C</u>, which will provide the public with new open space amenities and improve pedestrian connectivity and safety through the neighborhood.

The Project's circulation and open space plan includes multiple new public entrances into and through the Site in order to integrate the Site with the surrounding neighborhood and street network. The proposed north-south pedestrian connection (Walnut Walk) and the proposed east-west pedestrian connection (Mayfair Walk) would be open to the public and would provide the primary points of access to other publicly accessible common open spaces, plazas, squares, and vista points within the Project Site. The proposed Walnut Walk would align with Walnut Street to the north and the intersection of Euclid and Masonic to the south, incorporating the site into the surrounding street grid.

Exhibit B-1 Project Site Plan

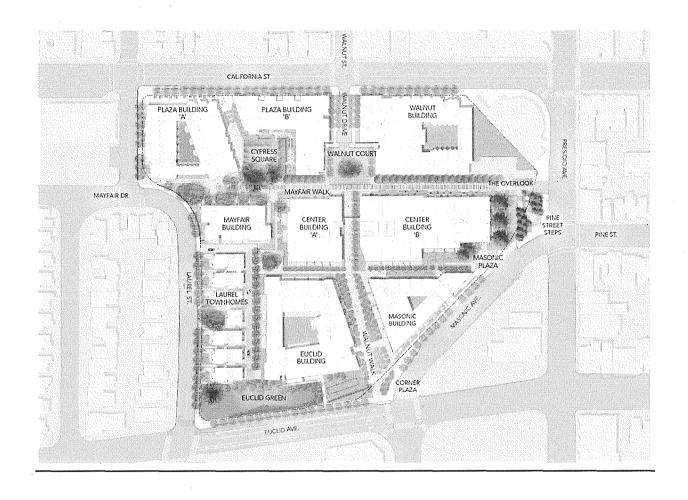


Exhibit C

Project Open Space

The Project would provide the following open space, substantially in accordance with <u>Attachment C-1</u>, <u>Attachment C-2</u>, <u>Attachment C-3</u>, and <u>Schedule 1</u> to the Agreement:

- 1. <u>Publicly Accessible Private Improvements.</u> The Project would include the construction, operation, and maintenance of the Publicly Accessible Private Improvements, which is comprised of approximately 2.87 acres of open space (1.63 acres of which exceed the Planning Code open space requirements that would otherwise apply for the Project) developed as follows:
 - a. <u>California Plaza</u>: An approximately 4,290 square foot plaza adjacent to California Street and the Plaza A and B retail uses. California Plaza will be improved with a combination of quality hardscape, planters and seating elements adjacent to the City sidewalk and designed to comply with the City's Better Streets policies.
 - b. Cypress Square and Stairs: Cypress Stairs (approximately 1,255 sq. ft.) are one of several pedestrian access points into the Project and would connect pedestrians from California Street to Cypress Square and the network of internal public open spaces throughout the Project Site. There will also be ADA access from California Street to Cypress Square adjacent to the Cypress Stairs. Cypress Square would be an approximately 12,052 square foot south-facing plaza that would retain the existing mature and healthy Cypress trees identified in the landscape plan. It would include hardscaped walkways and a central, paved open plaza area with wood decking, seating and landscaping.
 - c. Mayfair Walk: Mayfair Walk (approximately 30,685 sq. ft.) is the Project's main east-west pedestrian connector that will stitch the site back into the adjacent neighborhood's urban fabric with publicly-accessible landscaped pathways. The Walk includes a connection to Mayfair Drive/Laurel Street to the west with seating, stairs and landscaping, including the retention of existing mature and healthy oak trees and the addition of new trees as identified in the landscape plan. The Walk would include a hardscape pathway with landscaped borders and access to ground floor residential units. The Walk would connect with the ADA-accessible Pine Street Stairs to Presidio Avenue to the east.
 - d. <u>Presidio Overlook</u>: At the east side of the Project Site atop Pine Street Stairs, the Presidio Overlook will provide scenic views of downtown San Francisco for the public and ADA and stair access to Presidio Avenue. The Overlook will consist of approximately 10,450 square feet of open space and would include a large terrace with trees, planters and seating. The Overlook would act as an interconnection and scenic area between the east portion of the Mayfair Walk and the Pine Street Stairs.

- e. <u>Pine Street Steps</u>: The Pine Street Steps would be approximately 7,015 square feet and are inspired by California's indigenous biodiversity and include a grove of mature existing and new Redwood trees. They have been designed to provide the public with an ADA-accessible connection from the east side of the Project Site to the west.
- f. Walnut Walk North and Walnut Walk South: Walnut Walk would consist of a total of approximately 23,730 square feet of open space and will be the Project's main north-south public pedestrian access. Walnut Walk would run through the center of the Project Site from California Street (via Walnut Court) to the Masonic and Euclid Avenue intersection, helping to stitch the site back into the neighborhood's urban fabric. Walnut Walk would be a pedestrian pathway with a network of landscaped open spaces and seating.
- g. Walnut Drive and Walnut Court: Walnut Drive and Walnut Court would consist of approximately 17,825 square feet of open space and would include tree-lined hardscape pedestrian walkways on either side of Walnut Drive leading into Walnut Court, which would include a tree-lined vehicular turnaround plaza with a tree feature at the center. The drive and court areas would provide direct access to California Street, Mayfair Walk and Walnut Walk.
- h. <u>Euclid Green</u>: The new green lawn at the corner of Euclid and Laurel would provide the public with views of downtown San Francisco to the east, and views of the Golden Gate Bridge to the northwest. Euclid Green will consist of approximately 18,004 square feet of open space at the southwest corner of the Project at Laurel Street and Euclid Avenue. The existing green lawn will be renovated and maintained as a large, naturally sloping lawn with plantings and a direct access to the sidewalks on Euclid Avenue and Laurel Street.

The Publicly Accessible Private Improvements will be privately owned but accessible to the public on the terms described in <u>Attachment C-2</u> and <u>Attachment C-3</u>. The Publicly Accessible Private Improvements would be provided substantially as depicted in <u>Attachment C-1</u>, constructed in accordance with the terms of <u>Attachment C-2</u> and <u>Schedule 1</u>, and operated and maintained on the terms of <u>Attachment C-2</u> and <u>Attachment C-3</u>.

- 2. <u>Streetscape Improvements</u>. The Project would include the streetscape improvements depicted in <u>Attachment C-1</u> to enhance the safety of, and strengthen the network of, existing sidewalks and street crossings that abut the Project Site including Presidio Avenue, Masonic Avenue, Euclid Avenue, Laurel Street, Mayfair Street and California Street.
- 3. <u>Provision of Required Open Space</u>. The amount and phasing of private and/or common usable open space for the residential uses on the Project shall be governed by the Approvals.

Exhibit C-1 Open Space Plan

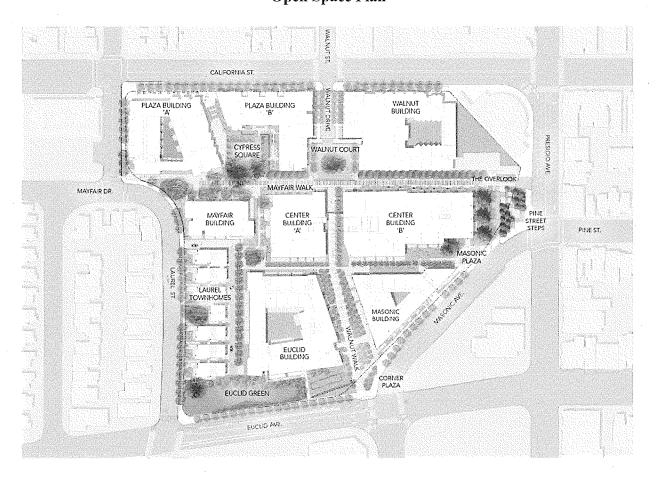


Exhibit C-2

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 (each, a "Publicly Accessible Private Improvement" and collectively, the "Publicly Accessible Private Improvements") as defined in Section 1 of this Agreement. The Publicly Accessible Private Improvements are the open spaces proposed for the Project that are privately owned, but will remain accessible to the public, as described in this Exhibit, and include California Plaza, Cypress Stairs, Cypress Square, Euclid Green, Mayfair Walk those portions of the Pine Street Steps that are privately owned, Presidio Overlook, Walnut Drive and Walnut Court, Walnut Walk North, and Walnut Walk South.

- 1. Permitted Uses. Upon completion of a Publicly Accessible Private Improvement in accordance with this Agreement, Developer 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 Developer 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. Developer 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. Developer 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, this Agreement, the Approvals, and any Later Approvals.

- 3. <u>No Discrimination.</u> Developer 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. <u>Maintenance Standard.</u> 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. <u>Temporary Closure</u>. Developer 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 Developer reasonably deems necessary to address either of the circumstances below:
 - a. <u>Emergency</u>; <u>Public Safety</u>. 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). Developer 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. <u>Maintenance and Repairs</u>. Developer may temporarily close a Publicly Accessible Private Improvement (or affected portions thereof) in order to make any repairs or perform any maintenance as Developer, 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 Improvements. Operation of each Publicly Accessible Private Improvement shall be subject to the additional requirements of this Paragraph.
 - a. Hours of Operation. 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 Agreement (including, without limitation, Paragraphs 4 and 5(b) of these Regulations), or (iii) reasonably imposed by Developer, 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.
 - b. <u>Signs.</u> Developer shall post signs at the major public entrances to each of its Publicly Accessible Private Improvement, indicating that it is a privately-owned public open space ("<u>POPOS</u>") 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.
- 7. Permissive Use. Developer may post at each entrance to each of its 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 Agreement. 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.
- 8. Arrest or Removal of Persons. Developer 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, Developer 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. Developer 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.

- 9. Project Security During Period of Non-Access. Developer 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 Developer's obligations under Applicable Law, Developer 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 Developer's right to install security cameras and monitoring devices anywhere on the Project.
- 10. <u>Removal of Obstructions.</u> Developer 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 Agreement, 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.
- 11. Temporary Structures. Subject to Developer'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.

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 _______, 2019, 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 ________, 2019 (the "Development Agreement"), approved by the City's Board of Supervisors by Ordinance No. _______ on November ___, 2019, a Special Use District approved by the City's Board of Supervisors by Ordinance No. ______ on November ___, 2019, amendments to the City's Planning Code, Zoning Map, and Height Map adopted by the Board of Supervisors under Ordinance No. ______ on November ___, 2019, and a street encroachment permit and associated encroachment permit and maintenance agreement approved by the Board of Supervisors by Ordinance No. ______ on November ___, 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) <u>Timing</u>. If Declarant constructs any Building during the DA Term, Declarant shall build the applicable Publicly Accessible Private Improvements (as defined in the attached <u>Exhibit</u> <u>C</u>) specified in the attached <u>Exhibit</u> <u>C</u> in compliance with the requirements of the Development Agreement.

(b) <u>Conceptual Plans; Changes</u> . 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
, and stamped as Exhibit in the City's Planning Department docket for
Case No, as such plans may be modified pursuant to conditions of approva
for the Project adopted by the City's Planning Commission on September, 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 Uses (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.

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 maintain 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. Notwithstanding the foregoing, 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 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. <u>City Regulatory Approvals</u>. 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. <u>Use: Operation</u>. On substantial completion of a Publicly Accessible Private Improvement, Declarant shall maintain 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 <u>Exhibit D</u> ("**Regulations**"). If Declarant closes any Publicly Accessible Private Improvement pursuant to Section 5 of the Regulations, Declarant 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.

Notice and Cure Rights. Except as provided in this Section, City shall provide written 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. Such notices shall be given to Declarant at the address last furnished to the City; provided, however, that following completion of a Publicly Accessible Private Improvement, such notices shall be given to any Association (as defined in Section 12 below), the owner of the legal parcel on which such Publicly Accessible Private Improvement is located (the "Improvement Owner"), and the owner of the legal parcel of each Building to which such completed Publicly Accessible Private Improvement is associated, as set forth in Exhibit C (the "Associated Owner"). Declarant shall have (i) a period of five (5) business days after receipt of such 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") and (ii) a period of thirty (30) days after receipt of such notice to cure any other violation, provided that if the violation is not capable of cure within such 30-day period, Declarant shall have such additional time as shall be reasonably required to complete a cure as long as Declarant 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 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 the Lender Cure Period, as defined in Section 6 below) as long as Declarant (or any applicable 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. The City's rights and remedies in this Section 5 shall be subject to the provisions of Section 12 below regarding responsibility for the Publicly Accessible Private Improvements following completion thereof and transfer to an association.

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 1650 Mission Street, Suite 400 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

6. <u>Lender Notice and Cure Rights</u>. As long as any deed of trust encumbering any portion of the Project Site made in good faith and for value (each, an "**Encumbrance**") shall remain unsatisfied of record, the City shall give to the beneficiary of such Encumbrance (each, a "**Lender**") a copy of each notice the City gives to Declarant from time to time of the occurrence of a violation under this Declaration if that Lender has given to the City a written request for such notices. Copies of such notices shall be given to any requesting Lender at the address that requesting Lender last furnished to the 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 <u>Section 7</u> below).

Each Lender shall have the right, but not the obligation, to do any act or thing required of Declarant 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 under this Declaration. In the case of any notice of violation given by the City to Declarant, the Lender shall have the same concurrent cure periods as are given Declarant under this Declaration for remedying a default or causing it to be remedied and, except in the event of a Public Access Violation, if prior to the expiration of the applicable cure period specified in Section 5 above, 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 such cure period, or (ii) the date that the City has served such notice of default 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. <u>Enforcement</u>. 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 fails to maintain a Publicly Accessible Private Improvement in the manner required in this Declaration, and Declarant fails to timely cure such failure pursuant to Section 5 above and no Lender cures such failure pursuant to Section 6 above, City shall further have the right, at its sole option, to remedy such failure at Declarant's expense by providing ten (10) days' prior written notice of City's intention to cure such failure (a "Self-Help Notice") to the Association (if any), the applicable Improvement Owner, and the applicable Associated Owner. 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 is obligated to perform. Association 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 there is no Association or an existing Association fails to timely reimburse City for City's Costs, then the applicable Associated Owner 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. If neither the Association (if any) nor the applicable Associated Owner timely reimburses City for City's Costs, City shall have the right to record a notice of such unpaid costs and expenses against record title to the legal parcel on which the Publicly Accessible Private Improvement is located and the legal parcel of each Building to which such Publicly Accessible Private Improvement is associated, as described in the attached Exhibit C. At City's request, Declarant shall provide security in a form and amount satisfactory to City to ensure Declarant's prompt reimbursement of any amounts owed by Declarant to City pursuant to this Section.

- 8. <u>Priority of Lien</u>. 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. <u>No Waiver</u>. 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. <u>Compliance With Laws</u>. 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.

- Litigation Expenses. If City brings an action or proceeding (including any cross-complaint, 11. counterclaim, or third-party claim) against Declarant or the then-owner(s) of the Project Site 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. <u>Binding on Successors; No Merger; Post-Construction Responsibility</u>. 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 require a residential, commercial or other management association for the Project Site (an "Association") to perform its obligations under this Declaration for a completed Publicly Accessible Private Improvement, but Declarant's rights and obligations under this Declaration in maintaining and operating a completed Publicly Accessible Private Improvement shall remain with the applicable Improvement Owner and the applicable Associated Owner.
- 13. <u>Severability</u>. 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. <u>Time</u>. 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 of San Francisco County, 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 its successors in interest to any fee interest of the Project Site) and City.

- 16. <u>Governing Law</u>. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- 17. <u>Recordation</u>. 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	
	a.	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: [Name], Director of Planning	
APPROVED AS TO FORM	:		
DENNIS J. HERRERA, City Attorney			
Ву:			
Carol Wong Deputy City Attorney	7		

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

State of California)	
) ss	
County of San Francisco)	
On, befo	ore me,	, a notary public in and for
said State, personally appeared	ed	, who proved to me
on the basis of satisfactory e	evidence to be the	e person(s) whose name(s) is/are subscribed to the
within instrument and acknowledge	wledged to me tl	hat he/she/they executed the same in his/her/their
authorized capacity(ies), and	that by his/her/th	eir signature(s) on the instrument the person(s), or
the entity upon behalf of whi	ch the person(s) a	cted, executed the instrument.
I certify under PENALTY OF I paragraph is true and correct.		e laws of the State of California that the foregoing
WITNESS my hand and officia	al seal.	
Signature	(S	Seal)

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

State of California)		
) ss		
County of San Francisco)		
On, be	fore me,		, a notary public in and for
said State, personally appear	ared		, who proved to me
within instrument and ack	nowledged to mand that by his/her	te that he/she/they r/their signature(s)	se name(s) is/are subscribed to the executed the same in his/her/their on the instrument the person(s), or he instrument.
I certify under PENALTY OF paragraph is true and corrections.		the laws of the Sta	ate of California that the foregoing
WITNESS my hand and office	cial seal.		
Signature		(Seal)	

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

[see attached]

EXHIBIT B-2

Depiction of Buildings and Publicly Accessible Private Improvements

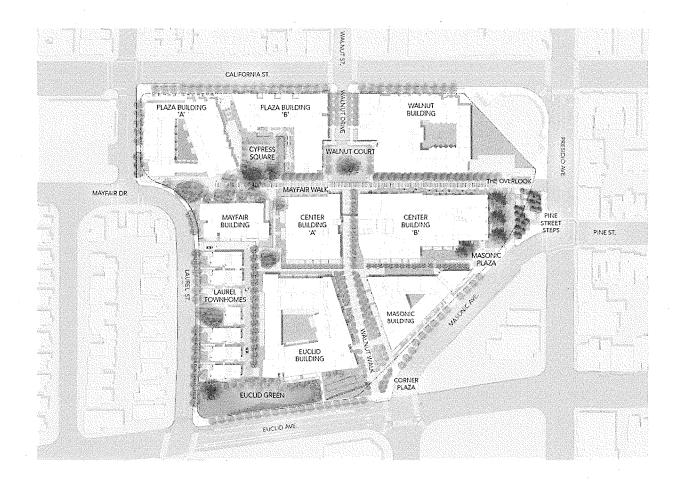


EXHIBIT C

Completion Schedule

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

- 1. <u>Description of Publicly Accessible Private Improvements</u>. Each of the following shall be a "Publicly Accessible Private Improvement" and shall collectively be the "Publicly Accessible Private Improvements":
- a. <u>California Plaza</u>: An approximately 4,290 square foot plaza adjacent to California Street, located in the general area depicted in the attached <u>Exhibit B-2</u>. 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. <u>Cypress Square</u>: 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 <u>Exhibit B-2</u>. The improvements will consist of the existing mature and healthy Cypress trees identified in the Project landscape plan submitted to ______ on ____ (the "Landscape Plan"), hardscaped walkways, and a central, paved open plaza area with wood decking, seating and landscaping.
- c. <u>Cypress Stairs</u>: 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 <u>Exhibit B-2</u>. The improvements will consist of stairs with landscaped planters along the edges.
- d. <u>Euclid Green</u>: An approximately 18,004 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 <u>Exhibit B-2</u>. The improvements will consist of a large, naturally sloping lawn with plantings.
- e. <u>Mayfair Walk</u>: 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 <u>Exhibit B-2</u>. 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. <u>Presidio Overlook</u>: 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 <u>Exhibit B-2</u>. The improvements will consist of a terrace with trees, planters, and seating.

- g. <u>Pine Street Steps</u>: 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 <u>Exhibit B-2</u>. The improvements will consist of stairs with landscaped planters along the edges.
- h. <u>Walnut Drive and Walnut Court</u>: 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 <u>Exhibit B-2</u>. 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. <u>Walnut Walk North</u>: 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 <u>Exhibit B-2</u>. 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. <u>Walnut Walk South</u>: 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 <u>Exhibit B-2</u>. 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. <u>Alternative Pedestrian Access Paths</u>: Any path constructed under Section 4 below.
- 2. <u>Installation Schedule</u>. 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. <u>California Plaza</u>. Declarant shall complete construction of California Plaza before the issuance of an Occupancy Certificate (as defined below) for any non-retail portion of the Plaza A Building, which is described on the attached <u>Exhibit B-1</u> and depicted on the attached <u>Exhibit B-2</u>. Once completed, California Plaza shall be associated with the Plaza A Building.
- b. <u>Cypress Square</u>. 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 <u>Exhibit B-1</u> and depicted on the attached <u>Exhibit B-2</u>. Once completed, Cypress Square shall be associated with the Plaza B Building.

- c. <u>Cypress Stairs</u>. 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. <u>Euclid Green</u>. 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. <u>Mayfair Walk</u>. 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. <u>Pine Street Steps</u>. 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. <u>Presidio Overlook.</u> 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. <u>Walnut Drive and Walnut Court</u>. 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 <u>Exhibit B-1</u> and depicted on the attached <u>Exhibit B-2</u>). Once completed, Walnut Drive and Walnut Court shall be associated with the Plaza B Building and the Walnut Affordable Housing Building.

- i. <u>Walnut Walk North</u>. 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. <u>Walnut Walk South</u>. 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 <u>Exhibit B-1</u> and depicted on the attached <u>Exhibit B-2</u>) or the Masonic Building (described on the attached <u>Exhibit B-1</u> and depicted on the attached <u>Exhibit B-2</u>). Once completed, Walnut Walk South shall be associated with the Euclid Building and the Masonic Building.
- 3. <u>Delayed Completion</u>. 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. <u>Alternative Pedestrian Access</u>. 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. <u>No Discrimination.</u> 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. <u>Maintenance Standard.</u> 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. <u>Temporary Closure.</u> 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. <u>Emergency</u>; <u>Public Safety</u>. 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. <u>Maintenance and Repairs</u>. 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. <u>Signs.</u> 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. <u>Temporary Structures</u>. 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.

Exhibit D

Affordable Housing Program

This Exhibit D describes the affordable housing program for the Project (the "Housing Plan"). All initially-capitalized, undefined terms used in this Exhibit D shall have the meanings given to them in the Development Agreement to which it is attached.

Recognizing the City's pressing need for housing – market rate and affordable - the Developer has agreed to (1) increase the total number of residential units for the Project from the 558 residential units initially proposed to 744 residential units; (2) construct 185 studio and one-bedroom affordable residential units for Senior Households at the Project Site (the "BMR Units") in order to make 25% of the Project residential units affordable, rather than the Section 415 (as defined below) requirement of providing 18% on-site affordable residential units or paying the City in-lieu affordable housing fees, together with 1 Manager Unit (as defined below); and (3) fund all predevelopment costs and gap financing required to complete the BMR Units.

The BMR Units will be deed-restricted to be affordable to qualified senior households with an average income not more than 59% of MOHCD AMI (as defined below) and will be constructed before the Developer can receive a CofO (as defined below) on more than three hundred eighty-six (386) Market Rate Units (as defined below).

1. Definitions.

- "Adjustment Date" means each anniversary of the Effective Date.
- "Affordable Housing Developer" means Mercy Housing California, a non-profit California corporation, or any other non-profit affordable housing developer with experience developing and operating affordable housing in San Francisco.
- "Affordable Rent" means a monthly rental charge for a BMR Unit (including the Utility Allowance applicable to the Household Size of such BMR Unit but excluding parking charges if a Parking Space is allocated to such BMR Unit) that does not exceed thirty percent (30%) of the maximum MOHCD AMI permitted for such BMR Unit, based on Household Size.
- "Approved Legal Description" means a legal description of the Walnut Land that substantially conforms to the depiction attached as <u>Attachment D-1</u> and is approved by the City's Director of Property and the MOHCD Director.
- "CofO" means a first certificate of occupancy issued by City's Department of Building Inspection, including any temporary certificate of occupancy.
- "CPI Increase" means, for the first Adjustment Date, the difference between the published CPI Index in effect at the time of the first Adjustment Date and the published CPI Index in effect at the time of the Effective Date. For each following Adjustment Date, the "CPI Increase" means the difference between the published CPI Index in effect at the time of an

applicable Adjustment Date and the published CPI Index in effect at the time of the immediately-preceding Adjustment Date.

- "CPI Index" means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics or, if the Consumer Price Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Consumer Price Index had not been discontinued or revised.
- "Development Agreement" shall mean the body of the Development Agreement to which this Housing Plan is attached.
- "Development Fee Deferral Surcharge Rate" means an amount determined by DBI under Building Code Section 107A.13.3.2.
- "First Construction Document" shall be as defined in San Francisco Building Code Section 107A.13.1(a)(8).
 - "Fair Market Value" shall have the meaning given such term in Attachment D-2.
- "Household" means one or more related or unrelated individuals who live together or intend to live together in a Senior Unit as their primary dwelling.
- "Household Size" means the number of persons in a Household as calculated under the MOHCD Manual.
- "Housing Entity" means a limited partnership with the Affordable Housing Developer (or a subsidiary entity owned or controlled by Affordable Housing Developer) as the general partner.
- "HUD" means the United States Department of Housing and Urban Development, or any successor agency.
 - "LIHTC" means the federal low income housing tax credit 4% program.
- "Manager Unit" means the 2-bedroom unit for the Walnut Affordable Housing Building manager.
 - "Market Rate Unit" means any Project Site residential unit that is not a BMR Unit.
- "MOHCD AMI" means median income as published annually by MOHCD, which is derived from the income limits determined by HUD for the San Francisco area, adjusted solely for household size but not high housing cost area. If HUD ceases to publish such data for 18 or more months, MOHCD and the Housing Entity will make good faith efforts to agree on other publicly available and credible substitute data for MOHCD AMI.

- "MOHCD Director" means the Director of the Mayor's Office of Housing and Community Development.
- "MOHCD Manual" means the City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual, as published by MOHCD and as updated from time to time.
 - "Outside Date" means the 12th anniversary of the Effective Date.
- "Ownership Gap Fee" means an amount equal to (i) the Gross Floor Area (as defined in Planning Code Section 401) for an applicable ownership Market Rate Unit multiplied by (ii) an amount equal to, at the time of calculation, (A) [insert an amount equal to MOHCD's published under Planning Code Section 415.5(b)(2) as of the effective date of the BOS legislation approving the Development Agreement, currently \$199.50 per square foot of Gross Floor Area of residential use], which shall be adjusted each anniversary of the Effective Date by the CPI Increase multiplied by (B) the lower of (1) [insert an amount equal to Planning Code Section 415.5 percentage for ownership units as of the effective date of the BOS legislation approving the Development Agreement] and (2) the percentage of off-site affordable ownership units that would otherwise be used for the Project if calculated under Planning Code Section 415.5(b).

"Parking Space" means a parking space assigned to a Senior Unit.

"Property Covenants" is defined in Section 2.A.

"Rental Gap Fee" means an amount equal to (i) the Gross Floor Area (as defined in Planning Code Section 401) for an applicable rental Market Rate Unit multiplied by (ii) an amount equal to, at the time of calculation, (A) [insert an amount equal to MOHCD's published under Planning Code Section 415.5(b)(2) as of the effective date of the BOS legislation approving the Development Agreement, currently \$199.50 per square foot of Gross Floor Area of residential use], which shall be adjusted each anniversary of the Effective Date by the CPI Increase, multiplied by (B) the lower of (1) [insert an amount equal to Planning Code Section 415.5 percentage for rental units as of the effective date of the BOS legislation approving the Development Agreement] and (2) the percentage of off-site affordable rental units that would otherwise be used for the Project if calculated under Planning Code Section 415.5(b).

"Section 415" means the City's Inclusionary Affordable Housing Program (Planning Code Sections 415 and 415.1 through 415.11), as amended from time to time.

"Senior Households" means a household that is 62 years old or older, or as otherwise defined by the requirements of any funding source used to construct or operate the Walnut Affordable Housing Building.

"Substantially Completed" means, with respect to any Senior Unit, the issuance of a CofO for that Senior Unit.

"Tax Credit Closing" means the date by which the Housing Entity has received (i) an LIHTC allocation for the Walnut Affordable Housing Building and (ii) all financing needed to commence and complete the construction of the Walnut Affordable Housing Building.

"Title Policy" is defined in Section 4.F.

"Utility Allowance" means a dollar amount determined in a manner acceptable to the California Tax Credit Allocation Committee, which may include an amount published periodically by the San Francisco Housing Authority or successor based on standards established by HUD, for the cost of basic utilities for households, adjusted for Household Size. If both the San Francisco Housing Authority and HUD cease publishing a Utility Allowance, then Developer may use another publicly available and credible dollar amount approved by MOHCD.

"Walnut Affordable Housing Building" is defined in Section 2.A.

"Walnut Child Care Parcel" is defined in Section 2.A.

"Walnut Housing Parcel" is defined in Section 2.A.

"Walnut Retail Parcel" is defined in Section 2.A.

"Walnut Land" is defined in Section 2.A.

2. Walnut Affordable Housing Building

A. <u>Description</u>. The 185 BMR Units and the Manager Unit will all be located in a single residential building (the "Walnut Affordable Housing Building") that will be located within a condominium parcel (the "Walnut Housing Parcel") on the portion of the Project Site depicted as the "Walnut Land" on <u>Attachment D-1</u> (the "Walnut Land"). The Walnut Affordable Housing Building will be comprised only of the BMR Units, the Manager Unit (which shall only be occupied by the Walnut Affordable Housing Building manager or, to the extent permitted under law, other property management staff), and the common and parking area for the BMR Units and Manager Unit. A condominium parcel for retail uses (the "Walnut Retail Parcel") and a condominium parcel for child care uses (the "Walnut Child Care Parcel") will also be located on the Walnut Land. The Walnut Housing Parcel, the Walnut Retail Parcel, and the Walnut Child Care Parcel will be created through a final map prepared under the Tentative Map as required in the Subdivision Map.

Before obtaining a First Construction Document for any portion of the Project or transferring the Walnut Land or the Walnut Housing Parcel to the Housing Entity, the Developer shall obtain legal descriptions for the Walnut Housing Parcel and the Walnut Child Care Parcel that are reasonably acceptable to City, cause the Walnut Land to be made a separate legal parcel, and record a declaration of restrictions (in a form approved by City and using such approved legal descriptions) that limits the use of the Walnut Housing Parcel to the construction and operation of the Walnut Affordable Housing Building and the Walnut Child Care Parcel to the construction and operation of a child care facility. In connection with the development of the Project, Developer shall have the right to enter into commercially reasonable licenses, easements, covenants, conditions and restrictions, reciprocal easement agreements, and similar agreements that affect the Walnut Housing Parcel to the extent necessary for the use or operation of any portion of the Walnut Housing Parcel (each, a "Property Covenant"); provided, however, that (i) Developer shall deliver the final version of each proposed Property Covenant to the MOHCD Director at least thirty (30) days before it is fully executed or recorded in the

Official Records of San Francisco County and (ii) all maintenance, repair, replacement and installation costs to be paid under a Property Covenant for the common area benefitting the Walnut Retail Parcel, the Walnut Housing Parcel, and the Walnut Child Care Parcel shall be proportionately allocated to the owners of the Walnut Retail Parcel, the Walnut Housing Parcel, and the Walnut Child Care Parcel based on the relative size of their respective parcel or any other commercially reasonable allocation that is approved in advance by the MOHCD Director, which approval shall not be unreasonably withheld.

- B. Housing Entity. Before commencing the construction of the Project's first Market Rate Unit, the Housing Entity will be formed and the Developer will contribute the Walnut Housing Parcel (subject to the requirements of the Development Agreement) to the Housing Entity. As a non-profit affordable housing developer and operator, the Affordable Housing Developer will operate the Walnut Affordable Housing Building to only serve Senior Households with incomes below 80% of MOHCD AMI, with an overall average of not more than 59% of MOHCD AMI.
- C. Financing. The Housing Entity will structure equity and debt financing for construction, and the Developer will fund all predevelopment costs and gap financing required to complete the construction, of the Walnut Affordable Housing Building. The Housing Entity will seek LIHTC and City-issued tax-exempt bond financing for construction. The Developer or the Housing Entity may apply to the following state funding programs for constructing the Walnut Affordable Housing Building without the City's prior written consent: the Multifamily Housing Program (MHP) and the Infill Infrastructure Grant Program (IIG). At the time of such application, the Developer or the Housing Entity shall provide the MOHCD Director with written notification of such application and a commitment that the award of such funding would lower the average MOHCD AMI for the Walnut Affordable Housing Building. Neither the Developer nor the Housing Entity can seek other federal or other state resources for constructing the Walnut Affordable Housing Building without the prior written consent of the MOHCD Director, which consent may be withheld if the award of such funding would not result in a lower average MOHCD AMI for the Walnut Affordable Housing Building or applying for the proposed funding would compete with the application of a MOHCD-supported project. A failure to obtain LIHTC, MHP, IIG, or non-competitive federal or state resources for constructing the Walnut Affordable Housing Building shall not decrease the Developer's affordable housing or other obligations under the Development Agreement. City has no obligation to provide any funding for the Walnut Affordable Housing Building. Developer may collaborate with other entities to obtain additional funding sources to the extent that those sources contribute to the feasibility, production speed, or increase the affordability of the Walnut Affordable Housing Building
- D. <u>Project Phasing</u>. The Developer may not obtain CofO for more than three hundred eighty-six (386) Market Rate Units until DBI issues a CofO for the Walnut Affordable Housing Building. In addition, the Developer must obtain a CofO for the Walnut Affordable Housing Building before the expiration of the Term.
- E. <u>Equivalency</u>. The Walnut Affordable Housing Building shall be substantially equivalent to the Project's other multi-unit residential buildings in exterior appearance and overall quality of construction. All BMR Units must be wired for telephone, cable, and internet

access and have substantially equivalent interior features and amenities (e.g. balconies, outdoor patios, number of bathrooms) as the studio and 1-bedroom rental Market Rate Units. Equivalency shall be guided by the MOHCD Manual as applicable to this Housing Plan, except that the terms set forth in the Development Agreement (including this Housing Plan) shall prevail (including the parties' agreement that all BMR Units will be studio or 1-bedroom residential units located in the Walnut Affordable Housing Building).

- F. Rental; Affordability. The initial rental and re-rental of the BMR Units shall comply with the lottery preferences and other provisions utilized by MOHCD under the MOHCD's Housing Preferences and Lottery Procedures Manual, as published by MOHCD and as each may be updated from time to time, to the extent permitted by law, and the reporting and monitoring requirements of the MOHCD Manual, to the extent permitted by law. The BMR Units must be provided at Affordable Rents and in accordance with the rent requirements in the MOHCD Manual and MOHCD's Hold Harmless Policy for MOHCD's Income Limits and Maximum Rents, effective as of May 3, 2019, as may be updated from time to time. The Developer or the Housing Entity shall record affordability and leasing restrictions that are senior to any financing documents and remain in effect for the life of the Walnut Affordable Housing Building against each of the BMR Units, in a form and priority approved by MOHCD, before their occupancy. The Housing Entity shall carry appropriate insurance to allow for the reconstruction of the Walnut Affordable Housing Building if there is any damage or casualty.
- G. Outreach. Given the Project's Site's location, the Parties desire that, to the greatest extent permitted by MOHCD's then-applicable policies and procedures, pre-marketing and marketing programs for BMR Units target residents of Supervisorial District 2 and/or residents residing within three-quarter (0.75) miles of the Project Site. In addition, the Parties desire that residents of District 2 and residents residing within three-quarter (0.75) miles of the Project Site be given the maximum neighborhood preference for leasing of BMR Units permitted under MOHCD's then-applicable policies and procedures.
- H. Planning Code Section 415. Except for Planning Code Section 415.6(a)-(f), (h) and (i), the Parties shall implement affordable housing requirements for the Walnut Affordable Housing Building that incorporate the provisions of Planning Code Section 415 and the MOHCD Manual. The following changes shall be deemed to conflict with the Development Agreement and therefore shall not apply to the Project: (i) any increase in the required number or percentage of affordable housing units beyond what is required by the Development Agreement; and (ii) any change in the minimum or maximum AMI percentage levels for the affordable housing pricing or income eligibility. The Parties acknowledge and agree that MOHCD will monitor and enforce the requirements applicable to BMR Units under this Housing Plan in accordance with Planning Code Section 415.9, except that all references to Section 415 will be deemed to refer to the requirements under this Housing Plan. To the extent there are implementation issues that have not been addressed in this Housing Plan, then the provisions of Section 415 and the MOHCD Manual shall govern and control such issues.
- 3. <u>Fees</u>. Before obtaining a First Construction Document for any portion of the Project, the parties shall select a mutually-agreeable third-party escrow (the "Escrow Account") to hold and disburse the Rental Gap Fees and Ownership Gap Fees under the requirements of this Housing Plan. Subject to the last sentence of this Section, for each Market Rate Unit the Developer

commences to construct before the Tax Credit Closing, the Developer shall, at its sole election, either deposit an amount equal to the Rental Gap Fee or Ownership Gap Fee, as applicable, for that unit in the Escrow Account before obtaining a First Construction Document for that unit, or deposit an amount equal to the Rental Gap Fee or Ownership Gap Fee, as applicable, for that unit and the Development Fee Deferral Surcharge for such Rental Gap Fee or Ownership Gap Fee (as calculated by DBI at the time of the Developer deposits such Rental Gap Fee or Ownership Gap Fee) in the Escrow Account between obtaining the First Construction Document and the CofO for that unit.

At any time within thirty (30) days after Developer's written request (accompanied by reasonable supporting materials), City shall authorize the release of funds from the Escrow Account to reimburse Developer for reasonable and customary Walnut Affordable Housing Building pre-development costs incurred prior to the Tax Credit Closing, such as, but not limited to, design drawings, schematic drawings, and commercially reasonable costs for financing that expedites the construction of the Walnut Affordable Housing Building. If the Tax Credit Closing occurs, all remaining funds in the Escrow Account needed to finance the construction of the Walnut Affordable Housing Building shall be disbursed to pay construction and development costs that are approved by the Walnut Affordable Housing Building construction lender at the time such costs are due and payable. If the Developer provides reasonable documentation to City that there are excess Escrow Account funds that are not required to finance the construction of the Walnut Affordable Housing Building, such excess Escrow Account funds shall be disbursed to the Developer.

If the Tax Credit Closing does not occur by the Outside Date, subject to extension for any applicable Excusable Delay, then City shall have the right to receive the Escrow Account funds by delivering written notice to the Escrow Account holder any time after the Outside Date for deposit in City's Citywide Affordable Housing Fund established in San Francisco Administrative Code Section 10.100-49. Within three (3) business days of receiving such written notice, the Escrow Account holder shall deliver the funds to the address specified by the MOHCD Director.

4. Transfer of Walnut Land to City.

A. <u>Transfer Notice</u>. If the Tax Credit Closing does not occur by the Outside Date, subject to extension for any applicable Excusable Delay, and construction of any Building occurs during the Term, then City shall have the right to acquire, and Developer agrees to transfer to the City, fee ownership of the Walnut Land pursuant to the form of grant deed (the "Grant Deed") attached as <u>Attachment D-3</u>, with the Approved Legal Description attached to it as Exhibit A. City shall have the right to exercise its right to acquire the Walnut Land by giving Developer, between the Outside Date and the last day of the Term, written notice of the City's request to acquire the Walnut Land pursuant to this Section (the "Transfer Notice"). If City receives the Walnut Land pursuant to this Section, and Developer later obtains all financing needed to commence and complete construction of retail improvements on the Walnut Retail Parcel (or child care improvements on the Walnut Child Care Parcel) prior to City's receipt of a First Construction Document for the Walnut Affordable Housing Building, City shall transfer fee ownership of the Walnut Retail Parcel or the Walnut Child Care Parcel, as applicable, to Developer within ten (10) business days of Developer's receipt of a First Construction Document for such improvements.

- B. <u>Developer's Representations</u>. Developer represents that it has the full right to make the commitments set forth in this Section without the consent or approval of any third party (or, if required, Developer has obtained all necessary consents and approvals).
- C. <u>Subordination</u>; <u>Condition of Title</u>. The rights of any Mortgagee secured by a Mortgage that encumbers all or part of the Walnut Land shall be subordinate to the City's rights under this Housing Plan. The City accepts the condition of the Walnut Land's title subject only to the matters described on the attached <u>Attachment D-4</u>, any additional matter that is approved in writing by the MOHCD Director in his or her sole and absolute discretion, and any Property Covenant that complies with the requirements of Section 2.A above. Developer further agrees to deliver the Walnut Land to the City generally in the condition that it is in on the Effective Date, provided it shall be free of all tenants and occupants. The Developer agrees that all contracts entered into by the Developer relating to the Walnut Land shall be terminated by Developer, at no cost to City, on or before the transfer unless the City agrees to assume the same.
- D. Cooperation. The Developer agrees to cooperate with City and to take all such actions as may be needed to promptly transfer the Walnut Land to City as set forth in this Section. To secure the Developer's obligations under this Section, before obtaining a First Construction Document for any portion of the Project or transferring the Walnut Land or the Walnut Housing Parcel to the Housing Entity, the Developer shall deliver a duly executed and acknowledged deed of trust to the City in substantially the form attached as Attachment D-5, with the Approved Legal Description attached to it as Exhibit A. City shall have the right to record the deed of trust in the Official Records of San Francisco County. There will be no conditions or City obligations relative to the Developer's transfer of the Walnut Land to City, and the form of any other transfer documents other than the Grant Deed needed to transfer fee ownership of the Walnut Land to City in the manner contemplated in this Section (collectively, the "Transfer Documents") will be subject to the reasonable approval of the Director of Property and the MOHCD Director, following consultation with the City Attorney's Office. By approving the Development Agreement, the City's Board of Supervisors authorizes the City's Director of Property and the MOHCD Director to enter into the Transfer Documents, if any, without additional action by City's Board of Supervisors as long as the Transfer Documents are consistent with the terms outlined in this Section.
- E. <u>Costs and Fees</u>. The Developer shall pay (1) all actual costs incurred by the City relating to the negotiation of Transfer Documents, if any, and all transfer taxes, recording fees, and escrow fees, and (2) the premium for the CLTA Title Policy. The Developer shall further indemnify the City for all costs and losses, including reasonable attorney's fees and costs, resulting from (i) any claim with respect to the Walnut Land relating to the period before the transfer of the Walnut Land to City, (ii) any contest to the Developer's right to transfer the Walnut Land as contemplated by this Section, and (iii) any failure by the Developer to satisfy the requirements of this Section. This indemnification shall survive the transfer of the Walnut Land to City.
- F. <u>Closing</u>. The Developer shall have a period of 60 days after Developer's receipt of the Transfer Notice (the "**Closing Period**") to (i) provide to City a CLTA policy of title

insurance, insuring City's fee interest in the Walnut Land in an amount equal to the fair market value of the Walnut Land, as reasonably determined by City, with only the exceptions permitted under Section 4.C above (the "Title Policy"), and (ii) to execute and deliver the Grant Deed and the Transfer Documents, if any, to City. Within 7 days after the City's receipt of the Title Policy, the duly executed and acknowledged Grant Deed, and, if any, the Transfer Documents, duly executed and acknowledged as applicable, City shall execute and return one (1) fully executed original of any Transfer Document to the Developer.

- G. City's Remedies. If the Developer fails to transfer the Walnut Land to City in accordance with this Section, then City shall have the right to specific performance to compel the transfer of the Walnut Land to City in accordance with this Section or to exercise its rights under the Deed of Trust to foreclose and take title to the Walnut Land. Following any specific performance to transfer the Walnut Land to City or any foreclosure of the Walnut Land by City under the Deed of Trust, Developer's obligations under this Section shall be satisfied; provided if the Developer is not able to transfer the Walnut Land to City in the condition required by this Section (a "Condition Preventing Transfer"), then City, as its sole remedy for a Condition Preventing Transfer, shall instead accept an in lieu payment in the amount of Fair Market Value. City's exercise of its remedy for a Condition Preventing Transfer shall be by delivering written notice of such exercise to Developer, with a statement explaining the basis for the determination that the Walnut Land cannot be transferred in accordance with this Section. If City delivers such notice, the Developer shall pay City an in lieu payment in the amount of Fair Market Value made within 60 days following the determination of the Fair Market Value. Any failure by Developer to make such in lieu payment when due shall accrue interest at 10% per annum from the date it is due until paid.
- H. <u>Fulfillment of Developer's Obligations</u>. On City's receipt of (i) fee ownership of the Walnut Land through an action for specific performance or foreclosure under the Deed of Trust or a payment of an in lieu payment due to a Condition Preventing Transfer, and (ii) the funds deposited in the Escrow Account as required in <u>Section 3</u> above, City shall have no further rights or remedies under the Development Agreement resulting from Developer's failure to timely commence or complete construction of the Walnut Affordable Housing Building. If the Developer obtains a First Construction Document for any Market Rate Unit after the Outside Date, nothing in the foregoing sentence shall limit the Developer's obligation to pay the fee calculated under Section 415.5 for such Market Rate Unit.

5. <u>Costa-Hawkins Rental Housing Act</u>

A. Non-Applicability of Costa-Hawkins Act. Chapter 4.3 of the California Government Code directs public agencies to grant concessions and incentives to private developers for the production of housing for lower income households. The Costa-Hawkins Rental Housing Act, California Civil Code Sections 1954.50 et seq. (the "Costa-Hawkins Act"), provides for no limitations on the establishment of the initial and all subsequent rental rates for a dwelling unit with a certificate of occupancy issued after February 1, 1995, with exceptions, including an exception for dwelling units constructed pursuant to a contract with a public agency in consideration for a direct financial contribution or any other form of assistance specified in Chapter 4.3 of the California Government Code (Section 1954.52(b)). The Parties agree that the Costa-Hawkins Act does not and in no way shall limit or otherwise affect the restriction of rental

charges for the BMR Units. The Development Agreement falls within the express exception to the Costa-Hawkins Act, Section 1954.52(b) because the Development Agreement is a contract with a public entity in consideration for contributions and other forms of assistance specified in Chapter 4.3 (commencing with Section 65919 of Division 1 of Title 7 of the California Government Code). The City and Developer would not be willing to enter into the Development Agreement without the understanding and agreement that Costa-Hawkins Act provisions set forth in California Civil Code Section 1954.52(a) do not apply to the BMR Units as a result of the exemption set forth in California Civil Code Section 1954.52(b) for the reasons specified above.

- B. General Waiver. Developer, on behalf of itself and all of its successors and assigns of all or any portion of the Project Site, agrees not to challenge and expressly waives, now and forever, any and all rights to challenge the requirements of the Development Agreement related to the establishment of the BMR Units under the Costa-Hawkins Act (as the Costa-Hawkins Act may be amended or supplanted from time to time). If and to the extent such general covenants and waivers are not enforceable under Law, the Parties acknowledge and that they are important elements of the consideration for the Development Agreement and the Parties should not have the benefits of the Development Agreement without the burdens of the Development Agreement. Accordingly, if Developer challenges the application of this covenant and waiver, then such breach will be an Event of Default and City shall have the right to terminate the Development Agreement in its entirety.
- C. <u>Notification</u>. Developer shall notify any potential buyer of all or part of the Project Site of the provisions of this Housing Plan. By acquiring any interest in the Project Site, a buyer agrees to these provisions, and agrees to the specific waiver, releases and indemnifications set forth herein. If Developer fails to notify a buyer of these provisions and a buyer alleges that it is not subject to the requirements of this Housing Plan because it was not made aware of these provisions before it acquired an interest in the Project Site, the Developer shall indemnify and defend the City against any and all claims or losses resulting from such allegation.

6. Nondiscrimination Based on Section 8, Household Size, or Source of Income

For all housing units within the Project Site, Developer shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing program under Section 8 of the Housing Act (42 U.S.C. §1437 et. seq.), or any successor program or similar federal, state or local governmental assistance program. Developer shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective tenants. Developer shall not collect security deposits or other deposits from Section 8 certificate or voucher holders in excess of that allowed under the Section 8 program. Developer shall not discriminate against tenant applicants on the basis of legal source of income (e.g., TANF, Section 8 or SSI), and Developer shall consider a prospective tenant's previous rent history of at least one year as evidence of the ability to pay the applicable rent (i.e., ability to pay shall be demonstrated if such a tenant can show that the same percentage or more of the tenant's income has been consistently paid on time for rent in the past as will be required to be paid for the rent applicable to the unit to be occupied, provided that such tenant's expenses have not increased materially).

Exhibit D-1

Depiction of Walnut Land

Exhibit D-2

Appraisal Process

1. Arbitration for Fair Market Value.

1.1 <u>Appointment</u>. Each Party shall appoint one (1) Appraiser (as defined below) within thirty (30) days after City delivers written notice to Developer that the arbitration provisions of this Exhibit have been invoked (the "Initial Selection Period"). Upon selecting its Appraiser, a Party shall promptly notify the other Party in writing of the name of that Appraiser. Each Appraiser selected by a Party under this Section shall be an "Initial Appraiser".

An "Appraiser" shall mean a competent and licensed appraiser who is qualified by training and experience in the City and County of San Francisco and a member in good standing of the Appraisal Institute and designated as a MAI, or, if the Appraisal Institute no longer exists, shall hold the senior professional designation awarded by the most prominent organization of appraisal professionals then awarding such professional designations. An Appraiser may have a prior working relationship with either or both of the Parties, provided that such working relationship shall be disclosed to both Parties. Without limiting the foregoing, an Appraiser shall have at least ten (10) years' experience valuing multi-family residential real estate that is in the City and County of San Francisco and substantially similar product-type to the Walnut Affordable Housing Building (i.e., affordable senior housing and condominium airspace interests or similar property interests such as ground leases) required for the Walnut Affordable Housing Building. If a Party fails to appoint its Appraiser within the Initial Selection Period, the Initial Appraiser appointed by the other Party shall individually determine the Fair Market Value in accordance with the provisions hereof.

Instruction and Completion. The term "Fair Market Value" shall mean the then current fair market value of the Walnut Land, as determined pursuant to this Exhibit. Each Initial Appraiser will make an independent determination of the Fair Market Value. The following instructions shall govern the preparation and delivery of each appraisal report giving the respective Initial Appraiser's opinion of the Fair Market Value. The Parties may supplement or modify these instructions upon mutual agreement. Each final opinion of value will be stated in a self-contained appraisal report based on a comprehensive study and analysis and setting forth, in detail, all data, analysis, and conclusions necessary and typical of a complete, self-contained appraisal report in compliance with the current version of the Uniform Standards of Professional Appraisal Practice ("USPAP"). The appraisal report will include the Initial Appraiser's final opinion of the Fair Market Value stated as a specific dollar figure. The Walnut Land shall be appraised based on the actual residential project that it is entitled for at the time of Appraisal consistent with the zoning and all conditions on the Walnut Land and assuming that the following apply to the Walnut Land: (i) the Approvals (as such term is defined in the Development Agreement), including, without

As of 2014, USPAP replaced the terminology of "Restricted Use, Summary and Self Contained", and replaced the report content types with two types, "Appraisal Report" and "Restricted Appraisal Report." The reference to "Self Contained" in V, Appraisal Standards, refers to the meaning it had prior to 2014. Also, the reference to "Complete" appraisal has the meaning that it did prior this term being removed officially from USPAP, i.e. essentially that no relevant and applicable valuation approaches or methodologies may be excluded (and the rationale for any approach excluded be provided).

limitation, the applicable conditions of approval and any notices of special restrictions, (ii) the Development Agreement (subject to the eventual expiration thereof), (iii) permitted exceptions to title, (iv) the final subdivision map, (v)covenants, conditions and restrictions, reciprocal easement agreements and similar agreements regarding operation and use of condominium airspace parcels on the Walnut Land, regardless of whether such agreements are then in effect, it being agreed that the Walnut Land will be subject to such agreements in a commercially reasonable form, (v) applicable zoning, (vi) applicable development impact fees, (vii) its then-current "as-is", "whereis" condition, provided the only exceptions to title will be those described in Section 4.C of Exhibit D to the Development Agreement and (viii) such other documents and restrictions that the Parties mutually agree to present to the Initial Appraisers (or the Initial Appraiser if there is only one) during the appraisal process. The Fair Market Value will be determined as if the Walnut Land were served by streets and utilities but otherwise vacant and unimproved by any structures, buildings, improvements, fixtures, additions, alterations, and betterments of whatsoever nature or description. For clarity, it is understood that the Walnut Land valuation shall take into consideration the actual costs and expenses necessary for the improvements to specifically serve the Walnut Land. Each Initial Appraiser will use sales comparisons to estimate value, presented in individual write-up sheets. Each Initial Appraiser shall adhere to USPAP direction pertaining to comparable sales requiring extraordinary verification and weighting considerations. If there is more than one Initial Appraiser, the Initial Appraisers may share and have access to objective information in preparing their appraisals, but they will independently analyze the information in their determination of the Fair Market Value, and neither of the Initial Appraisers shall have access to the appraisal of the other (except for the sharing of objective information contained in such appraisals) until both of the appraisals are submitted in accordance with the provisions of this Section. Neither Party shall communicate with the Initial Appraiser selected by the other Party regarding the instructions contained in this Section before the Initial Appraisers complete their appraisals. If an Initial Appraiser has questions regarding the instructions in this Section, such Initial Appraiser shall use his or her own professional judgment and shall make clear all assumptions upon which his or her professional conclusions are based, including any supplemental instructions or interpretative guidance received from the Party appointing such Initial Appraiser. There shall not be any arbitration or adjudication of the instructions to the Initial Appraisers contained in this Section. Each Initial Appraiser shall complete, sign and submit its written appraisal setting forth the Fair Market Value to the Parties within sixty (60) days after the appointment of the last of the Initial Appraisers (or if only one Initial Appraiser is selected, within sixty (60) days after the expiration of the Initial Selection Period).

If only one Initial Appraiser is selected during the Initial Selection Period, then the Fair Market Value shall be the figure in such Initial Appraiser's appraisal. If two Initial Appraisers are selected during the Initial Selection Period, and the higher appraised Fair Market Value is not more than one hundred ten percent (110%) of the lower appraised Fair Market Value, then the Fair Market Value shall be the average of such two (2) Fair Market Value figures.

1.3 <u>Potential Third Appraiser</u>. If two Initial Appraisers are selected during the Initial Selection Period, and the higher appraised Fair Market Value is more than one hundred ten percent (110%) of the lower appraised Fair Market Value, then the Initial Appraisers shall agree upon and appoint an independent third Appraiser meeting the requirements for an Appraiser specified in Section 1.2 within thirty (30) days after the appraisals of both of the Initial Appraisers have been

submitted to the Parties in accordance with the following procedure. The Initial Appraisers shall inform the Parties of their appointment of the proposed third Appraiser at or before the end of such thirty (30)-day appointment period. Each Party shall have the opportunity to question the proposed third Appraiser, in writing only, as to his or her qualifications, experience, past working relationships with the Parties, and any other matters relevant to the appraisal. Either Party may, by written notice (given within three (3) business days after receiving notice of the selection of the third proposed Appraiser) to the other Party and the Initial Appraisers, raise a good faith objection to the selection of the third proposed Appraiser based on his or her failure to meet the requirements for an Appraiser specified in Section 1.2. In such event, if the Initial Appraisers determine that the objection was made in good faith, the Initial Appraisers shall promptly select another third proposed Appraiser, subject again to the same process for the raising of objections. If neither Party raises a good faith objection to the appointment of the third proposed Appraiser within three (3) business days after receiving notice of his or her appointment, each such Party shall be deemed to have waived any issues or questions relating to the qualifications or independence of the third Appraiser or any other matter relating to the selection of the third Appraiser under this Exhibit. If for any reason the Initial Appraisers do not appoint a third proposed Appraiser within such thirty (30)-day appointment period (or within a ten (10) business days thereafter), then either Party may apply to the Writs and Receivers Department of the Superior Court of the State of California in and for the County of San Francisco for appointment of a third Appraiser meeting the requirements for an Appraiser specified in Section 1.2. If the Court denies or otherwise refuses to act upon such application within sixty (60) days from the date on which the Party first applies to the Court for appointment of the third Appraiser, either Party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent third Appraiser meeting the foregoing qualifications. An Appraiser appointed pursuant to this Section shall be the "Third Appraiser".

- 1.4 <u>Baseball Appraisal</u>. The Third Appraiser, if any, shall consider the appraisals submitted by the Initial Appraisers, as well as any other relevant written evidence the Third Appraiser may request of either or both of the Initial Appraisers. If either of the Initial Appraisers submits any such evidence to the Third Appraiser, it shall do so only at the request of the Third Appraiser and shall deliver a complete and accurate copy to the other Party and the Initial Appraiser such Party selected, at the same time it submits the same to the Third Appraiser. Neither Party, nor the Initial Appraisers they appoint, shall conduct any ex parte communications with the Third Appraiser regarding the subject matter of the appraisal. Within thirty (30) days after his or her appointment, the Third Appraiser shall select the Fair Market Value determined by one or the other of the Initial Appraisers that is the closer, in the opinion of the Third Appraiser, to the actual Fair Market Value. The determination of the Third Appraiser shall be limited solely to the issue of deciding which of the determinations of the two Initial Appraisers is closest to the actual Fair Market Value. The Third Appraiser shall have no right to propose a middle ground or to modify either of the two appraisals or any provision of this Exhibit.
- 1.5 <u>Conclusive Determination</u>. Except as provided in California Code of Civil Procedure Section 1286.2 (as the same may be amended from time to time), the determination of the Fair Market Value by the accepted appraisal shall be conclusive, final and binding on the Parties. No Appraiser selected or appointed pursuant to this Exhibit shall have any power to

modify any of the provisions of this Exhibit and must base his or her decision on the definitions, standards, assumptions, instructions and other provisions contained in this Exhibit. Subject to the provisions of this Section, the Parties will cooperate to provide all appropriate information to each Appraiser selected or appointed under this Exhibit. The Appraisers selected or appointed under the provisions of this Exhibit will each produce their determination in writing, supported by the reasons for the determination.

1.6 <u>Fees and Costs; Waiver</u>. Each Party shall bear the fees, costs and expenses of the Initial Appraiser it selects. The fees, costs and expenses of the Third Appraiser, including the fees, costs and expenses in his or her appointment pursuant to this Exhibit, shall be shared equally by the City and Developer.

Exhibit D-3

Form of Grant Deed

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

Director of Property Real Estate Division City and County of San Francisco 25 Van Ness Avenue, Suite 400 San Francisco, California 94102

The undersigned hereby declares this instrument to be exempt from Recording Fees (CA Govt. Code § 27383) and Documentary Transfer Tax (CA Rev. & Tax Code § 11922 and S.F. Bus. & Tax Reg. Code § 1105)

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

GRANT DEED

(Lot No. ____ Block No. ___)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, LAUREL HEIGHTS PARTNERS, LLC, a Delaware limited liability company ("Grantor"), hereby grants to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the real property located in the City and County of San Francisco, State of California, described on Exhibit A attached hereto and made a part hereof (the "Property"), together with any and all rights, privileges and easements incidental or appurtenant to the Property, including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances on and under the Property, as well as any and all development rights, air rights, water, water rights, riparian rights and water stock relating to the Property, and any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the land and all of Grantor's right, title and interest in and to any and all roads and alleys adjoining or servicing the Property, and subject to the exceptions set forth on Exhibit B attached hereto and made a part hereof.

Executed as of this	day of _	, 20
		LAUREL HEIGHTS PARTNERS, LLC a Delaware limited liability company
		By: Name: Its:
		By: Name: Its:

Page 1 to Exhibit D-5

State of California)	
County of San Francisco)	
said State, personally apper on the basis of satisfactor within instrument and acl	eared	, a notary public in and for , who proved to me son(s) whose name(s) is/are subscribed to the e/she/they executed the same in his/her/their ignature(s) on the instrument the person(s), or executed the instrument.
I certify under PENALTY Oparagraph is true and corre		rs of the State of California that the foregoing
WITNESS my hand and o	fficial seal.	
Signature	(Seal)	

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

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 Francis	sco)	
On	_, before me,	, a notary public in and for
said State, personally	appeared	, who proved to me
within instrument and authorized capacity(ie	d acknowledged to me es), and that by his/her/t	the person(s) whose name(s) is/are subscribed to the that he/she/they executed the same in his/her/their their signature(s) on the instrument the person(s), or acted, executed the instrument.
I certify under PENAL paragraph is true and		the laws of the State of California that the foregoing
WITNESS my hand a	nd official seal.	
Signature		(Seal)

CERTIFICATE OF ACCEPTANCE

This is to certify that the intere	st in real property conveyed by the foregoing Grant Deed to
the City and County of San Francisco	o, a municipal corporation, is hereby accepted pursuant to
Board of Supervisors' Ordinance No	o, approved September, 2019, and the
grantee consents to recordation thereo	f by its duly authorized officer.
•	
Dated:	CITY AND COUNTY OF SAN FRANCISCO,
	a municipal corporation
	n.
	By:
	Director of Property

EXHIBIT A

Legal Description of Property

EXHIBIT B

List of Exceptions

- 1. The lien of real property taxes not yet due or payable at the time City acquires fee title to the Walnut Land
- 2. The lien of any taxes for Mello Roos Community Facilities District No. 90-1 not yet due or payable at the time City acquires fee title to the Walnut Land
- 3. Water rights, claims or title to water, whether or not disclosed by the public records
- 4. The declaration of public access covenants and restrictions attached as Exhibit C-3 to the Development Agreement
- 5. The notice of special restrictions for a child care facility to be recorded under Exhibit L to the Development Agreement

Exhibit D-4

Accepted Conditions of Title

- 1. The lien of real property taxes not yet due or payable at the time City acquires fee title to the Walnut Land
- 2. The lien of any taxes for Mello Roos Community Facilities District No. 90-1 not yet due or payable at the time City acquires fee title to the Walnut Land
- 3. Water rights, claims or title to water, whether or not disclosed by the public records
- 4. The declaration of public access covenants and restrictions attached as Exhibit C-3 to the Development Agreement
- 5. The notice of special restrictions for a child care facility to be recorded under Exhibit L to the Development Agreement

Exhibit D-5 Deed of Trust

RECORDING REQUESTED BY CLERK OF THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO AND WHEN RECORDED MAIL TO:

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

Attn: Land Use Team

Exempt from Recording Fees (CA Govt. Code §27383) and Documentary Transfer Tax (CA Rev. & Tax Code §11922 and S.F. Bus. & Tax Reg. Code §1105)

APN:	Block	Lot	
Street	Address:		

DEED OF TRUST

This DEED OF TRUS	T (this "Deed	l of Trust") is made	as of	, 2019,
among LAUREL HEIGHTS PA	ARTNERS, LI	LC, a Delaware limite	ed liability cor	npany ("Trustor"),
whose address is		, [
("Trustee"), whose address is				THE CITY AND
COUNTY OF SAN FRANCIS	SCO, a munic	cipal corporation ("I	Beneficiary"),	whose address is
	, Trustor irre	evocably grants, tran	sfers and ass	igns to Trustee in
trust, with power of sale, all o	f Trustor's rig	ght, title and interest	in and to the	at certain property
located in the City and County	of San Francis	co, California, more	particularly de	escribed in <u>Exhibit</u>
A attached hereto and incorpora	ated by referen	ce herein (the "Land	"), including,	without limitation,
all improvements located on the	e Land ("Impr	ovements"), subject,	however, to t	he termination, re-
conveyance and subordination	provisions of	Section E.6 below.	The Land and	the Improvements
shall be collectively referred to	in this Deed o	of Trust as the "Prope	erty". Capital	ized terms that are
used but not defined herein sha	ll have the me	anings given such te	rms in that ce	rtain Development
Agreement by and between the	e City and Co	unty of San Francisc	co and Laurel	Heights Partners,
LLC, dated	, 2019, and	recorded in the Offi	icial Records	of San Francisco
County as Document No.	on	, 20	(the "DA").	

For the purpose of securing only (1) Trustor's obligation to transfer the Property in accordance with Section 4 of Exhibit D to the DA (the "Transfer Section") as and when required under the Transfer Section, and (2) the performance of each agreement of Trustor incorporated by reference or contained herein or reciting it is so secured (items (1) and (2) above are referred to herein as the "Secured Obligations"). Other than such transfer obligation under the Transfer Section, no other provision of the DA is secured by this Deed of Trust.

- A. To protect and maintain the security of this Deed of Trust, Trustor agrees:
- 1. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any suit brought by Beneficiary to foreclose this Deed of Trust.
 - 2. To pay all costs, fees and expenses of this Deed of Trust.

3. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, with interest from date of expenditure at the maximum rate allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed that:

- 1. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his or her right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.
- 2. At any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust, and without affecting the personal liability, if any, of any person for payment of the indebtedness secured hereby, Trustee has the right to reconvey any part of the Property, consent to the making of any map or plat thereof, join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.
- 3. Upon written request of Beneficiary stating that all actions required under the Transfer Section have been performed, all sums secured hereby have been paid, and upon surrender of this Deed of Trust to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."
- C. The occurrence of any of the following events shall constitute an event of default (a "Default") under this Deed of Trust:
- 1. Trustor (i) transfers its interest in the Property, or any part of thereof, or any interest in the Property, in any manner other than (a) a transfer to the Housing Entity (as defined in the DA), (b) the grant of a deed of trust or mortgage to any Mortgagee (as defined in the DA) that is subordinate to this Deed of Trust and encumbers all or part of Trustor's interest in the Property, (c) leases entered into in the ordinary course, or (d) Property Covenants (as defined in Section 2.A of Exhibit D of the DA) in accordance with Section 2.A of Exhibit D of the DA or (ii) is divested of its title or any interest in the Property in any manner or way, whether voluntarily or involuntarily, in each case without the Beneficiary's prior written consent (which consent shall not be unreasonably withheld).
- 2. Trustor's failure to perform any covenant or obligation of Trustor contained herein, as and when performance is due, and the continuance of such failure for a period of thirty (30) days following written notice thereof from Beneficiary to Trustor; provided, however, that if such failure is not reasonably susceptible of cure within such thirty (30) day period, then, so long as Trustor commences to cure such failure within such thirty (30) day period and continually and

diligently pursues such cure and completes such cure within a reasonable period, such failure shall not be a Default.

- 3. Trustor's becomes insolvent, makes an assignment for the benefit of creditors, or commences or becomes subject to any proceeding under the federal Bankruptcy Code or any other insolvency, receivership, reorganization, arrangement of debt, liquidation or debtor's relief law wherein the Trustor is the debtor.
- 5. Trustor's fails to transfer the Property in accordance with the Transfer Section, as and when required under the Transfer Section.
- D. If any Default occurs, and as long any such Default exists, Beneficiary shall have the right to declare all indebtedness secured hereby to be immediately due and payable, and all such indebtedness shall thereupon become immediately due and payable, without any presentment, demand, protest or notice of any kind, all of which are expressly waived by Trustor, and Beneficiary shall have the following remedies:
- 1. Beneficiary shall have the right, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of the security, to enter upon and take possession of the Property, or any part thereof, in its own name or in the name of Trustee, and do any acts which Beneficiary deems necessary or desirable to preserve the value, marketability or rentability of the Property or increase the income therefrom or protect the security hereof, and, with or without taking possession of the Property, to sue for or otherwise collect the rents and profits of the Property, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, upon any indebtedness secured hereby, all in such order as Beneficiary may determine.
- 2. Beneficiary shall have the right to commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof.
- 3. Beneficiary shall have the right to deliver to Trustee a written declaration of default and demand for sale pursuant to the power of sale in this Deed of Trust. If Beneficiary elects to foreclose this Deed of Trust by exercise of the power of sale in this Deed of Trust, Beneficiary shall notify Trustee and shall deposit with Trustee such written notice of default and election to sell and such receipts or evidence of expenditures made and secured hereby as Trustee may require. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by Trustee in said notice of sale, as a whole, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee shall have the right to postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter shall have the right to postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the

truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary, may purchase at such sale.

- 4. After deducting all costs, fees and expenses of Trustee and of the trust created under this Deed of Trust ("Trust"), including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.
- 5. Every right, power and remedy granted to Trustee or Beneficiary in this Deed of Trust shall be cumulative and not exclusive, and in addition to all rights, powers and remedies granted at law or in equity or by statute, and each such right, power and remedy may be exercised from time to time and as often and in such order as may be deemed expedient by Trustee or Beneficiary, and the exercise of any such right, power or remedy shall not be deemed a waiver of the right to exercise, at the same time or thereafter, any other right, power or remedy.
- 6. Trustor hereby requests that a copy of any notice of default and of any notice of sale under this Deed of Trust be mailed to Trustor at the address of Trustor set forth in this Deed of Trust as required by applicable law.

E. It is further mutually agreed that:

- 1. Beneficiary, or any successor in its rights under the Transfer Section or ownership of any indebtedness secured hereby, has the right to, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee.
- 2. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine or the neuter, and the singular number includes the plural.
- 3. The Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.
- 4. A copy of any notice of default and any notice of sale hereunder shall be mailed to Trustor at his address hereinbefore set forth.

- 5. Trustor shall have no personal liability under this Deed of Trust, and Beneficiary's only recourse against Trustor for the satisfaction of the Secured Obligations shall be Beneficiary's exercise of its rights and remedies with respect to the Property.
- 6. Immediately prior to the earlier to occur of (i) the Tax Credit Closing (as defined in Exhibit D to the DA) or (ii) the payment of the amounts under subsection G of the Transfer Section following City's election to take such payment, this Deed of Trust automatically shall become null and void without the need for further action by Trustor, Trustee or Beneficiary, and Beneficiary shall cause to be recorded, in the Official Records of the City and County of San Francisco, with respect to the Property a standard form of re-conveyance of deed of trust with respect to this Deed of Trust.
- 7. This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

[Remainder of Page Intentionally Blank. Signature on Following Page.]

IN WITNESS WHEREOF, the undersigned has caused this Deed of Trust to be executed and delivered under seal as of the day and year first above written.

LAUREL HEIGHTS PARTNERS, LLC, a Delaware limited liability company
By:
Name:
Title:

A notary public or other officer of the document to which this certification.			
State of California	<i>)</i>		
County of San Francisco)		
On	, before me,		, a Notary Public,
personally appeared		, who proved to 1	, a Notary Public, me on the basis of
satisfactory evidence to be the	he person(s) whose n	ame(s) is/are subscribed	d to the within
instrument and acknowledge authorized capacity(ies), and the entity upon behalf of wh	I that by his/her/their ich the person(s) actor	signature(s) on the insted, executed the instrum	trument the person(s), or nent.
I certify under PENALTY C foregoing paragraph is true a		the laws of the State of	California that the
WITNESS my hand and offi	cial seal.		
Signature			•

Exhibit A

Legal Description of Land

Exhibit E

List of Approvals

Final a	approval actions by the City and County of San Francisco Board of Supervisors
1.	Ordinance [] (File No. []): (1) Approving a Development Agreement between the City and County of San Francisco and Laurel Heights Partners LLC; (2) waiving or modifying certain provisions of the Administrative Code and Planning Code, and approving specific development impact fees; and (3) adopting findings under the California Environmental Quality Act and findings of consistency with the General Plan and Planning Code priority policies.
2.	Ordinance [] (File No. []): Amending the Planning Code, the Zoning Map, and the Height Map to add the 3333 California Project Special Use District and adopting findings under the California Environmental Quality Act and findings of consistency with the General Plan and Planning Code priority policies.
3.	Ordinance [] (File No. []): Approving Major Encroachment Permit to Laurel Heights Partners LLC for improvements on
Final a	and Related Approval Actions of City and County of San Francisco Planning
	uission (referenced by Motion Number "M No." or Resolution Number "R No.")
1.	M No. []: Certifying the Final Environmental Impact Report for the 3333 California Mixed-Use District Project.
2.	M No. []: Adopting Findings and Statement of Overriding Considerations under the California Environmental Quality Act.
3.	M No. []: Approving a Conditional Use Authorization/Planned Unit Development for the 3333 California Project.
4.	R No. []: Recommending to the Board of Supervisors approval of amendments to the Planning Code to establish the 3333 California Project Special Use District and approval of amendments to Sectional Maps SU03 to refer to the 3333 California Project Special Use District and HT03 of the Zoning Map.
5.	R No. []: Recommending to the Board of Supervisors approval of a Development Agreement between the City and Laurel Heights Partners LLC.
Final	and Related Approval Actions of City and County of San Francisco Municipal
	portation Agency Board of Directors
1.	Resolution Number [] consenting to a Development Agreement between the City and Laurel Heights Partners LLC, including the Transportation Exhibit.
	and Related Approval Actions of City and County of San Francisco Public Utilities
Comm	Resolution Number [] consenting to the AWSS Schedule in the Development Agreement between the City and Laurel Heights Partners LLC.
Final a	and Related Approval Actions by San Francisco Public Works

1. Approval of Tentative Map

Exhibit F

MMRP

[see attached]

Exhibit G

Notice of Completion and Termination

WHEN RECORDED RETURN TO:	
[address]	
Attn:	
. (Space above this line reserved for Recorder's use only)
THIS NOTICE OF COMPLETION OF BUILD "Notice") dated for reference purposes only as of by and between the CITY AND COUNTY OF 5 municipal corporation of the State of California (Department, and, a	this day of, 20, is made SAN FRANCISCO, a political subdivision and (the "City"), acting by and through its Planning
of, 20 and recorded in the Of Francisco on, as Document Nu	imber (Book No, Reel No. pitalized terms used in this Notice that are not
2. Under Section 7.1 of the Develop have been completed and all of the Associated Corhave also been completed, the City agreed, uponotice of completion as it relates to the applicable	n Developer's request, to execute and record a
3. The City confirms that the Buildir described in the attached Exhibit A (the "Affected Community Benefits tied to that Building, he Development Agreement. All parties with an interely on this Notice.	ave been completed in accordance with the
CITY:	Approved as to form:
CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation	[DENNIS J. HERRERA], City Attorney
By: Director of Planning	By: Deputy City Attorney
Director of Framiling	Deputy City Attorney

Exhibit A

[attach legal description of Affected Property]

Exhibit H

Form of Assignment and Assumption Agreement

RECORDING REQUESTED BY CLERK OF THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO (Exempt from Recording Fees Pursuant to Government Code Section 27383)

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

ASSIGNMENT AND ASSUMPTION AGREEMENT

RELATIVE TO D	EVELOPMENT AGREI	EMENT FOR []
THIS ASSIGNMENT AND a entered into this day of	ASSUMPTION AGREEM of, 20_	MENT (hereinafter, the "Assignment") is, by and between, a, a
("Assi	gnor ") and	, a
("Assignee").		
	RECITALS	
A.	, a	and the City and County of Santion of the State of California (the "City").
entered into that certain Deve	lopment Agreement (the '	" Development Agreement ") dated as of rtain real property owned by Assignor, as
		elopment Agreement (the "Project Site").
		ial Records of the City and County of San
Francisco on a		· · · · · · · · · · · · · · · · · · ·
[add recital to document an information]	y previous transfer of the	e Transferred Property, with recording
(i) Transfer all or a portion	of the Project Site, (ii) as	nat Developer (Assignor) has the right to ssign all of its rights, title, interest and asferee with respect to the portions of the

Project Site transferred to the Transferee, and (iii) upon the recordation of an approved Assignment and Assumption Agreement, to be released from any prospective liability or obligation under the

Development Agreement related to the Transferred Property as set forth in Section ____ of the Development Agreement.

- C. Assignor intends to convey certain real property as more particularly identified and described on Exhibit A attached hereto (hereafter the "**Transferred Property**") to Assignee. The Transferred Property is subject to the Development Agreement.
- D. Assignor desires to assign and Assignee desires to assume Assignor's right, title, interest, burdens and obligations under the Development Agreement with respect to and as related to the Transferred Property, as more particularly described below.

ASSIGNMENT AND ASSUMPTION

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

- 1. <u>Defined Terms</u>. Initially capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Development Agreement.
- 2. <u>Assignment of Development Agreement</u>. Assignor hereby assigns to Assignee, effective as of Assignor's conveyance of the Transferred Property to Assignee, all of the rights, title, interest, burdens and obligations of Assignor under the Development Agreement with respect to the Transferred Property, including any Community Benefits that are tied to Buildings on the Transferred Property. Assignor retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect to all other portions of the Project Site owned by Assignor.
- 3. <u>Assumption of Development Agreement</u>. Assignee hereby assumes, effective as of Assignor's conveyance of the Transferred Property to Assignee, all of the rights, title, interest, burdens and obligations of Assignor under the Development Agreement with respect to the Transferred Property, including its associated Community Benefits, and agrees to observe and fully perform all the duties and obligations of Assignor under the Development Agreement with respect to the Transferred Property, and to be subject to all the terms and conditions thereof with respect to the Transferred Property. The parties intend that, upon the execution of this Assignment and conveyance of the Transferred Property to Assignee, Assignee shall become the "Developer" under the Development Agreement with respect to the Transferred Property.
- 4. <u>Reaffirmation of Indemnifications</u>. Assignee hereby consents to and expressly reaffirms any and all indemnifications of the City set forth in the Development Agreement, including without limitation Section of the Development Agreement.
- 5. <u>Housing Obligations</u>. Assignee has read and understands the obligations set forth in Exhibit __ of the Development Agreement as they relate to the Transferred Property. Without limiting the foregoing, Assignee agrees (1) to the terms and provisions of such Exhibit ___, including the indemnities, waivers and releases set forth therein, and (2) that the Development Agreement falls within the express exception to the Costa-Hawkins Act, Section 1954.52(b) because it is a contract with a public entity in consideration for contributions and other forms of assistance specified in Chapter 4.3 (commencing with Section 65919 of Division 1 of Title 7 of

the California Government Code). Assignee understands that the City would not have been willing to enter into the Development Agreement without the provisions of such Exhibit D.

- 6. <u>Assignee's Covenants</u>. Assignee hereby covenants and agrees that: (a) Assignee shall not challenge the enforceability of any provision or requirement of the Development Agreement; (b) Assignee shall not sue the City in connection with any and all disputes between Assignor and Assignee arising from this Assignment or the Development Agreement, including any failure to complete all or any part of the Project by any party; and (c) Assignee shall indemnify the City and its officers, agents and employees from, and if requested, shall defend them against any and all Losses resulting directly or indirectly from any dispute between Assignor and Assignee arising from this Assignment or the Development Agreement.
- 7. <u>Binding on Successors</u>. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

8. <u>Notice</u>	ces. The notice addres	s for Assignee un	der Section	_ of the Devel	opment
Agreement shall be	:				
				,	
	Attn:				٠
With copy to	o:				
	A (1)				
	Attn				

- 8. <u>Counterparts</u>. This Assignment may be executed in as many counterparts as may be deemed necessary and convenient, and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument.
- 9. <u>Governing Law</u>. This Assignment and the legal relations of the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of California, without regard to its principles of conflicts of law.

IN WITNESS HEREOF, the parties hereto have executed this Assignment as of the day and year first above written.

ASSIGNOR:

[insert signature block]

ASSIGNEE:

[insert signature block]

Exhibit I

Workforce Agreement

Developer shall make contributions and require Project Sponsors, Contractors, Consultants, Subcontractors and Subconsultants, as applicable, to undertake activities to support workforce development in the construction of the Project, as set forth in this <u>Exhibit I</u>.¹

A. First Source Hiring Program.

- 1. Each Project Sponsor shall, with respect to any building that is included as a Workforce Building², (i) include in each Contract for construction work a provision requiring each Contractor to enter into a FSHA Construction Agreement in the form attached hereto as Attachment A before beginning any construction work, and (ii) provide a signed copy thereof to the First Source Hiring Administration ("FSHA") and CityBuild within 10 business days of execution. The FSHA Construction Agreement shall be required for the initial construction of each Workforce Building, and (ii) any improvements or alterations that require a Permit, as defined in San Francisco Administrative Code Chapter 83 ("Chapter 83"), during the 10 year period following issuance of the first temporary certificate of occupancy for the Workforce Building, except as noted below (the "Workforce Period").
- 2. Each Project Sponsor shall, with respect to each Workforce Building, comply with the requirements of San Francisco Administrative Code Chapter 83 ("Chapter 83") and upon entering into leases or other occupancy contracts for commercial space at the Premises that are subject to Chapter 83 with a tenant occupying more than 25,000 square feet in floor area ("Commercial Tenant"), will include in each such contract a requirement that the Commercial Tenant enter into a FSHA Operations Agreement in the form attached hereto as <u>Attachment B</u>, and (ii) provide a signed copy thereof to the FSHA within 10 business days of execution. The FSHA

¹ Any capitalized term used in this <u>Exhibit I</u>, including its attachments, that is not defined herein shall have the meaning given to such term in the Development Agreement.

² Any capitalized term used in this Section A that is not defined in Section A or the Development Agreement will have the definition given to such term in <u>Attachment A</u>, including the following terms: Contract, Contractor, Entry Level Positions, Premises, Project Sponsor, Qualified Economically Disadvantaged Individuals for Entry Level Positions, and Workforce Building.

Operations Agreement shall be required for the initial Commercial Tenant and for any later Commercial Tenant that occupies all or part of a Workforce Building that is subject to Chapter 83 during the Workforce Period.

- 3. CityBuild shall represent the FSHA and will provide referrals of Qualified Economically Disadvantaged Individuals for Entry Level Positions on the construction work for each Workforce Building as required under Chapter 83. The FSHA will provide referrals of Qualified Economically Disadvantaged Individuals for the permanent Entry Level Positions located within the Premises where required under Chapter 83.
- 4. The owners or residents of the individual residential units and any residential Homeowner's Association within the Project shall have no obligations under this Section A and no obligation to enter into a FSHA Construction Agreement or FSHA Operations Agreement.
- 5. FSHA shall notify any Contractor, Subcontractor and Commercial Tenant, as applicable, in writing, with a copy to Project Sponsor, of any alleged breach on the part of that entity of its obligations under Chapter 83 or its FSHA Construction Agreement or the FSHA Operations Agreement, as applicable, before seeking an assessment of liquidated damages pursuant to Section 83.12 of the Administrative Code. FSHA's sole remedies against a Contractor, Subcontractor or Commercial Tenant shall be as set forth in Chapter 83, including the enforcement process. Upon FSHA's request, a Project Sponsor shall reasonably cooperate with FSHA in any such enforcement action against any Contractor, Subcontractor or Commercial Tenant, provided in no event shall a Project Sponsor be liable for any breach by a Contractor, Subcontractor or Commercial Tenant.
- 6. If a Project Sponsor fulfills its obligations as set forth in this Section A, it shall not be held responsible for the failure of a Contractor, Subcontractor, Commercial Tenant or any other person or party to comply with the requirements of Chapter 83 or this Section A. If a Project Sponsor fails to fulfill its obligations under this Section A, the applicable provisions of Chapter 83 shall apply, though the City and the Project Sponsor shall have the right to invoke the process set forth in Section 9.2 of the Development Agreement.

7. This Section A is an approved "First Source Hiring Agreement" as referenced in Section 83.11 of the Administrative Code.

B. <u>Local Business Enterprise (LBE) Utilization Program.</u>

Each Project Sponsor of a Workforce Building, as defined in Attachment C, and its respective Contractors and Consultants, shall comply with the Local Business Enterprise Utilization Program set forth in Attachment C hereto.

C. <u>FSH and LBE Obligations</u>.

The obligations set forth in this Workforce Agreement shall constitute the entirety of the First Source Hiring and LBE obligations with respect to the Project, and no additional First Source Hiring or LBE obligations, or any similar obligations, shall be imposed, directly or indirectly, on the Project.

Attachment A

Attachment B

Attachment C

Local Business Enterprise Utilization Plan

- 1. Purpose and Scope. This Attachment C ("LBE Utilization Plan") governs the Local Business Enterprise obligations of the Project pursuant to San Francisco Administrative Code Section 14B.20 and satisfies the obligations of each Project Sponsor and its Contractors and Consultants for a LBE Utilization Plan as set forth therein. Capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement or Section 14B.20 as applicable. The purpose of the City's LBE program is to cause private developers to seek, whenever practicable, to engage contracting teams that reflect the diversity of the City and include participation of both businesses and residents from the City's most disadvantaged communities. In the event of any conflict between Administrative Code Chapter 14B and this Attachment, this Attachment shall govern.
- 2. <u>Roles of Parties</u>. In connection with the design and construction phases of each Workforce Building (as defined below), the Project will provide community benefits designed to foster employment opportunities for disadvantaged individuals by offering contracting and consulting opportunities to local business enterprises ("LBEs") in accordance with this Attachment. Each Project Sponsor shall participate in this local business enterprise program, and the City's Contract Monitoring Division ("CMD") will serve the roles as set forth below; provided, however, that, as set forth in Section 5 below, the requirements of this <u>Attachment C</u> may be satisfied on a project-wide basis.
- 3. <u>Definitions</u>. For purposes of this Attachment, the definitions shall be as follows:
 - a. "CMD" shall mean the Contract Monitoring Division of the City Administrator's Office.
 - b. "Commercially Useful Function" shall mean that the business is directly responsible for providing the materials, equipment, supplies or services to the Project Sponsor, Construction Contractor or professional services firm retained to work on a Workforce Building, as the case may be (each, a "Contracting Party"), as required by the solicitation or request for quotes, bids or proposals. Businesses that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a "commercially useful function" unless the brokerage, referral or temporary employment services are those required and sought by the Project Sponsor or a Contractor or professional services firm. When the Project Sponsor or a Contractor or professional services firm requires and seeks products from an LBE supplier or distributor, including, without limitation, products that are not regularly stocked or are a specially manufactured item(s), no more than 60% of the entire cost of the product shall be credited towards LBE participation goals.
 - c. "Consultant" shall mean a person or company that has entered into a professional services contract for monetary consideration with a Project Sponsor to provide advice or services to the Project Sponsor directly related to the architectural or landscape design,

physical planning, and/or civil, structural or environmental engineering of a Workforce Building.

- d. "Contract(s)" shall mean an agreement, whether a direct contract or subcontract, for Consultant or Contractor services for all or a portion of a Workforce Building, subject to the exclusions set forth in Section 5 below.
- e. "Contractor" shall mean a person or entity that enters into a direct Contract with a Project Sponsor to build or construct all or a portion of a Workforce Building.
- f. "Good Faith Efforts" shall mean procedural steps taken by the Project Sponsor, Contractor or Consultant with respect to the attainment of the LBE participation goals, as set forth in Section 7 below.
- g. "Local Business Enterprise" or "LBE" means a business that is certified as a Micro or Small LBE under Chapter 14B.3.
- h. "LBE Liaison" shall mean the Project Sponsor's primary point of contact with CMD regarding the obligations of this LBE Utilization Plan. Each prime Contractor(s) shall likewise have a LBE Liaison.
- i. "Project Sponsor" shall mean the project sponsor of a Workforce Building.
- j. "Subconsultant" shall mean a person or entity that has a direct Contract with a Consultant to perform a portion of the work under a Contract for a Workforce Building.
- k. "Subcontractor" shall mean a person or entity that has a direct Contract with a Contractor to perform a portion of the work under a Contract for a Workforce Building.
- l. "Workforce Building" shall mean the following: (i) the residential portions of all residential buildings, including associated residential units, residential common space and amenity space, residential parking, and back of house construction; and (iii) all construction related to the residential portions of any standalone affordable housing buildings. Workforce Buildings shall expressly exclude residential owner-contracted improvements in for-sale residential units and any non-residential tenant improvements. Developer will use good faith efforts to hire LBEs for ongoing service contracts (e.g. maintenance, janitorial, landscaping, security etc.) within Workforce Buildings and advertise such contracting opportunities with CMD except to the extent impractical or infeasible. If a master association is responsible for the operation and maintenance of publicly owned improvements within the Project Site, CMD shall refer LBEs to such association for consideration with regard to contracting opportunities for such improvements. Such association will consider, in good faith such LBE referrals, but hiring decisions shall be entirely at the discretion of such association.
- 4. <u>Diversity</u>. Developer will be seeking to, whenever practicable, engage contracting teams that reflect the diversity of the City and participation of both businesses and residents from the City's most disadvantaged communities. Developer's compliance with the good faith efforts in Section 7 shall be deemed to satisfy this objective.

5. <u>LBE Participation Goal</u>. Project Sponsor agrees to participate in this LBE Utilization Program and CMD agrees to work with Project Sponsor in this effort, as set forth in this <u>Attachment C</u>. As long as this <u>Attachment C</u> remains in full force and effect, each Project Sponsor shall make good faith efforts as defined below to achieve an overall LBE participation goal of twelve percent (12%) of the total cost of all Contracts for a Workforce Building awarded to LBE Contractors, Subcontractors, Consultants or Subconsultants that are Small and Micro-LBEs, as set forth in Administrative Code Section 14B.8(A). Project Sponsor may satisfy the overall LBE participation goal on a project-wide basis.

Notwithstanding the foregoing, CMD's Director may, in his or her discretion, provide for a downward adjustment of the LBE participation goal, depending on LBE participation data presented by the Project Sponsor and its team in quarterly and annual reports and meetings. In addition, where, based on reasonable evidence presented to the Director by a party attempting to achieve the LBE Participation goals, there are not sufficient qualified Small and Micro-LBEs available and the applicable party has not already advertised for professional services and contracting opportunities with respect to the applicable work or solicited bids for such work, the Director may authorize the applicable party to satisfy the LBE participation goal through the use of Small, Micro or SBA-LBEs (as each such term is defined is employed in Chapter 14B of the Administrative Code), or may set separate subcontractor participation requirements for Small and Micro-LBEs, and for SBA-LBEs.

6. <u>Project Sponsor Obligations</u>. Each Project Sponsor shall comply with the requirements of this <u>Attachment C</u> as follows: Upon entering into a Contract with a Contractor or Consultant, each Project Sponsor will include in each such Contract a provision requiring the Contractor or Consultant to comply with the terms of this <u>Attachment C</u>, and setting forth the applicable percentage goal for such Contract and provide a signed copy thereof to CMD within 10 business days of execution. Such Contract shall specify the notice information for the Contractor or Consultant to receive notice pursuant to Section 17.

Each Project Sponsor shall identify an LBE Liaison. The LBE Liaison shall be an LBE Consultant and have experience in and responsibility for making recommendations on maximizing engagement of LBEs from disadvantaged communities. [Note to CMD: please provide contact information for possible LBE Consultants.] The LBE Liaison shall be available to meet with CMD staff on a regular basis or as necessary regarding the implementation of this Attachment C. If a Project Sponsor fulfills its obligations as set forth in this Section 6 and otherwise cooperates in good faith at CMD's request with respect to any meet and confer process or enforcement action against a non-compliant Contractor, Consultant, Subcontractor or Subconsultant, then it shall not be held responsible for the failure of a Contractor, Consultant, Subcontractor or Subconsultant or any other person or party to comply with the requirements of this Attachment C.

7. <u>Good Faith Efforts.</u> City acknowledges and agrees that each Project Sponsor, Contractor, Subcontractor, Consultant and Subconsultant shall have the sole discretion to qualify, hire or not hire LBEs. If a Contractor or Consultant does not meet the LBE hiring goal set forth above, it will nonetheless be deemed to satisfy the good faith effort obligation of this Section 7 and thereby satisfy the requirements and obligations of this <u>Attachment C</u> if the Contractor,

Consultants and their Subcontractors and Subconsultants, as applicable, perform the good faith efforts set forth in this Section 7 as follows:

- a. <u>Advance Notice</u>. Notify CMD in writing of all upcoming solicitations of proposals for work under a Contract at least 15 business days before issuing such solicitations to allow opportunity for CMD to identify and outreach to any LBEs that it reasonably deems may be qualified for the Contract scope of work.
- b. <u>Contract Size</u>. Where practicable, the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant will divide the work in order to encourage maximum LBE participation or, encourage joint venturing, as long as such division will not lead to inefficiencies in the performance of the work as reasonably determined by the Contracting Party. If the Contracting Party reasonably determines that it would be efficient for Subcontractors to perform specific items, then the Contracting Party will identify those specific items of each Contract that may be performed by Subcontractors.
- c. <u>Advertise</u>. The Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant will (i) advertise for 30 days for professional services and contracting opportunities in media focused on small businesses including the Bid and Contract Opportunities website through the City's SF Supplier Portal and other local and trade publications, and (ii) allow subcontractors to attend outreach events, pre-bid meetings, and invite LBEs to submit bids to Project Sponsor or its prime Contractor or Consultant, as applicable. As practicable, the contractor shall convene pre-bid or pre-solicitation meetings no less than 15 days prior to the opening of bids and proposals to all for LBEs to ask questions about the selection process and technical specifications/requirements. A Project Sponsor may request CMD's permission to award a contract without advertising if the work consists of specialty services or otherwise does not provide opportunities for LBE participation.
- d. <u>CMD Invitation</u>. If a pre-bid meeting or other similar meeting is held with proposed Contractors, Subcontractors, Consultants or Subconsultants, invite CMD to the meeting to allow CMD to explain proper LBE utilization.
- e. <u>Public Solicitation</u>. The Project Sponsor or its Prime Contractor(s) and/or Consultants, as applicable, will work with CMD to follow up on initial solicitations of interest by contacting LBEs to determine with certainty whether they are interested in performing specific items in a project, have sufficient experience with performing similar types of work, and are available during the desired time frame for performance of the work.
- f. Outreach and Other Assistance. The Project Sponsor or its Prime Contractor(s) and/or Consultants, as applicable, will a) provide LBEs with plans, specifications and requirements for all or part of the project; and b) notify LBE trade associations that disseminate bid and contract information and provide technical assistance to LBEs. The designated LBE Liaison(s) will work with CMD to conduct outreach to LBEs for all consulting/contracting opportunities in the applicable trades and services in order to encourage them to participate on the project.

- g. <u>Contacts</u>. Make contacts with LBEs, associations or development centers, or any agencies, which disseminate bid and contract information to LBEs and document any other efforts undertaken to encourage participation by LBEs.
- h. <u>Good Faith/Nondiscrimination</u>. Make good faith efforts to enter into Contracts with LBEs and give good faith consideration to bids and proposals submitted by LBEs. Use nondiscriminatory selection criteria (for the purpose of clarity, exercise of subjective aesthetic taste in selection decisions for architect and other design professionals shall not be deemed discriminatory and the exercise of its commercially reasonable judgment in all hiring decisions shall not be deemed discriminatory), including assessment of qualifications for the scope of work, ability to obtain bonds and insurance with types and amounts of coverage typical in the general marketplace, and availability during the desired time frame for performance of the work, and whether the LBE's proposed pricing and other terms are commercially reasonable and competitive in the general marketplace.
- i. <u>Incorporation into contract provisions</u>. Project Sponsor shall include in prime Contracts provisions that require prospective Contractors and Consultants that will be utilizing Subcontractors or Subconsultants to follow the above good faith efforts to subcontract to LBEs, including overall LBE participation goal and any LBE percentage that may be required under such Contract.
- j. <u>Monitoring</u>. Allow CMD Contract Compliance unit to monitor Consultant/Contractor selection processes and, when necessary give suggestions as to how best to maximize LBEs ability to complete and win procurement opportunities.
- k. <u>Insurance and Bonding</u>. Recognizing that lines of credit, insurance and bonding are problems common to local businesses, staff will be available to explain the applicable insurance and bonding requirements, answer questions about them, and, if possible, suggest governmental or third party avenues of assistance. Contractor, Subcontractor, Consultant and Subconsultant will work with the Project Sponsor and CMD in good faith to consider any commercially reasonable insurance programs that are available at the time to provide to LBE subcontractors access to the required coverage through either the owner, Owner-Controlled Insurance Policy (OCIP), general contractor, Contractor-Controlled Insurance Policy (CCIP), or other insurance programs.
- l. <u>Maintain Records and Cooperation</u>. Maintain records of LBEs that are awarded Contracts, not discriminate against any LBEs, and, if requested, meet and confer with CMD as reasonably required in addition to the meet and confer sessions described in Section 10 below to identify a strategy to meet the LBE goal;
- m. <u>Quarterly Reports</u>. During construction, the LBE Liaison(s) shall prepare a quarterly report of LBE participation goal attainment and submit to CMD as required by Section 10 herein; and
- n. <u>Meet and Confer</u>. Attend the meet and confer process described in Section 10.
- 8. <u>Good Faith Outreach</u>. Good faith efforts shall be deemed satisfied solely by compliance with Section 7. Notwithstanding anything to the contrary in this LBE Utilization Plan, if despite

satisfying the good faith efforts requirements by complying with Section 7, the twelve percent (12%) LBE participation goal is not met as to any Workforce Building, then (i) CMD's Director has the discretion to provide a downward adjustment for the LBE participation goal as set forth in Section 5 above, and (ii) regardless of whether such downward adjustment is provided, the amount by which the 12% goal is unmet shall not be carried over to any remaining Workforce Building(s). Contractors and Consultants, and Subcontractors and Subconsultants as applicable shall also work with CMD to identify from CMD's database of LBEs those LBEs who are most likely to be qualified for each identified opportunity under Section 7.b, and following CMD's notice under Section 9.a, shall undertake reasonable efforts at CMD's request to support CMD's outreach to identified LBEs as mutually agreed upon by CMD and each Contractor or Consultant and its Subcontractors and Subconsultants, as applicable.

- 9. <u>CMD Obligations</u>. The following are obligations of CMD to implement this LBE Utilization Plan:
 - a. During the thirty (30) day advertising period for upcoming Contracts required by Section 7.b, CMD will work with the Project Sponsor and its prime Contractor and/or Consultant as applicable to send such notification to qualified LBEs to alert them to upcoming Contracts.
 - b. Provide detailed technical assistance to Contractors, Subcontractors, Consultants and Subconsultants on good faith outreach to LBEs.
 - c. Review quarterly reports of LBE participation goals; when necessary give suggestions as to how best to maximize LBEs ability to compete and win procurement opportunities.
 - d. Perform other tasks as reasonably required to assist the Project Sponsor and its Contractors, Subcontractors, Consultants and Subconsultants in meeting LBE participation goals and/or satisfying good faith efforts requirements.
 - e. Insurance and Bonding. Recognizing that lines of credit, insurance and bonding are problems common to local businesses, CMD staff will be available to explain the applicable insurance and bonding requirements, answer questions about them, and, if possible, suggest governmental or third party avenues of assistance.
- 10. <u>Meet and Confer Process</u>. Commencing with the first Contract that is executed for a Workforce Building, and every six (6) months thereafter, or more frequently if requested by either CMD, Project Sponsor or a Contractor or Consultant each Contractor and Consultant and the CMD shall engage in an informal meet and confer to assess compliance of such Contractor and Consultants and its Subcontractors and Subconsultants as applicable with this <u>Attachment C</u>. When deficiencies are noted, meet and confer with CMD to ascertain and execute plans to increase LBE participation and remediate deficiencies.
- 11. <u>Prohibition on Discrimination</u>. Project Sponsors shall not discriminate in its selection of Contractors and Consultants, and such Contractors and Consultants shall not discriminate in their selection of Subcontractors and Subconsultants against any person on the basis of race, gender, or any other basis prohibited by law. As part of its efforts to avoid unlawful discrimination in

the selection of Subconsultants and Subcontractors, Contractors and Consultants will undertake the Good Faith Efforts and participate in the meet and confer processes as set forth in Sections 7 and 10 above.

- 12. <u>Collective Bargaining Agreements</u>. Nothing in this <u>Attachment C</u> shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, project labor agreement, project stabilization agreement, existing employment contract or other labor agreement or labor contract ("Collective Bargaining Agreements"). In the event of a conflict between this <u>Attachment C</u> and a Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall supersede this Attachment C.
- 13. Reporting and Monitoring. Each Contractor, Consultant, and its Subcontractors and Subconsultants as applicable shall maintain accurate records demonstrating compliance with the LBE participation goals, including keeping track of the date that each response, proposal or bid that was received from LBEs, including the amount bid by and the amount to be paid (if different) to the non-LBE contractor that was selected, documentation of any efforts regarding good faith efforts as set forth in Section 7. Developer and/or their Contractors and Consultants shall use the City's online project reporting system (currently LCP Tracker/B2G) or other CMD approved reporting method. Project Sponsors shall create a reporting method for tracking LBE participation. Data tracked shall include the following (at a minimum):
 - a. Name/Type of Contract(s) let (e.g. Civil Engineering contract, Environmental Consulting, etc.)
 - b. Name of prime Contractors (including identifying which are LBEs and non-LBEs)
 - c. Name of Subcontractors (including identifying which are LBEs and non-LBEs)
 - d. Scope of work performed by LBEs (e.g. under an Architect, an LBE could be procured to provide renderings)
 - e. Dollar amounts associated with both LBE and non-LBE Contractors at both prime and Subcontractor levels.
 - f. Total LBE participation is defined as a percentage of total Contract dollars.
- 14. Written Notice of Deficiencies. If based on complaint, failure to report, or other cause, the CMD has reason to question the good faith efforts of a Project Sponsor, Contractor, Subcontractor, Consultant or Subconsultant, then CMD shall provide written notice to the Project Sponsor, each affected prime Contractor or Consultant and, if applicable, also to its Subcontractor or Subconsultant. The prime Contractor or Consultant and, if applicable, the Subcontractor or Subconsultant, shall have a reasonable period, based on the facts and circumstances of each case, to demonstrate to the reasonable satisfaction of the CMD that it has exercised good faith to satisfy its obligations under this Attachment C. When deficiencies are noted CMD staff will work with the appropriate LBE Liaison(s) to remedy such deficiencies.

15. <u>Remedies</u>. Notwithstanding anything to the contrary in the Development Agreement, the following process and remedies shall apply with respect to any alleged violation of this Attachment C:

Mediation and conciliation shall be the administrative procedure of first resort for any and all compliance disputes arising under this <u>Attachment C</u>. The Director of CMD shall have power to oversee and to conduct the mediation and conciliation.

Non-binding arbitration shall be the administrative procedure of second resort utilized by CMD for resolving the issue of whether a Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant discriminated in the award of one or more LBE Contracts to the extent that such issue is not resolved through the mediation and conciliation procedure described above. Obtaining a final judgment through arbitration on LBE contract related disputes shall be a condition precedent to the ability of the City or the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant to file a request for judicial relief.

If a Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant is found to be in willful breach of the obligations set forth in this <u>Attachment C</u>, assess against the noncompliant Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant liquidated damages not to exceed \$25,000 or 5% of the Contract, whichever is less, for each such willful breach. In determining the amount of any liquidated damages to be assessed within the limits described above, the arbitrator or court of competent jurisdiction shall consider the financial capacity of the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

For all other violations of this <u>Attachment C</u>, the sole remedy for violation shall be specific performance, without the limits with respect thereto in Section 9.4.3-9.4.5 of the Development Agreement.

- 16. <u>Duration of this Agreement</u>. This Attachment C shall terminate (i) as to each Workforce Building, upon the issuance of the last Certificate of Occupancy for such Workforce Building (i.e., upon completion of the Workforce Building); and (ii) as to the good faith obligations under Section 3(*l*) above with respect to services under service contracts, ten (10) years after issuance of the last Temporary Certificate of Occupancy for the applicable Building. Upon such termination, this Attachment C shall be of no further force and effect.
- 17. <u>Notice</u>. All notices to be given under this <u>Attachment C</u> shall be in writing and sent by: certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail, a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or hand delivery, in which case notice shall be deemed delivered on the date received, all as follows:

If to CMD:	
	Attn:

	Attn:	<u></u>
If to Contractor:		in the Annual Park Park Annual Park Park Park Park Park Park Park Park
	Attn:	
If to Consultant:	·	
	Attn:	
arty may change its addi	ress for notice nurnoses h	giving the other parties n

Sunday or a day in which banks in San Francisco, California are authorized to close.

Exhibit J

Transportation

This Transportation Exhibit outlines the Project's transportation commitments in two areas: (i) the Transportation Demand Management Plan and (ii) the reconfiguration of two slip lanes.

1. Transportation Demand Management Plan

The Developer shall implement a site-specific Transportation Demand Management Plan included as Attachment 1 to this exhibit. While the Project would be subject to Planning Code Section 169.3(e)(1) and required to implement 50% of applicable target points, the Developer commits through this Agreement, to be subject to Planning Code Section 169.3(e)(2) and to implement 75% of applicable target points. Otherwise, the Project remains subject to all of the provisions of Planning Code Section 169 et seq.

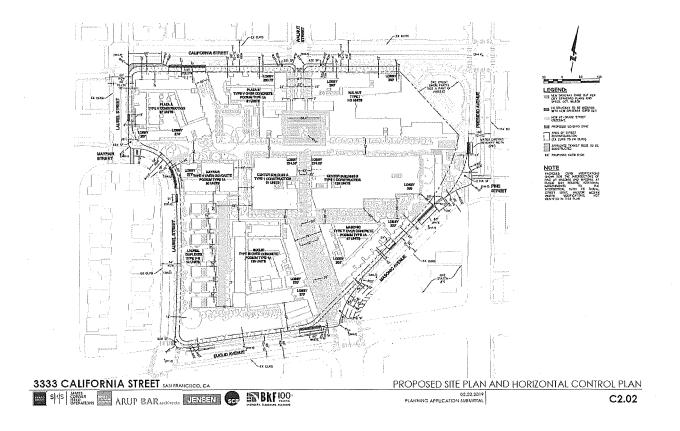
2. Reconfiguration of Slip Lanes

A key element of the Project's Public Improvements includes the reconfiguration of existing traffic slip lanes at the intersections of Presidio Avenue and Pine Street/Masonic Avenue and at Masonic Avenue and Euclid Avenue. These Public Improvements consist of bulb outs and other sidewalk improvements where two separate slip lanes are currently located. With the Public Improvements, the slip lane areas will remain publicly accessible, but will no longer be accessible to motorized vehicles. The parties, including the SFMTA Board of Directors through its consent to the Development Agreement, agree to the slip lane and sidewalk reconfiguration concept level plans that are included as Attachment 2 to this Exhibit. The Developer will work with DPW and SFMTA to obtain all necessary review, approvals and construction permits.

Attachment 1 Transportation Demand Management Plan

[see attached]

Attachment 2
Proposed Site Plans and Horizontal Control Plan



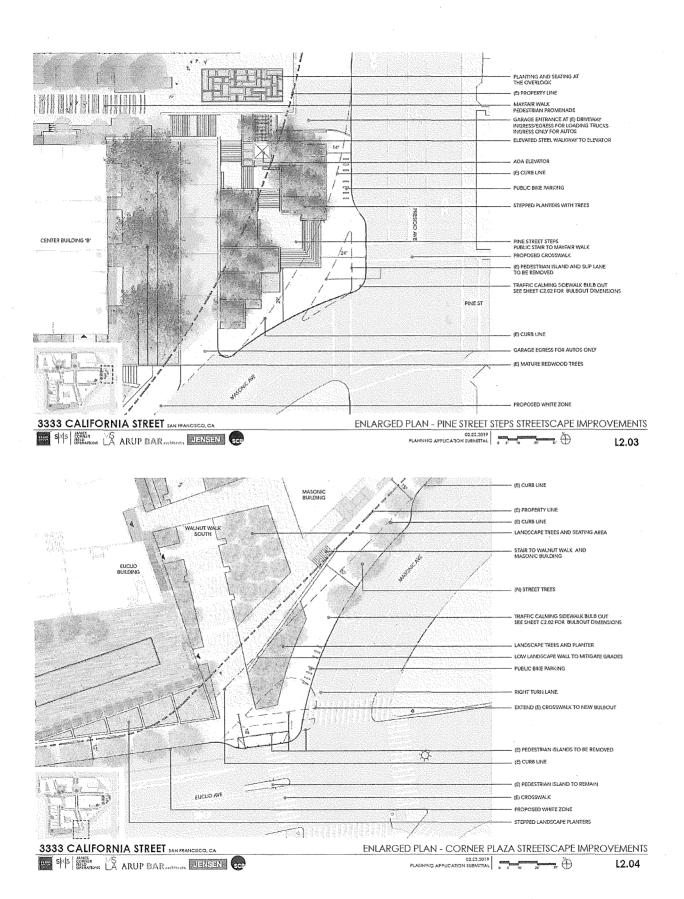


Exhibit K

Schedule Template for Later Approvals

Developer will submit a project milestone schedule at the time of filing any application for the following Later Approvals: Major Encroachment Permit (if applicable), Street Improvement Permit, Final Map(s), or other pre-construction phase Later Approvals. The initial project schedule will be conceptual in nature and will be based upon the best estimate of the Developer.

Project schedules are intended to provide basic information to assist the City with its review and staff capacity planning related to the Later Approvals described above. Due to the many outside factors that affect a real estate development project's schedule and the varying workload of City staff, the Parties understand that this schedule is intended only as guidance to the City.

This schedule should include the following major milestones and be in the format described below. Public Works Infrastructure Taskforce and OEWD will review this schedule and then share this schedule with City departments for feedback. With department feedback in hand, Public Works Infrastructure Taskforce and OEWD may request a meeting with Developer for schedule confirmation.

Milestones to be included, as applicable to project:

City approvals:

- Subdivision/mapping actions
- Transaction documents (any easements, street vacations, etc.)
- Infrastructure engineering/permit applications
 - Example: Street Improvement Plan (SIP), storm water plan, and other major systems, like AWSS or backwater system
- Any necessary commission approvals
- Start of construction (demolition/site prep, horizontal and/or vertical)
- Substantial completion
- City acceptance of infrastructure
- TCO
- Any other relevant major milestones

Non-City approvals:

Any associated non-San Francisco approvals (i.e. Navy, Caltrans, Caltrain, State lands, etc.)

Schedule format:

- The schedule should be in Gantt chart format
 - o Time should be in in fiscal years via months or quarters at the top
 - Milestones should be in rows on the left

- Start dates (day/month/year) and durations in days should be indicated for each milestone
- Project should be broken out into major Phases and sub Phases, if applicable
- The planning horizon should include: SIP, Transactional Documents, Tent./Final Map, Vertical Design, SoC, TCO
- The preferred schedule software is Microsoft Project

Schedule submission:

Developer will submit each schedule to the following address:

Office of Economic and Workforce Development Public Works Infrastructure Taskforce

City Hall, Room 496

Attn: Housing Hub/3333 California Project

1 Dr. Carlton B. Goodlett Place

San Francisco, CA 94102

Exhibit L

Child Care Program

- 1. Developer to provide approximately 14,000 gross square feet of rentable area for a child care facility built on the Walnut Child Care Parcel with an adjacent open space for child care use (as required by local/State law). Developer will deliver the child care facility in warm shell condition (for example, with the space demised to meet occupancy separation requirements (minus finishes on wall, floor and ceiling), stubs for standard utilities, path to a location for mechanical equipment, storefront and rear access as required, and other items required to obtain a temporary certificate of occupancy to allow tenant to proceed with their improvements). The child care provider would specify the tenant improvements necessary for the space, which Developer would not be responsible for providing under this Agreement.
- 2. A State-licensed child care provider shall operate in the space under the following terms, provided that all Later Approvals and applicable operating and licensing and other requirements as may be necessary are first obtained.
 - a. Provider shall comply with all State guidelines and applicable local guidelines for operating a child care facility.
 - b. Provider shall operate a facility licensed to serve approximately 175 children with the final number to be determined based on state and any local licensing requirements.
 - c. In accordance with Planning Code Section 414.13, Developer shall include (and require compliance with) a provision in its lease with the child care provider requiring the provider to reserve at least ten percent (10%) of the maximum capacity of the child care facility (as determined by the license for the facility issued by the California Department of Social Services) to be affordable to children of households of low income. Operators are encouraged to work with the San Francisco Office of Early Care and Education to learn about Early Learning Scholarships for low- and moderate-income families as well as other operator resources.
 - d. Programs shall serve a broad range of age groups, including infants and toddlers.
 - e. Slots shall be made available to the general public on the same terms and conditions as those for Project residents, employees and users.
- 3. The operating term for the child care facility shall equal the life of the Walnut Building. Subject to the provisions of this Exhibit L, the Developer shall use commercially reasonable efforts to lease the space to a child care operator at all times for the life of the Walnut Building. The operating term may be fulfilled by more than one child care operator

over the life of the Walnut Building. The Developer shall comply with the terms below during initial leasing and periods of operator turnover and/or vacancy periods.

- a. (i) On the earlier to occur of (A) applying for a First Construction Document (as defined in San Francisco Building Code Section 107A.13.1(a)(8)) for the Walnut Building and (B) 15 business days before initially offering the facility for rent and (ii) within 15 business days following the expiration or termination of a child care operator's lease for the facility, the owner of the facility shall notify governmental and nonprofit entities that can assist in publicizing the availability of the facility (the "Child Care Marketers") of the opportunity to lease it, including, at a minimum, the following entities: the San Francisco Office of Early Care and Education (or any successor agency), the Family Child Care Association of San Francisco, the Children's Council, and Wu Yee Children's Services.
- b. If the child care space remains vacant for more than three years after DBI has issued of a first certificate of occupancy (including any temporary certificate of occupancy) for the Walnut Building despite Developer's commercially reasonable efforts to lease it at prevailing child care facility market terms (comparable to other similarly-sized and geographically proximate licensed child care facilities) to an initial child care operator, and Developer wishes to be released from its obligation to lease the facility to a child care operator, then Developer shall have the right to pay City an amount equal to \$2,101,489.55 [in lieu child care facility fee that would otherwise be due at the Effective Date if the fee was not waived], proportionately adjusted to reflect any increase between the published CPI Index in effect as of the Effective Date and the published CPI Index in effect at the time such payment is made (as adjusted, the "Base Fee"), plus an amount equal to 10% of the Base Fee, for deposit in the Child Care Capital Fund established under Planning Code Section 414.14. On paying such amount to City under this subsection, the Developer may use the facility for any use permitted under the Project SUD.
- c. If after having leased the facility to at least one child care operator, the child care space remains vacant for more than three years after the termination or earlier expiration of the most recent child care operator's lease despite Developer's commercially reasonable efforts to lease the facility at prevailing child care facility market terms (comparable to other similarly-sized and geographically proximate licensed child care facilities) to a child care operator, and Developer wishes to be released from its obligation to lease the facility to a child care operator, then Developer shall have the right to pay City an amount equal to the Base Fee prorated over a fifteen (15) year period, with a credit for any time the facility was operated by a child care provider in compliance with this Agreement. On paying such amount to City under this subsection, the Developer may use the facility for any use permitted under the Project SUD.

- 4. Developer or subsequent owner of the Walnut Building cannot charge rent (including security, common building charges and utilities, etc.) to the child care operator that exceeds prevailing market rent comparable to other similarly-sized and geographically proximate licensed child care facilities.
- 5. Developer or subsequent owner of the Walnut Building shall execute a Notice of Special Restrictions to dedicate the space for child care use ("NSR"). The NSR shall incorporate the requirements of this Exhibit L, be in a form approved by Developer and City (which approval shall not be unreasonably withheld or conditioned), and recorded against the Walnut Child Care Parcel at the earlier to occur of the time that the final map that includes the Walnut Child Care Parcel is recorded or the First Construction Document is issued for the Building to be constructed on the Walnut Child Care Parcel.
- 6. In consideration of this community benefit, the Project shall not be subject to the residential child care fee (Planning Code Sec. 414A) and that fee shall be waived.
- 7. Phasing/performance requirements for the child care facility will be detailed in <u>Schedule 1</u> (Community Benefits Linkages and Impact Fees). If DBI has not issued a certificate of occupancy (including any temporary certificate of occupancy) for the child care facility prior to the expiration of the Term but Developer has received First Construction Document for any Building, then Developer shall pay to City an amount equal to the Base Fee plus 20% of the Base Fee at the end of the Term.

Exhibit M

SUD Ordinance and Conditional Use/Planned Unit Development Exceptions

Exhibit N

Notice of Special Restrictions - AB900 Determination Compliance

FREE RECORDING PURSUANT TO GOVERNMENT CODE SECTION 27383

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

Planning Department City and County of San Francisco 1650 Mission Street, Suite 400 San Francisco, CA 94103-2479 Attention: Director

Property Address: 3333 California Street,

San Francisco, CA 94118

(Space Above This Line for Recorder's Use)

NOTICE OF SPECIAL RESTRICTIONS UNDER PLANNING CODE

The undersigned, LAUREL HEIGHTS PARTNERS, LLC, a Delaware limited liability company, the owner of that certain real property situated in the City and County of San Francisco, State of California more particularly described as follows: (see 'Exhibit A' for full legal description of the property)

BEING ASSESSOR'S BLOCK AND LOT: 1032-003 AND COMMONLY KNOWN AS 3333 CALIFORNIA STREET

hereby give notice that there are special restrictions on the use of said property under Part II, Chapter II of the San Francisco Municipal Code (Planning Code).

Said restrictions consist of the restrictions, conditions and requirements described herein below to be recorded in the Official Records of the Recorder of the City and County of San Francisco for the Property as required in the Development Agreement, by and between the City and County of San Francisco and Laurel Heights Partners, LLC, for Property located at 3333 California Street (the "Agreement"), approved by the Board of Supervisors of the City and County of San Francisco by Ordinance No. _______, on November ____, 2019, in connection with the proposed redevelopment of the 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, as a large mixed-use development that

will include residential, retail, commercial, child care, open space, parking, and related uses (the "Project").

Developer submitted its application and initial supporting materials for certification into the Environmental Leadership Development Project Program on August 23, 2018 (the "AB900 Application"), and, on January 30, 2019, the State of California Air Resources Board ("CARB") issued its Executive Order G-18-101 (the "CARB Executive Order") in which it determined, based on the CARB Staff Evaluation of AB 900 Application for 3333 California Street Mixed Use Project ("CARB Staff Evaluation"), dated January 30, 2019, and the AB900 Application that, pursuant California Public Resources Code section 21183(c), the Project would not result in any net additional GHG emissions (the "CARB Executive Order").

On June 7, 2019, the Governor's Office, with the concurrence of the Joint Legislative Budget Committee on July 8, 2019 (the "JLBC Letter"), determined that the Project is an eligible project under the Jobs and Economic Improvement Through Environmental Leadership Act of 2011, Public Resources Code sections 21178 et seq. (the "Determination").

Copies of the CARB Staff Evaluation, the Carb Executive Order, the JLBC Letter, and the Determination are attached to this Notice at Exhibit B.

In connection with the Determination, Project Sponsor committed to comply with certain greenhouse gas ("GHG") emissions reductions measures and procurement of offsets as more specifically set forth herein below.

The restrictions, conditions and requirements of which notice is hereby given are:

Compliance with GHG Emissions Reduction Measures and Procurement of Offsets.

a. GHG Emissions – Construction

Prior to issuance of the first permit (including site or building permit) for grading related to the construction of any phase of of the Project, Developer shall purchase carbon offsets issued by an accredited carbon registry in an amount sufficient to offset the net increase in construction-related GHG emissions attributable to that phase, as set forth in the CARB Staff Evaluation. Developer shall provide the Planning Department with copies of such contracts promptly following the execution of such contracts and prior to receipt of the first site permit for the applicable construction phase. Developer's obligations under this Section 1.a shall remain in effect as to each phase until the date on which Developer has purchased the carbon offsets that are required under this Section 1.a. with respect to the applicable phase.

b. GHG Emissions – Operations

Developer shall explore feasible GHG emissions reduction measures according to the following prioritization: (1) Project design feature/on-site reduction measures; (2) off-site local reductions; (3) off-site regional reductions; and (4) purchase of voluntary carbon offsets issued by an accredited carbon registry in an amount sufficient to offset the net increase in operation-related GHG emissions, as set forth in the CARB Staff Evaluation.

Prior to issuance of the final certificate of occupancy for each first building constructed during the applicable phase of construction, Developer shall (i) identify all project design features/on-site reduction measures, off-site local reductions, or off-site regional reductions to be implemented in order to reduce or offset GHG emissions associated with the applicable phase and identify the amount of GHG emission reductions they would achieve, (ii) execute contracts to offset any remaining net new GHG emissions generated during Project operation for the applicable phase based on the thirty (30) year period for operations set forth in the CARB Staff Evaluation, and (iii) submit documentation to the Department that corroborates any equivalent operational GHG emission reductions achieved through Project design features, such as solar photovoltaic output, that was not available at the time the AB 900 Application was submitted. Developer's obligations under this Section 1.b shall remain in effect as to each building constructed as part of the Project until the date on which Developer has offset any remaining net new GHG emissions with respect to the applicable building in the manner required in this Section 1.b.

Examples of feasible GHG emissions reduction measures include the Project's compliance with San Francisco Planning Code Section 169 -- Transportation Demand Management Program (added by Ordinance 34-17, approved February 2017), Leadership in Energy and Environmental Design (LEED) Gold certification or better for the Project, including energy efficiency, water conservation, and other green building practices that would contribute to achieving the LEED Gold certification.

2. Recordation.

Prior to the earlier to occur of the issuance of the first permit (including site or building permit) for grading related to the construction of any phase of of the Project and the time Developer records any other notice of special restrictions with respect to the Project, Developer shall record this Notice in the Official Records of the Recorder of the City and County of San Francisco for the Property.

3. Printing of conditions of approval on plans.

The restrictions, conditions and requirements of Section 1 above shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project.

4. Enforcement.

Violation of any of the restrictions, conditions or requirements contained in this Notice shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

5. Assignment.

As used in this Notice, the term Developer means the Developer originally named herein or a Transferee following a Transfer (as such terms are defined in the Development Agreement).

The use of said property contrary to these special restrictions, conditions or requirements shall constitute a violation of the Planning Code, and no release, modification or elimination of these restrictions, conditions or requirements shall be valid unless notice thereof is recorded in the Land Records by the Zoning Administrator of the City and County of San Francisco.

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

State of California County of San Francisco))
and acknowledged to me that he/s	, who proved to me on the basis of (s) whose name(s) is/are subscribed to the within instrument she/they executed the same in his/her/their authorized r signature(s) on the instrument the person(s), or the entity
I certify under PENALTY OF PERJ foregoing paragraph is true and correct	JURY under the laws of the State of California that the et.
WITNESS my hand and official seal.	
Signature	

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.

EXHIBIT A

LEGAL DESCRIPTION

The land referred to herein is situated in the City and County of San Francisco, State of California, described as follows:

EXHIBIT B

[Attach copies of CARB Staff Evaluation, the Carb Executive Order, the JLBC Letter, and the Determination]

Schedule 1

Community Benefits Linkages and Impact Fees Schedule

Pursuant to Section 4.1 of the Agreement, the Developer's Community Benefits obligations are tied to specific Buildings or number of Market Rate Units (as defined in Exhibit D) that will be developed over the course of the Project and during the Term of the Agreement. The linkages between the specific Community Benefits and the associated Buildings or Market Rate Units are detailed below, as well as within any referenced exhibits. The development impact fees that apply to the Project are detailed below.

COMMUNITY BENEFITS

- 1. **Publicly Accessible Private Improvements**. The Developer shall complete the Publicly Accessible Private Improvements described in Exhibit C and generally depicted in Attachment C-1 prior to obtaining a first certificate of occupancy (including any temporary certificate of occupancy) for any non-retail portion, if any, of specific Buildings as described below (or, in the case of Publicly Accessible Private Improvements to be delivered only after completion of more than one Building, then prior to obtaining the first certificate of occupancy for the later Building); provided, however, that if Developer wishes to receive a first certificate of occupancy (or the equivalent thereof) for a Building (or later Building, as applicable) before completing its associated Publicly Accessible Private Improvement, then, notwithstanding anything to the contrary in this Schedule, Developer may complete this obligation after that certificate of occupancy for the associated Building (or later Building, as applicable) by providing to the City, prior to issuance of the first certificate of occupancy for that Building (or later Building, as applicable), 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, and shall diligently and continuously pursue that Publicly Accessible Private Improvement to completion following which such bond will be released.
 - a. California Plaza with the completion of Plaza A Building
 - b. Cypress Square with the completion of Plaza B Building
 - c. <u>Cypress Stairs</u> with the later completion of either Plaza A Building or Plaza B Building
 - d. <u>Mayfair Walk</u> the Mayfair Walk extends the entire width of the Project Site and shall be completed in segments tied to the completion of the adjacent Buildings as depicted in <u>Attachment C-1</u> (the later of Mayfair Building or Plaza A Building, the later of Plaza B Building or Center A Building, and the completion of Center B Building)
 - e. <u>Presidio Overlook</u> with the completion of Center Building B

- f. Pine Street Steps with the completion of Center Building B
- g. <u>Walnut Walk North</u> with the later completion of Center A Building or Center B Building
- h. Walnut Walk South with the later completion of the Euclid Building or Masonic Building
- i. <u>Walnut Drive and Walnut Court</u> with the later completion of Plaza B Building or Walnut Affordable Housing Building (as defined in Exhibit D)
- j. <u>Euclid Green</u> with the completion of the Project's final Building; provided, however, that if the Developer receives a first certificate of occupancy (including any temporary certificate of occupancy) for any Building(s) without completing all proposed Buildings during the Term, then Euclid Green shall be completed by the end of the Term.
- k. Pedestrian Access if Developer receives a first certificate of occupancy (including any temporary certificate of occupancy) for any Building(s) without completing all proposed Buildings during the Term that would otherwise require the completion of Walnut Walk North, Walnut Walk South, and Mayfair Walk as described above, then Developer, 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 Developer shall construct such alternative plan improvements prior to the end of the Term.
- 2. Streetscape Improvements. The Developer shall complete each of the Streetscape Improvements described in Exhibit C and generally depicted in Attachment C-1 (and as will be more specifically set forth in the building permit application for the Streetscape Improvements associated with the applicable Building) before obtaining any first certificate of occupancy (including any temporary certificate of occupancy) for the applicable Building (or later of adjacent Buildings, if applicable) for such Streetscape Improvement as depicted in Attachment C-1; provided, however, that if Developer wishes to receive a first certificate of occupancy for a Building before completing its associated Streetscape Improvement, then, notwithstanding anything to the contrary in this Schedule, Developer may complete its associated Streetscape Improvement after that certificate of occupancy by providing a surety performance bond or other security to City, prior to issuance of the first certificate of occupancy for that Building, in form acceptable to the City and in an amount equal to 100% of the reasonably estimated cost to complete that Streetscape Improvement, and the Developer shall diligently and continuously pursue that Streetscape Improvement to completion following which the bond shall be released. Such requirement shall be in addition to any security or bonding requirements required under

- the street improvement permit issued by City's Department of Public Works for the performance of such Streetscape Improvement.
- 3. <u>Maintenance and Operation</u>. The Developer shall cause the appropriate party (e.g., a master association) to enter into agreements for the ongoing operation, maintenance and repair of the Publicly Accessible Private Improvements to the standards described in Attachment C-2 and Attachment C-3.
- 4. <u>Housing Plan.</u> The Project's BMR Units shall be complete as set forth in <u>Exhibit D</u>, the Affordable Housing Program.
- 5. **AWSS Community Benefit Fee.** The Project's AWSS Community Benefit Fee shall be paid as set forth in <u>Schedule 2</u>.
- 6. **Workforce Agreement.** The workforce requirements will apply to the Project as set forth in Exhibit I, the Workforce Program.
- 7. <u>Transportation Demand Management.</u> The Transportation Demand Management Plan shall be implemented as set forth in <u>Exhibit J</u>, the Transportation Exhibit, and the Approvals described in <u>Exhibit E</u>.
- 8. Child Care Program. The Developer shall have constructed the child care facility to warm shell condition, as described in Exhibit L, on the Walnut Child Care Parcel (as defined in Exhibit D) by the earlier of receiving a first certificate of occupancy (including any temporary certificate of occupancy) for the Walnut Affordable Housing Building (as defined in Exhibit D) and obtaining a first certificate of occupancy (including any temporary certificate of occupancy) for more than three hundred eighty-six (386) Market Rate Units (as defined in Exhibit D). In addition, if the Developer receives a first certificate of occupancy (or a temporary certificate of occupancy) for any Building, the Developer must obtain a first certificate of occupancy (or a temporary certificate of occupancy) for the child care facility before the expiration of the Term. The child care facility shall be operated on the terms described in Exhibit L.

DEVELOPMENT IMPACT FEES

The following development impact fees apply to the Project: Transportation Sustainability Fee (Planning Code Section 411A) and Jobs Housing Linkage Fee (Section 413). The Residential Child Care Impact Fee (Planning Code Section 414A) and the Affordable Housing Fee (Planning

Code Section 415) have been waived in consideration of the on-site provision of a child care facility and affordable housing as described in $\underline{\text{Exhibit L}}$ and $\underline{\text{Exhibit D}}$, respectively.

Schedule 2

AWSS Community Benefit Fee

1. Background and Need

The Auxiliary Water Supply System ("AWSS") is a water distribution system used by the San Francisco Fire Department ("SFFD") for fire suppression. The AWSS delivers water under high pressure for firefighting and is independent from the San Francisco's domestic water system. The design elements of the AWSS, such as restrained pipeline joints and earthquake resistant ductile iron pipe make it more resistant to earthquake damage. The San Francisco Public Utilities Commission ("SFPUC") operates and maintains the AWSS citywide.

Life safety is the paramount concern of the SFFD, followed by the protection of property. When new developments are proposed in San Francisco with high density structures, adequate and readily available water supplies for firefighting are imperative. The Project is a proposed new development within San Francisco which will have both high occupancy and a significant amount of wood frame construction. The closest AWSS main runs east to west on Sacramento Street with AWSS/High Pressure ("HP") hydrants at each corner from Presidio Avenue to Arguello Boulevard. The closest HP hydrant to the entrance of the proposed Project is currently located at the northwest corner of Walnut and Sacramento Streets, approximately 400 feet away from the Project's closest property line. SFFD fire engines carry a maximum of 1,000 feet of fire hose.

One new HP fire hydrant shall be installed on California Street at the southern intersection of Walnut and California Streets with a connection back to the AWSS main on Sacramento Street in order for SFFD to have backup emergency water supply for firefighting and rescue operations at the Project. This HP hydrant would allow one fire engine to obtain AWSS water supply and immediately initiate firefighting and rescue operations to any area within the development upon arrival. During a greater alarm fire when fire operations demand more water than a domestic water hydrant can supply, the AWSS HP hydrant will support the need for additional water volume and pressure. Following a major event, when additional fire engines are not available, a fire crew can use the HP hydrants and still have ample water pressure and volume for firefighting operations.

2. AWSS Requirement for 3333 California Project

The SFFD and SFPUC have analyzed the Project and determined that AWSS is not required or appropriate for installation within the Project's property line. This is due to (1) confirmation that a standard 1,000 fire hose is able to serve the entire site from one new HP hydrant at the southern intersection of Walnut and California Streets; and (2) the fact that the Project will be

privately-owned and no public right of ways will be created within which AWSS could be installed, owned, and maintained by SFPUC.

The SFPUC and SFFD have determined that in order to provide the Project with a backup emergency water supply, the following new AWSS infrastructure (the "AWSS Scope") will be required: a new HP hydrant on the public sidewalk at Walnut and California Streets, and a connection to be installed on Walnut Street from the new HP hydrant to the existing AWSS main running east to west on Sacramento Street. This new infrastructure will be designed and installed by the SFPUC, with contributory fair-share funding paid by the Developer.

The Developer and SFPUC will coordinate on the installation and timing of installation of this AWSS Scope in relation to the ultimate development phasing and improvements. The intent is to have the AWSS Scope coordinated with Project's street improvements on California Street or adjacent streets to minimize or eliminate the need to demolish newly constructed improvements related to the Project.

3. AWSS Community Benefit Fee

The AWSS Community Benefit Fee will offset the cost of bringing AWSS to the Project boundary. The SFPUC has developed an initial capital cost estimate of the AWSS Scope (including contingencies) totaling approximately \$1,055,000 in 2018 dollars. In consideration of the AWSS Scope that the Project requires to be adequately served and protected by SFFD, the Developer shall pay an AWSS Community Benefit Fee of \$1,055,000.

4. Fee Payment Terms

The Developer shall pay the AWSS Community Benefit Fee as a proportion of Gross Square Feet ("GSF") developed in the Project. Based on the Project's total of 1,434,098 GSF, the Developer shall pay the AWSS Community Benefit Fee at a rate of \$.735 per GSF. Payment shall be made to SFPUC on a Building by Building basis and shall be determined by the total GSF of each Building. Payment shall be due prior to and as a condition to the Developer obtaining a temporary Certificate of Occupancy or Certificate of Final Completion for each Building.

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

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)

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND LAUREL HEIGHTS PARTNERS, LLC

FOR PROPERTY LOCATED AT 3333 CALIFORNIA STREET

Block 1032 Lot 003

TABLE OF CONTENTS

		<u>Page</u>				
1.	DEFI	NITIONS4				
2.	FFFF	CTIVE DATE; TERM				
۷٠	2.1	Effective Date 13				
	2.2	Term				
		101111				
3.	GENI	ERAL RIGHTS AND OBLIGATIONS13				
	3.1	Development of the Project				
	3.2	Workforce				
4.	PURI	PUBLIC BENEFITS; DEVELOPER OBLIGATIONS AND CONDITIONS TO				
т.		ELOPER'S PERFORMANCE				
	4.1	Community Benefits Exceed Those Required by Existing Ordinances and				
		Regulations				
	4.2	Conditions to Performance of Community Benefits				
	4.3	No Additional CEQA Review Required; Reliance on FEIR for Future				
		Discretionary Approvals				
	4.4	Nondiscrimination				
	4.5	City Cost Recovery17				
	4.6	Prevailing Wages				
	4.7	Indemnification of City				
5.	VEST	VESTING AND CITY OBLIGATIONS19				
	5.1	Vested Rights				
	5.2	Existing Standards				
	5.3	Criteria for Later Approvals				
	5.4	Strict Building Code Compliance				
	5.5	Denial of a Later Approval				
	5.6	New City Laws				
	5.7	Fees and Exactions				
	5.8	Changes in Federal or State Laws				
	5.9	No Action to Impede Approvals27				
	5.10	Estoppel Certificates				
	5.11	Existing, Continuing Uses and Interim Uses28				
	5.12	Taxes				
6.	NO E	DEVELOPMENT OBLIGATION28				
7.	MUT	UAL OBLIGATIONS29				
	7.1	Notice of Completion, Revocation or Termination				
	7.2	General Cooperation; Agreement to Cooperate				
	7.3	Third-Party Challenge				
	7.4	Good Faith and Fair Dealing30				
	7.5	Other Necessary Acts				

8.	PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE			
	8.1	Annual Review	31	
	8.2	Review Procedure	31	
9.	ENFORCEMENT OF AGREEMENT; DEFAULT; REMEDIES			
	9.1	Enforcement	32	
	9.2	Meet and Confer Process	32	
	9.3	Default		
	9.4	Remedies		
	9.5	Time Limits; Waiver; Remedies Cumulative		
	9.6	Attorneys' Fees	35	
10.	FINANCING; RIGHTS OF MORTGAGEES			
	10.1	Developer's Right to Mortgage		
	10.2	Mortgagee Not Obligated to Construct		
	10.3	Copy of Notice of Default and Notice of Failure to Cure to Mortgagee		
	10.4	Mortgagee's Option to Cure Defaults		
	10.5	Mortgagee's Obligations with Respect to the Property		
	10.6	No Impairment of Mortgage		
	10.7	Cured Defaults	38	
11.	AMENDMENT; TERMINATION; EXTENSION OF TERM			
	11.1	Amendment or Termination		
	11.2	Early Termination Rights		
	11.3	Termination and Vesting		
	11.4	Amendment Exemptions		
	11.5	Extension Due to Legal Action or Referendum; Excusable Delay	40	
12.		NSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE		
	12.1	Permitted Transfer of this Agreement		
	12.2	Notice of Transfer		
	12.3	Release of Liability		
	12.4	Responsibility for Performance		
	12.5	Constructive Notice		
	12.6	Rights of Developer	44	
13.		ELOPER REPRESENTATIONS AND WARRANTIES		
	13.1	Interest of Developer; Due Organization and Standing		
	13.2	No Inability to Perform; Valid Execution		
	13.3	Conflict of Interest		
	13.4	Notification of Limitations on Contributions		
	13.5	Other Documents		
	13.6	No Bankruptcy	46	
14.	MISCELLANEOUS PROVISIONS			
	14.1	Entire Agreement		
	14.2	Incorporation of Exhibits	46	

14.3	Binding Covenants; Run With the Land	46
14.4	Applicable Law and Venue	47
14.5	Construction of Agreement	47
14.6	Project Is a Private Undertaking; No Joint Venture or Partnership	47
14.7	Recordation	48
14.8	Obligations Not Dischargeable in Bankruptcy	48
14.9	Survival	48
14.10	Signature in Counterparts	48
14.11	Notices	
14.12	Limitations on Actions	49
14.13	Severability	49
14.14	MacBride Principles	49
14.15	Tropical Hardwood and Virgin Redwood	49
14.16	Sunshine	
14.17	Non-Liability of City Officials and Others	50
14.18	Non-Liability of Developer Officers and Others	50
14.19	No Third Party Beneficiaries	50

EXHIBITS AND SCHEDULES

Exhibits

A	Project Site Legal Description					
В	Project Description					
B-1	Site Plan					
C	Project Open Space					
C-1	Open Space Plan					
C-2	Regulations Regarding Access and Maintenance of Publicly Accessible Private					
	Improvements					
C-3	Public Access Declaration					
D	Affordable Housing Program					
D-1	Title Report for Walnut Parcel					
D-2	Baseball Arbitration Appraisal Process					
D-3	Form of Deed of Trust					
Ε	List of Approvals					
F	MMRP					
G	Notice of Completion and Termination					
H	Form of Assignment and Assumption Agreement					
I	Workforce Agreement					
J	Transportation Exhibit					
K	Schedule Template for Later Approvals					
L	Child Care Program					
M	SUD Ordinance and Conditional Use/Planned Unit Development Exceptions					

Schedules

- Community Benefits Linkages and Impact Fees Schedule AWSS Community Benefit Fee 1
- 2

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO AND LAUREL HEIGHTS PARTNERS, LLC

THIS DEVELOPMENT AGREEMENT dated for reference purposes only as of this _____ day of _____, 2019, is 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"), pursuant to the authority of Section 65864 *et seq.* of the California Government Code and Chapter 56 of the Administrative Code. The City and Developer are also sometimes referred to individually as a "Party" and together as the "Parties". Capitalized terms not defined when introduced shall have the meanings given in Article 1.

RECITALS

This Agreement is made with reference to the following facts:

- A. Developer is the owner of an irregularly-shaped parcel 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 on Exhibit A (the "Project Site"). The Project Site is improved with (i) a four-story, approximately 455,000 gross square foot office building with a three-level, partially below-grade garage that has 212 parking spaces and approximately 12,500 gross square feet of storage space, (ii) a one-story, approximately 14,000 gross square foot annex building with building facilities and plant operations, office space for physical plant engineers, and unused laboratory space, (iii) 2 circular garage ramp structures, (iv) 3 surface parking lots that collectively have 331 parking spaces, and (v) approximately 165,200 square feet of landscaping or landscaped open space.
- B. The Developer proposes a mixed use development that will include on-site affordable units and that will include residential, retail, open space, parking, child care and related uses (the "**Project**"). Specifically, the Project includes (i) up to approximately 744 residential units consisting of a mix of market rate and on-site BMR Units, including 185 on-site senior affordable housing units (plus one (1) manager's unit), (ii) approximately 34,496 square feet for retail/restaurant/commercial use, (iii) 10 below-grade parking garages with approximately 857

parking spaces, (iv) an approximately 14,665 square foot space for child care use, and (v) approximately 236,000 square feet of landscaped or open space, which includes approximately 127,126 square feet of privately owned, public open space, more than 73,000 square feet of which is in excess of the open space requirements under the Code, all as more particularly described on Exhibit B.

- C. The Project is anticipated to generate an annual average of approximately 675 construction jobs during construction and, upon completion, approximately 200 net new permanent on-site jobs, an approximate \$10 million annual increase in property taxes, and approximately \$15 million in development impact fees (including transportation, housing linkages, and school fees).
- D. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 *et seq.* (the "Development Agreement Statute"), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property regarding the development of such property. Pursuant to Government Code Section 65865, the City adopted Chapter 56 of the Administrative Code ("Chapter 56") establishing procedures and requirements for entering into a development agreement pursuant to the Development Agreement Statute. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56.
- E. In addition to the significant housing, jobs, and economic benefits to the City from the Project, the City has determined that as a result of the development of the Project in accordance with this Agreement and the Special Use District and the Planned Unit Development approvals attached at Exhibit M, additional clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies. Major additional public benefits to the City from the Project include: (i) an increase in affordable housing that exceeds amounts otherwise required and will equal approximately twenty-five percent (25%) of the total number of housing units for the Project, serving senior households with incomes below 80% of MOHCD AMI with an overall average of not more than 59% of MOCHD AMI; (ii) construction and maintenance of the Publicly Accessible Private Improvements (as defined in Section 1) for a total of approximately 127,126 square feet of public useable open area; (iii) transportation demand management measures that exceed the level otherwise required; (iv) the Child Care Program (as

defined in <u>Section 1</u>); (v) workforce obligations; and (vi) the Streetscape Improvements (as defined in Section 1).

- F. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in a way as to fully comply with the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.; "CEQA"), the CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 et seq.); "CEQA Guidelines"), the Development Agreement Statute, Chapter 56, the Planning Code, the Enacting Ordinances and all other applicable Laws in effect as of the Effective Date. This Agreement does not limit the City's obligation to comply with applicable environmental Laws, including CEQA, before taking any discretionary action regarding the Project, or the Developer's obligation to comply with all applicable Laws in connection with the development of the Project.
- G. The Final Environmental Impact Report ("FEIR") prepared for the Project and certified by the Planning Commission on _________, 2019, together with the CEQA findings (the "CEQA Findings") and the Mitigation Measures adopted concurrently therewith and set forth in the MMRP, comply with CEQA, the CEQA Guidelines, and Chapter 31 of the Administrative Code. The FEIR thoroughly analyzes the Project and the Mitigation Measures were designed to mitigate significant impacts to the extent they are susceptible to feasible mitigation. On _________, 20____, the Board of Supervisors, in Motion No. [_________], affirmed the decisions of the Planning Commission to certify the FEIR. The information in the FEIR and the CEQA Findings were considered by the City in connection with approval of this Agreement.
- H. On _______, 20___, the Planning Commission held a public hearing on this Agreement and the Project, duly noticed and conducted under the Development Agreement Statute and Chapter 56. Following the public hearing, the Planning Commission adopted the CEQA findings and determined among other things that the FEIR thoroughly analyzes the Project and the Mitigation Measures are designed to mitigate significant impacts to the extent they are susceptible to a feasible mitigation, and further determined that the Project and this Agreement will, as a whole, and taken in their entirety, continue to be consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended, and the policies set forth in Section 101.1 of the Planning Code (together the "General Plan Consistency Findings"). The information in the FEIR and the CEQA Findings has been considered by the City in connection with this Agreement.

I.	On	, the Board	l of Supervisors	, having receiv	ed the Plan	ning
Commission's	recommendations,	held a public	hearing on thi	s Agreement	pursuant to	the
Development.	Agreement Statute a	nd Chapter 56.	Following the J	public hearing,	the Board n	nade
the CEQA Fin	dings required by CI	EQA, incorpora	iting by referenc	e the General P	lan Consist	ency
Findings.						
J.	On	, the Board	adopted Ordinar	nce No. [], amen	ding
the Planning C	Code, the Zoning Ma	p, and the Heig	ght Map, Ordina	nce No. [], appro	ving
this Agreement (File No. []), and authorizing the Planning Director to execute this						
Agreement or	n behalf of the Ci	ty, and Ordin	nance No	, appro	ving the m	ıajor
encroachment permit for the Project (collectively, the "Enacting Ordinances"). The Enacting						
Ordinances took effect on						
Now therefore, for good and valuable consideration, the receipt and sufficiency of which						
are hereby ack	nowledged, the Parti	es agree as fol	lows:			

AGREEMENT

1. **DEFINITIONS**

In addition to the definitions set forth in the above preamble paragraph, Recitals and elsewhere in this Agreement, the following definitions shall apply to this Agreement:

- 1.1 "Administrative Code" means the San Francisco Administrative Code.
- 1.2 "Agreement" means this Development Agreement, the Exhibits and Schedules that have been expressly incorporated herein, and any amendments thereto.
- 1.3 "AMI" means the unadjusted median income levels derived from the U.S. Department of Housing and Urban Development on an annual basis for the San Francisco area, adjusted solely for household size, but not high housing cost area.
 - 1.4 "Annual Review Date" has the meaning set forth in <u>Section 8.1</u>.
- 1.5 "Applicable Laws" has the meaning set forth in <u>Section 5.2</u> (where not capitalized, "applicable Law" has its plain meaning and refers to Laws as otherwise defined herein).
- 1.6 "Approvals" means the City approvals, entitlements, and permits listed on Exhibit E, including any Later Approvals at the time and to the extent they are included pursuant to Section 5.1.

- 1.7 "Assignment and Assumption Agreement" has the meaning set forth in Section 12.2.
 - 1.8 "Associated Community Benefit" is defined in Section 4.1.
 - 1.9 "AWSS Community Benefit Fee" is defined in Schedule 2.
 - 1.10 "BMR Units" has the meaning set forth in the Housing Program.
- 1.11 "Board of Supervisors" or "Board" means the Board of Supervisors of the City and County of San Francisco.
- 1.12 "Building" or "Buildings" means each of the existing, modified and new buildings on the Project Site, as described in the Project description attached as Exhibit B.
 - 1.13 "California Plaza" is described in Section 1.a of Exhibit C.
 - 1.14 "CEQA" has the meaning set forth in Recital F.
 - 1.15 "CEQA Findings" has the meaning set forth in Recital G.
 - 1.16 "CEQA Guidelines" has the meaning set forth in Recital F.
 - 1.17 "Chapter 56" has the meaning set forth in Recital D.
- 1.18 "Child Care Program" means the child care facility program attached as Exhibit L.
- 1.19 "City" means the City as defined in the opening paragraph of this Agreement. Unless the context or text specifically provides otherwise, references to the City means the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors.
- 1.20 "City Agency" or "City Agencies" means the City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement, or are controlled by persons or commissions that have executed or consented to this Agreement, that have subdivision or other permit, entitlement or approval authority or jurisdiction over development of the Project or any improvement located on or off the Project Site, including, without limitation, the City Administrator, Planning Department, MOHCD, OEWD, SFMTA, PW, DBI, together with any successor City agency, department, board, or commission. Nothing in this Agreement shall affect the jurisdiction under the City's Charter of a City department that has not approved or consented to this Agreement in connection with the issuance of a Later Approval. The City actions and proceedings subject to this Agreement shall be through the Planning Department, as well as affected City Agencies (and when required by applicable Law, the Board of Supervisors).

- 1.21 "City Attorney's Office" means the Office of the City Attorney of the City and County of San Francisco.
- 1.22 "City Costs" means the actual and reasonable costs incurred by a City Agency in preparing, adopting or amending this Agreement, in performing its obligations or defending its actions under this Agreement or otherwise contemplated by this Agreement, as determined on a time and materials basis, including reasonable attorneys' fees and costs but excluding work, hearings, costs or other activities contemplated or covered by Processing Fees; provided, however, City Costs shall not include any costs incurred by a City Agency in connection with a City Default or which are payable by the City under Section 9.6 when Developer is the prevailing party.
 - 1.23 "City Parties" has the meaning set forth in Section 4.7.
 - 1.24 "City Report" has the meaning set forth in Section 8.2.2.
- 1.25 "City-Wide" means all real property within the territorial limits of the City and County of San Francisco, not including any property owned or controlled by the United States or by the State of California and therefore not subject to City regulation.
 - 1.26 "CMA" is defined in Section 12.1.
- 1.27 "Commence Construction", "Commenced Construction" or "Commencement of Construction" means groundbreaking in connection with the commencement of physical construction of the applicable Building foundation, but specifically excluding the demolition or partial demolition of existing structures.
 - 1.28 "Community Benefits" has the meaning set forth in Section 4.1.
- 1.29 "Community Benefits Linkages and Impact Fees Schedule" means the schedule attached to this Agreement as <u>Schedule 1</u>.
- 1.30 "Community Benefits Program" has the meaning set forth in Section 4.1.1.
 - 1.31 "Costa Hawkins Act" has the meaning set forth in Exhibit D.
 - 1.32 "Cypress Square" is described in Section 1.b of Exhibit C.
 - 1.33 "Cypress Stairs" are described in Section 1.b of Exhibit C.
 - 1.34 "**Default**" has the meaning set forth in Section 9.3.
- 1.35 "**DBI**" means the Department of Building Inspection of the City and County of San Francisco.

- 1.36 "**Developer**" has the meaning set forth in the opening paragraph of this Agreement, and shall also include (i) any Transferee as to the applicable Transferred Property, and (ii) any Mortgagee or assignee thereof that acquires title to any Foreclosed Property but only as to such Foreclosed Property.
- 1.37 "Development Agreement Statute" has the meaning set forth in <u>Recital D</u>, as in effect as of the Effective Date.
- 1.38 "Development Parcel" means a parcel within the Project Site on which a Building or other improvements will be constructed, as set forth in a Subdivision Map.
 - 1.39 "Effective Date" has the meaning set forth in Section 2.1.
 - 1.40 "Enacting Ordinances" has the meaning set forth in Recital J.
 - 1.41 "Euclid Green" is described in Section 1.h of Exhibit C.
 - 1.42 "Excusable Delay" has the meaning set forth in Section 11.5.2.
- 1.43 "Existing Mortgage" means the deed of trust recorded in the Official Records of San Francisco County on March 30, 2018 as Instrument Nos. 2018-K595916-00 and 2018-K595918-00, including all modification thereto.
 - 1.44 "Existing Standards" has the meaning set forth in Section 5.2.
- 1.45 "Existing Uses" means all existing lawful uses of the existing Buildings and improvements (and including, without limitation, pre-existing, non-conforming uses under the Planning Code) on the Project Site as of the Effective Date, as the same may be modified by the Approvals and any Later Approvals.
- 1.46 "Federal or State Law Exception" has the meaning set forth in Section 5.8.1.
 - 1.47 "**FEIR**" has the meaning set forth in <u>Recital G</u>.
- 1.48 "Finally Granted" means (i) any and all applicable appeal periods for the filing of any administrative or judicial appeal challenging the issuance or effectiveness of any of the Approvals, this Agreement or the FEIR shall have expired and no such appeal shall have been filed, or if such an administrative or judicial appeal is filed, the Approvals, this Agreement or the FEIR, as applicable, shall have been upheld by a final decision in each such appeal without adverse effect on the applicable Approval, this Agreement or the FEIR and the entry of a final judgment, order or ruling upholding the applicable Approval, this Agreement or the FEIR and (ii) if a referendum petition relating to this Agreement is timely and duly circulated and filed, certified as

valid and the City holds an election, the date the election results on the ballot measure are certified by the Board of Supervisors in the manner provided by the Elections Code reflecting the final defeat or rejection of the referendum.

- 1.49 "First Construction Document" shall be as defined in San Francisco Building Code Section 107A.13.1(a)(8).
 - 1.50 "Foreclosed Property" is defined in Section 10.5.
- 1.51 "General Plan Consistency Findings" has the meaning set forth in Recital H.
- 1.52 "Gross Floor Area" has the meaning set forth in the Planning Code as of the applicable date of determination of such area.
- 1.53 "**Housing Program**" means the Affordable Housing Program attached as Exhibit D.
- 1.54 "Impact Fees and Exactions" means any fees, contributions, special taxes, exactions, impositions, and dedications charged by the City, whether as of the date of this Agreement or at any time thereafter during the Term, in connection with the development of Projects, including but not limited to transportation and transit fees, child care requirements or inlieu fees, dedications, housing (including affordable housing) requirements or fees, dedication or reservation requirements, and obligations for on-or off-site improvements. Impact Fees and Exactions shall not include the Mitigation Measures, Processing Fees, taxes or special assessments or school district fees, SFPUC Capacity Charges, and any fees, taxes, assessments, and impositions imposed by any Non-City Agency, all of which shall be due and payable by Developer as and when due in accordance with applicable Laws.
- 1.55 "Later Approval" means any other land use approvals, entitlements, or permits from the City or any City Agency, other than the Approvals, that are consistent with the Approvals and necessary or advisable for the implementation of the Project, including without limitation, demolition permits, grading permits, site permits, building permits, lot line adjustments, sewer and water connection permits, major and minor encroachment permits, street and sidewalk modifications, street improvement permits, permits to alter, certificates of occupancy, transit stop relocation permits, Subdivision Maps, improvement plans, lot mergers, and lot line adjustments. A Later Approval shall also include any amendment to the foregoing land use approvals,

entitlements, or permits, or any amendment to the Approvals that are sought by Developer and approved by the City in accordance with the standards set forth in this Agreement.

- 1.56 "Law(s)" means the Constitution and laws of the United States, the Constitution and laws of the State of California, the laws of the City and County of San Francisco, and any codes, statutes, rules, regulations, or executive mandates thereunder, and any State or Federal court decision (including any order, injunction or writ) thereunder. The term "Laws" shall refer to any or all Laws as the context may require.
 - 1.57 "Law Adverse to City" is defined in Section 5.8.4.
 - 1.58 "Law Adverse to Developer" is defined in Section 5.8.4.
- 1.59 "Life of the Project" shall mean, for each Building that is constructed on the Project Site under this Agreement, the life of that Building.
 - 1.60 "Litigation Extension" has the meaning set forth in Section 11.5.1.
 - 1.61 "Losses" has the meaning set forth in Section 4.7.
- 1.62 "Material Change" means any modification that (a) would materially alter the rights, benefits or obligations of the City or Developer under this Agreement, (b) is not consistent with the Project SUD or a planned unit development authorization made under the Project SUD, (c) extends the Term, (d) changes the uses of the Project Site from those described in this Agreement, (e) decreases the Community Benefits, (f) increases the maximum height, density, bulk or size of the Project (except to the extent permitted under the Project SUD or a planned unit development authorization made under the Project SUD), (g) increases parking ratios, or (h) reduces the Impact Fees and Exactions.
 - 1.63 "Mayfair Walk" is described in Section 1.c of Exhibit C.
- 1.64 "Mitigation Measures" means the mitigation measures (as defined by CEQA) applicable to the Project as set forth in the MMRP or that are necessary to mitigate adverse environmental impacts identified through the CEQA process as part of a Later Approval.
- 1.65 "MMRP" means that certain mitigation monitoring and reporting program attached as Exhibit F.
- 1.66 "MOHCD" means the Mayor's Office of Housing and Community Development.
 - 1.67 "MOHCD AMI" is defined in Exhibit D (Affordable Housing Program).

- 1.68 "Mortgage" means a mortgage, deed of trust or other lien on all or part of the Project Site to secure an obligation made by the applicable property owner, including the Existing Mortgage.
- 1.69 "Mortgagee" means (i) any mortgagee or beneficiary under a Mortgage, and (ii) a person or entity that obtains title to all or part of the Project Site as a result of foreclosure proceedings or conveyance or other action in lieu thereof, or other remedial action.
- 1.70 "Municipal Code" means the San Francisco Municipal Code. All references to any part of the Municipal Code in this Agreement shall mean that part of the Municipal Code in effect on the Effective Date, as the Municipal Code may be modified by changes and updates that are adopted from time to time in accordance with Section 5.4 or by permitted New City Laws as set forth in Section 5.6.
 - 1.71 "New City Laws" has the meaning set forth in Section 5.6.
- 1.72 "Non-City Agency" means Federal, State, and local governmental agencies that are independent of the City and not parties to this Agreement.
- 1.73 "Non-City Approval" means any permits, agreements, or entitlements from Non-City Agencies as may be necessary for the development of the Project.
- 1.74 "**OEWD**" means the San Francisco Office of Economic and Workforce Development.
- 1.75 "Official Records" means the official real estate records of the City and County of San Francisco, as maintained by the City's Assessor-Recorder's Office.
- 1.76 "Party" and "Parties" has the meaning set forth in the opening paragraph of this Agreement and shall also include any party that becomes a party to this Agreement, such as a Transferee (each during its period of ownership of all or part of the Project Site).
 - 1.77 "Pine Street Steps" are described in Section 1.e of Exhibit C.
 - 1.78 "Planning Code" means the San Francisco Planning Code.
- 1.79 "Planning Commission" means the Planning Commission of the City and County of San Francisco.
- 1.80 "Planning Department" means the Planning Department of the City and County of San Francisco.
- 1.81 "Planning Director" means the Director of Planning of the City and County of San Francisco.

- 1.82 "Presidio Overlook" is described in Section 1.d of Exhibit C.
- 1.83 "Processing Fees" means the standard fee imposed by the City upon the submission of an application for a permit or approval, which is not an Impact Fee or Exaction, in accordance with the City practice on a City-Wide basis.
- 1.84 "Project" means the project as described in <u>Recital B</u>, <u>Exhibit B</u>, and the Approvals, including, without limitation, the Project variant and Project alternatives described in the Project SUD, together with Developer's rights and obligations under this Agreement.
- 1.85 "Project Site" has the meaning set forth in Recital A, and as more particularly described in Exhibit A.
- 1.86 "Project SUD" means Planning Code Section 249. [___] as adopted by the Board in Ordinance No. [___].
- 1.87 "Public Health and Safety Exception" has the meaning set forth in <u>Section</u> 5.8.1.
- 1.88 "Publicly Accessible Private Improvements" means the privately-owned and publicly-accessible California Plaza, Cypress Square, Cypress Stairs, Mayfair Walk, Presidio Overlook, Pine Street Steps, Walnut Walk North, Walnut Walk South, Walnut Drive and Walnut Court, and Euclid Green, all as further described and depicted in Exhibit C-1, and Schedule 1 and which exceeds the Required Open Space for the Project.
 - 1.89 "PW" means San Francisco Public Works.
- 1.90 "Required Open Space" has the meaning given such term in Section 102 of the Planning Code.
 - 1.91 "SFMTA" means the San Francisco Municipal Transportation Agency.
 - 1.92 "SFPUC" means the San Francisco Public Utilities Commission.
- 1.93 "SFPUC Capacity Charges" means all water and sewer capacity and connection fees and charges payable to the SFPUC, as and when due in accordance with theapplicable City requirements.
- 1.94 "Streetscape Improvements" means the following improvements, all as further described and depicted in Exhibit C, Exhibit C-1, and Schedule 1: (i) reconfiguring portions of the curb lines at Presidio Avenue and Masonic Avenue; (ii) removing the triangular-shaped pedestrian island and the right-most travel lane for southbound traffic on Presidio Avenue merging onto Masonic and incorporating it into the Pine Street Steps, (iii) removing the triangular-shaped

pedestrian island and the right-most travel lane for southbound traffic on Masonic Avenue merging onto Euclid Avenue and incorporating it into Walnut Walk South (iv) constructing corner bulbouts on the west side of the Masonic Avenue/Presidio Avenue/Pine Street intersection, the northeast corner of Laurel Street/Mayfair Drive, the southwest corner of the California Street/Laurel Street intersection, the southeast and southwest corners of the California Street/Walnut Street intersection, and the northeast corner of the Laurel Street/Euclid Avenue intersection; (v) installing a continental crosswalk crossing Presidio Avenue to Pine Street and an eastside crosswalk at the three-way intersection at Laurel Street crossing Mayfair Drive; and (vi) widening sidewalks on portions of Presidio Avenue, Masonic Avenue, Euclid Avenue, and Laurel Street.

- 1.95 "Subdivision Code" means the San Francisco Subdivision Code.
- 1.96 "Subdivision Map" means any map that Developer submits for the Project Site with respect to the Project under the Subdivision Map Act and the Subdivision Code, which may include, but not be limited to, tentative or vesting tentative subdivision maps, final or vesting final subdivision maps and any tentative or final parcel map, or transfer map, including phased final maps to the extent authorized under an approved tentative subdivision map, but excluding the Tentative Map.
- 1.97 "Subdivision Map Act" means the California Subdivision Map Act, California Government Code Section 66410 et seq.
- 1.98 "**Tentative Map**" means the tentative map for the Project Site approved by PW on ______, 2019.
 - 1.99 "**Term**" has the meaning set forth in <u>Section 2.2</u>.
- 1.100 "Third-Party Challenge" means any administrative, legal or equitable action or proceeding instituted by any party other than the City or Developer challenging the validity or performance of any provision of this Agreement, the Project, the Approvals or Later Approvals, the adoption or certification of the FEIR or other actions taken pursuant to CEQA, or other approvals under Laws relating to the Project, any action taken by the City or Developer in furtherance of this Agreement, or any combination thereof relating to the Project or any portion thereof.
- 1.101 "Transfer," "Transferee" and "Transferred Property" have the meanings set forth in Section 12.1, and in all events excludes (1) a transfer of ownership or

membership interests in Developer or any Transferee, (2) grants of easement or of occupancy rights for existing or completed Buildings or other improvements (including, without limitation, space leases in Buildings), and (3) the placement of a Mortgage on the Project Site.

- 1.102 "Transportation Demand Management" benefits are described in Exhibit <u>J</u>.
 - 1.103 "Vested Elements" has the meaning set forth in Section 5.1.
 - 1.104 "Walnut Walk North" is described in Section 1.f of Exhibit C.
 - 1.105 "Walnut Walk South" is described in Section 1.f of Exhibit C
- 1.106 "Workforce Agreement" means the Workforce Agreement attached as Exhibit I.

2. EFFECTIVE DATE; TERM

- 2.1 <u>Effective Date</u>. This Agreement shall take effect upon the later of (i) the full execution and delivery of this Agreement by the Parties and (ii) the date the Enacting Ordinances are effective and operative ("**Effective Date**").
- 2.2 Term. The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for fifteen (15) years thereafter unless extended or earlier terminated as provided herein ("Term"); provided, however, that (i) the Term shall be extended for each day of a Litigation Extension and (ii) Developer shall have the right to terminate this Agreement with respect to a Development Parcel upon completion of the Building within that Development Parcel and the Associated Community Benefits for that Building, as set forth in Section 7.1. The term of any conditional use permit or planned unit development shall be for the longer of the Term (as it relates to the applicable parcel) or the term otherwise allowed under the conditional use or planned unit development approval, as applicable. The term of the Tentative Map and any Subdivision Map shall be for the longer of the Term (as it relates to the applicable parcel) or the term otherwise allowed under the Subdivision Map Act.

3. GENERAL RIGHTS AND OBLIGATIONS

3.1 <u>Development of the Project</u>. Developer shall have the vested right to develop the Project in accordance with and subject to the provisions of this Agreement, and the City shall consider and process all Later Approvals for development of the Project in accordance with and subject to the provisions of this Agreement. The Parties acknowledge that Developer (i) has obtained all Approvals from the City required to Commence Construction of the Project, other

than any required Later Approvals, and (ii) may proceed in accordance with this Agreement with the construction and, upon completion, use and occupancy of the Project as a matter of right, subject to the attainment of any required Later Approvals and any Non-City Approvals.

3.2 <u>Workforce</u>. Developer shall require project sponsors, contractors, consultants, subcontractors and subconsultants, as applicable, to undertake workforce development activities in accordance with the Workforce Agreement attached as Exhibit I.

4. PUBLIC BENEFITS; DEVELOPER OBLIGATIONS AND CONDITIONS TO DEVELOPER'S PERFORMANCE

- 4.1 Community Benefits Exceed Those Required by Existing Ordinances and Regulations. The Parties acknowledge and agree that the development of the Project in accordance with this Agreement provides a number of public benefits to the City beyond those achievable through existing Laws, including, but not limited to, those set forth in this Article 4 (the "Community Benefits"). The City acknowledges and agrees that a number of the Community Benefits would not be otherwise achievable without the express agreement of Developer under this Agreement. Developer acknowledges and agrees that, as a result of the benefits to Developer under this Agreement, Developer has received good and valuable consideration for its provision of the Community Benefits, and the City would not be willing to enter into this Agreement without the Community Benefits. Payment or delivery of each of the Community Benefits is tied to a specific Building or the number of constructed residential units as described in the Community Benefits Linkages and Impact Fees Schedule attached as Schedule 1 to this Agreement or as described elsewhere in this Agreement (each, an "Associated Community Benefit"). Upon Developer's Commencement of Construction of a Building, the Associated Community Benefits tied to that Building shall survive the expiration or termination of this Agreement to the date of completion of the Associated Community Benefit. Time is of the essence with respect to the completion of the Associated Community Benefits.
- 4.1.1 <u>Community Benefits</u>. Developer shall provide the following Community Benefits (collectively, the "Community Benefits Program") at the times specified in the Community Benefits Linkages and Impact Fees Schedule:
- (a) the Publicly Accessible Private Improvements, as further described in Exhibit C-1, Exhibit C-2 and Schedule 1;

- (b) the Streetscape Improvements, as further described in, Exhibit C, Exhibit C-1 and Schedule 1;
- (c) the Housing Program benefits, as further described in Exhibit D and Schedule 1;
 - (d) the AWSS Community Benefit Fee as further described in

Schedule 2;

(e) the Workforce Agreement benefits, as further described in

Exhibit I;

- (f) the Transportation Demand Management benefits, as further described in Exhibit J; and
- (g) the Child Care Program benefits, as further described in $\operatorname{\underline{Exhibit}} L$.
- 4.2 <u>Conditions to Performance of Community Benefits</u>. Developer's obligation to perform each Associated Community Benefit tied to a specific Building is expressly conditioned upon each and all of the following conditions precedent:
- (a) All Approvals for the applicable Building to which the Associated Community Benefit is tied shall have been Finally Granted;
- (b) Developer shall have obtained all Later Approvals necessary to Commence Construction of the applicable Building to which the Associated Community Benefit is tied, and the same shall have been Finally Granted, except to the extent that such Later Approvals have not been obtained or Finally Granted due to the failure of Developer to timely initiate and then diligently and in good faith pursue such Later Approvals. Whenever this Agreement requires completion of an Associated Community Benefit at or before the completion of or receipt of first certificate of occupancy for a Building, the City may withhold a certificate of occupancy for that Building until the required Associated Community Benefit is completed except as otherwise expressly set forth in Exhibit C, Exhibit D, Exhibit L, Schedule 1 or elsewhere in this Agreement or any Approvals; and
- (c) Developer shall have Commenced Construction of the Building to which the Associated Community Benefit applies.
- 4.3 <u>No Additional CEQA Review Required; Reliance on FEIR for Future</u>

 <u>Discretionary Approvals.</u> The Parties acknowledge that the FEIR prepared for the Project

complies with CEQA. The Parties further acknowledge that (a) the FEIR contains a thorough analysis of the Project and possible alternatives, (b) the Mitigation Measures have been adopted to eliminate or reduce to an acceptable level certain adverse environmental impacts of the Project, and (c) the Board of Supervisors adopted CEQA Findings, including a statement of overriding considerations in connection with the Approvals, pursuant to CEQA Guidelines Section 15093, for those significant impacts that could not be mitigated to a less than significant level. Accordingly, the City does not intend to conduct any further environmental review or mitigation under CEQA for any aspect of the Project vested under this Agreement. The City shall rely on the FEIR, to the greatest extent possible in accordance with applicable Laws, in all future discretionary actions related to the Project; provided, however, that nothing shall prevent or limit the discretion of the City to conduct additional environmental review in connection with any Later Approvals to the extent that such additional environmental review is required by applicable Laws, including CEOA.

- 4.3.1 Compliance with CEQA Mitigation Measures. Developer shall comply with all Mitigation Measures imposed as applicable to the Project except for any Mitigation Measures that are expressly identified as the responsibility of a different party or entity. Without limiting the foregoing, Developer shall be responsible for the completion of all Mitigation Measures identified as the responsibility of the "owner" or the "project sponsor". The Parties expressly acknowledge that the FEIR and the associated MMRP are intended to be used in connection with each of the Later Approvals to the extent appropriate and permitted under applicable Law. Nothing in this Agreement shall limit the ability of the City to impose conditions on any new, discretionary permit resulting from Material Changes as such conditions are determined by the City to be necessary to mitigate adverse environmental impacts identified through the CEQA process and associated with the Material Changes or otherwise to address significant environmental impacts as defined by CEQA created by an approval or permit; provided, however, any such conditions must be in accordance with applicable Law.
- 4.4 <u>Nondiscrimination</u>. In the performance of this Agreement, Developer agrees not to discriminate against any employee, City employee working with Developer's contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the

fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

4.5 City Cost Recovery.

- 4.5.1 Developer shall timely pay to the City all Impact Fees and Exactions applicable to the Project or the Project Site as set forth in Section 5.7.
- 4.5.2 Developer shall timely pay to the City all Processing Fees applicable to the processing or review of applications for the Approvals and Later Approvals.
- 4.5.3 Developer shall pay to the City all City Costs incurred in connection with the drafting and negotiation of this Agreement, defending the Approvals and Later Approvals, and in processing and issuing any Later Approvals or administering this Agreement (except for the costs that are covered by Processing Fees), within sixty (60) days following receipt of a written invoice complying with Section 4.5.4 from the City.
- 4.5.4 OEWD shall provide Developer on a quarterly basis (or such alternative period as agreed to by the Parties) a reasonably detailed statement showing costs incurred by OEWD, the City Agencies and the City Attorney's Office, including the hourly rates for each City staff member at that time, the total number of hours spent by each City staff member during the invoice period, any additional costs incurred by the City Agencies and a brief nonconfidential description of the work completed (provided, for the City Attorney's Office, the billing statement will be reviewed and approved by OEWD but the cover invoice forwarded to Developer will not include a description of the work). OEWD will use reasonable efforts to provide an accounting of time and costs from the City Attorney's Office and each City Agency in each invoice; provided, however, if OEWD is unable to provide an accounting from one or more of such parties, then OEWD may send an invoice to Developer that does not include the charges of such party or parties without losing any right to include such charges in a future or supplemental invoice but subject to the eighteen (18) month deadline set forth below in this Section 4.5.4. Developer's obligation to pay the City Costs shall survive the termination of this Agreement. Developer shall have no obligation to reimburse the City for any City Cost that is not invoiced to Developer within eighteen (18) months from the date the City Cost was incurred. The City will maintain records, in

reasonable detail, with respect to any City Costs and upon written request of Developer, and to the extent not confidential, shall make such records available for inspection by Developer.

- 4.5.5 If Developer in good faith disputes any portion of an invoice, then within sixty (60) days following receipt of the invoice Developer shall provide notice of the amount disputed and the reason for the dispute, and the Parties shall use good faith efforts to reconcile the dispute as soon as practicable. Developer shall have no right to withhold the disputed amount. If any dispute is not resolved within ninety (90) days following Developer's notice to the City of the dispute, Developer may pursue all remedies at law or in equity to recover the disputed amount.
- 4.6 <u>Prevailing Wages</u>. Developer agrees that all persons performing labor in the construction of the Streetscape Improvements and the Publicly Accessible Private Improvements shall be paid not less than the highest prevailing rate of wages for the labor so performed consistent with the requirements of Section 6.22(e) of the Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California, and Developer shall include this requirement in any construction contract entered into by Developer for any such improvements. Upon request, Developer and its contractors will provide to City any workforce payroll records as needed to confirm compliance with this Section. Without limiting the foregoing, Developer shall comply with all applicable state law requirements relating to the payment of prevailing wages, and to the extent there is any difference between the requirements of such state law requirements and Section 6.22(e) of the Administrative Code, the stricter requirements shall apply to the construction of the Streetscape Improvements and the Publicly Accessible Private Improvements.
- 4.7 <u>Indemnification of City</u>. Developer shall indemnify, reimburse, and hold harmless the City and its officers, agents and employees (the "City Parties") from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims ("Losses") arising or resulting directly or indirectly from (i) any third party claim arising from a Default by Developer under this Agreement, (ii) Developer's failure to comply with any Approval, Later Approval or Non-City Approval, (iii) the failure of any improvements constructed pursuant to the Approvals or Later Approvals to comply with any Federal or State Laws, the Existing Standards or any permitted New City Laws, (iv) any accident, bodily injury, death, personal injury, or loss of or damage to property occurring on the Project Site (or the public right of way adjacent

to the Project Site) in connection with the construction by Developer or its agents or contractors of any improvements pursuant to the Approvals, Later Approvals or this Agreement, (v) a Third-Party Challenge instituted against the City or any of the City Parties, (vi) any dispute between Developer, its contractors or subcontractors relating to the construction of any part of the Project, and (vii) any dispute between Developer and any Transferee or any subsequent owner of any of the Project Site relating to any assignment of this Agreement or the obligations that run with the land, or any dispute between Developer and any Transferee or other person relating to which party is responsible for performing certain obligations under this Agreement, each regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed on the City or any of the City Parties, except to the extent that any of the foregoing indemnification obligations is void or otherwise unenforceable under applicable Law, and except to the extent such Loss is the result of the negligence or willful misconduct of the City Parties. The foregoing indemnity shall include, without limitation, reasonable attorneys' fees and costs and the City's reasonable cost of investigating any claims against the City or the City Parties. indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement, to the extent such indemnification obligation arose from an event occurring before the expiration or termination of this Agreement. To the extent the indemnifications relate to Developer's obligations that survive the expiration or termination of this Agreement, the indemnifications shall survive for the term of the applicable obligation plus four (4) years.

5. VESTING AND CITY OBLIGATIONS

5.1 <u>Vested Rights.</u> By the Approvals, the City has made a policy decision that the Project, as described in and as may be modified in accordance with the Approvals, is in the best interests of the City and promotes the public health, safety and welfare. Developer shall have the vested right to develop the Project as set forth in this Agreement and the Project SUD, including without limitation with the following vested elements: the locations and numbers of Buildings proposed, the land uses, height and bulk limits, including the maximum density, intensity and gross square footages, the permitted uses, the provisions for open space, vehicular access, and parking (collectively, the "Vested Elements"; provided the Existing Uses on the Project Site shall also be included as Vested Elements). The Vested Elements are subject to and shall be governed by Applicable Laws. The expiration of any building permit or Approval shall not limit the Vested Elements, and Developer shall have the right to seek and obtain subsequent building permits or

approvals, including Later Approvals, at any time during the Term, any of which shall be governed by Applicable Laws. Each Later Approval, once granted, shall be deemed an Approval for purposes of this Section 5.1.

- 5.2 <u>Existing Standards</u>. The City shall process, consider, and review all Later Approvals in accordance with (i) the Approvals, (ii) the San Francisco General Plan, the Municipal Code (including the Subdivision Code), and all other applicable City policies, rules and regulations, as each of the foregoing is in effect on the Effective Date ("Existing Standards"), as the same may be amended or updated in accordance with <u>Section 5.4</u> or with permitted New City Laws as set forth in <u>Section 5.6</u>, (iii) California and Federal law, as applicable, and (iv) this Agreement (collectively, "Applicable Laws"). The Enacting Ordinances contain express waivers and amendments to Chapter 56 consistent with this Development Agreement.
- 5.2.1 <u>No Implied Waiver of Codes.</u> Nothing in this Agreement constitutes an implied waiver or exemption of the Subdivision Code or the Public Works Code. For any waiver or exemption, Developer shall comply with the City's existing processes to seek any necessary waivers or exemptions. The City's failure to enforce any part of the Subdivision Code or Public Works Code shall not be deemed a waiver of its right to do so thereafter, but it shall not override the Approvals standards set forth in <u>Sections 5.2</u>, <u>5.3</u>, and <u>5.4</u>.
- 5.2.2 <u>General Plan Consistency Findings</u>. The Parties acknowledge the Project is consistent with the City's General Plan and the General Plan Consistency Findings are intended to support all Later Approvals that are consistent with the Approvals. To the maximum extent practicable, the Planning Department shall rely exclusively on the General Plan Consistency Findings when processing and reviewing all Later Approvals, including proposed Subdivision Maps and any other actions related to the Project requiring General Plan determinations; provided Developer acknowledges that the General Plan Consistency Findings do not limit the City's discretion in connection with any Later Approval that (a) requires new or revised General Plan consistency findings because of Material Changes or amendments to any of the Approvals or (b) is analyzed in the context of a future General Plan amendment that is a non-conflicting New City Law.
- 5.3 <u>Criteria for Later Approvals.</u> Developer shall be responsible for obtaining all required Later Approvals before the start of any construction and timely providing project schedules to OEWD as described in <u>Exhibit K</u>. The City, in granting the Approvals and vesting

the Project through this Agreement, is limiting its future discretion with respect to Later Approvals to the extent that they are consistent with the Approvals and this Agreement. The City shall not disapprove applications for Later Approvals based upon an item or element that is consistent with the Approvals, and shall consider all such applications in accordance with its customary practices (subject to the requirements of this Agreement). Subject to the requirements of this Agreement, the City shall not impose any new condition for a Later Approval that conflicts with the Approvals except when such condition is necessary to bring the Later Approval into compliance with Applicable Laws. For any part of a Later Approval request that has not been previously reviewed or considered by the applicable City Agency (such as additional details or plans), the City Agency shall exercise its discretion consistent with the Municipal Code and the Approvals and otherwise in accordance with the City's customary practice (but subject to the requirements of this Agreement). Nothing in this Agreement shall preclude the City from applying New City Laws for any development not within the definition of the "Project" under this Agreement.

5.4 Strict Building Code Compliance.

5.4.1 <u>City-Wide Building Codes</u>. Notwithstanding anything in this Agreement to the contrary, except as otherwise provided in <u>Section 5.4.2</u>, when considering any application for a Later Approval, the City or the applicable City Agency shall apply the thenapplicable provisions, requirements, rules, or regulations (including any applicable exceptions) that are contained in the San Francisco Building Codes, including the Public Works Code (which includes the Stormwater Management Ordinance), Subdivision Code, Mechanical Code, Electrical Code, Housing Code, Plumbing Code, Fire Code, or other uniform construction codes applicable on a City-Wide basis.

5.4.2 <u>Sidewalks</u>, <u>Streets and Infrastructure</u>. By entering into this Agreement, the City's Board of Supervisors and the City Agencies have reviewed and approved (i) the Streetscape Improvements and the Publicly Accessible Private Improvements, including sidewalk, pathway, street widths, and general right of way configurations with respect to location and relationship of major elements, curbs, bicycle facilities, parking, loading areas, and landscaping, including the general location and number of new Street Trees (as defined in San Francisco Public Works Code Section 802) and the removal of certain existing Street Trees and Significant Trees (as defined in San Francisco Public Works Code Section 810A), as set forth in the Approvals described in <u>Exhibit E</u> (including the plans incorporated in such Approvals) and the

Project SUD, as consistent with the City's central policy objective to ensure street safety for all users while maintaining adequate clearances, including for fire apparatus vehicles. No City Agency with jurisdiction may object to a Later Approval for any of the Buildings, Streetscape Improvements, or Publicly Accessible Private Improvements due to the proposed width of a sidewalk, pathway, or street, unless such objection is based upon the applicable City Agency's reserved authority to review engineering design for compliance with Applicable Laws or other authority under State law. In the case of such objection, then within five (5) business days of the objection being raised (whether raised formally or informally), representatives from Developer, PW, the Planning Department and the objecting City Agency shall meet and confer in good faith to attempt to find a mutually satisfactory resolution to the objection. If the matter is not resolved within fourteen (14) days following the objection, then the Planning Director shall notify the Clerk of the Board of Supervisors and the members of the Board of Supervisors' Land Use and Transportation Committee. The City Agencies and Developer agree to act in good faith to resolve the matter quickly and in a manner that does not conflict with the City policy, Approvals, this Agreement, or applicable Law. For purposes of this Section, "engineering design" shall mean professional engineering work as set forth in the Professional Engineers Act, California Business and Professions Code Sections 6700 et seq.

- Approval that implements a Building, such denial must be consistent with Applicable Laws, and the City must specify in writing the reasons for such denial and shall suggest modifications required for approval of the application. Any such specified modifications shall be consistent with Applicable Laws and City staff shall approve the application if it is subsequently resubmitted for City review and corrects or mitigates, to the City's reasonable satisfaction, the stated reasons for the earlier denial in a manner that is consistent and compliant with Applicable Laws and does not include new or additional information or materials that give the City a reason to object to the application under the standards set forth in this Agreement.
- 5.6 New City Laws. All future changes to Existing Standards and any other Laws, plans or policies adopted by the City or adopted by voter initiative after the Effective Date ("New City Laws") shall apply to the Project and the Project Site except to the extent they conflict with this Agreement or the terms and conditions of the Approvals. In the event of such a conflict, the terms of this Agreement and the Approvals shall prevail, subject to the terms of Section 5.8.

- 5.6.1 New City Laws shall be deemed to conflict with this Agreement and the Approvals if they:
- (a) limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the square footage or number of proposed Buildings or change the location of proposed Buildings or change or reduce other improvements from that permitted under the Approvals;
- (b) limit or reduce the height or bulk of the Project, or any part thereof, or otherwise require any reduction in the height or bulk of individual Buildings or other improvements that are part of the Project under the Approvals;
- (c) limit, reduce or change the location of vehicular access, parking or loading for the Project from that permitted under the Approvals;
- (d) limit any land uses for the Project from that permitted under the Approvals or the Existing Uses;
 - (e) change or limit the Approvals or Existing Uses;
- (f) materially delay, limit or control the rate, timing, phasing, or sequencing of the Project, including the demolition of existing buildings at the Project Site, except as expressly set forth in this Agreement;
- (g) require the issuance of permits or approvals for the Project by the City other than those required under the Existing Standards, except for (i) permits or approvals that are required on a City-Wide basis, relate to the construction of improvements, and do not prevent construction of the applicable aspects of the Project that would be subject to such permits or approvals as and when intended by this Agreement or (ii) permits that replace (but do not expand the scope or purpose of) existing permits;
- (h) limit or control the availability of public utilities, services or facilities, or any privileges or rights to public utilities, services, or facilities for the Project;
- (i) materially and adversely limit the processing or procuring of applications and approvals of Later Approvals that are consistent with Approvals;
- (j) increase the percentage of required affordable or BMR Units, change the AMI percentage levels for the affordable housing pricing or income eligibility, change the requirements regarding unit size or unit type, control or limit homeowner association or common area dues or amenity charges, or place restrictions on the right to alienate, transfer or

otherwise dispose of property, or increase the amount or change the configuration of required open space for the Project;

- (k) designate any existing tree on the Project Site as a Landmark Tree (as defined in San Francisco Public Works Code Section 802) if such designation would interfere with the construction of the Project; or
- (I) impose new or modified Impact Fees and Exactions on the Project that are expressly prohibited in <u>Section 5.7.2</u>.

5.6.2 Developer shall have the right, from time to time and at any time, to file Subdivision Map applications (including phased final map applications and developmentspecific condominium map or plan applications) with respect to some or all of the Project Site and subdivide (including reconfiguring or merging parcels, subject to Developer's obligations under the Housing Program and the Child Care Program) the Project Site as may be necessary or desirable in order to develop a particular part of the Project as shown generally in Exhibit B-1. The specific boundaries of Development Parcels shall be set by Developer and approved by the City during the subdivision process. Nothing in this Agreement shall authorize Developer to subdivide or use any of the Project Site for purposes of sale, lease or financing in any manner that conflicts with the Subdivision Map Act or with the Subdivision Code. Nothing in this Agreement shall prevent the City from enacting or adopting changes in the methods and procedures for processing subdivision and parcel maps so long as such changes do not conflict with the provisions of this Agreement or with the Approvals. Prior to recording any final Subdivision Map with respect to the Project, Developer shall cause any then-existing Mortgagee to provide its authorized signature on such final Subdivision Map (or any other written approval permitted under Applicable Law), which shall include consent and acknowledgement of the BMR Units requirements with specified AMI levels for the life of the Project, in accordance with this Agreement.

5.7 Fees and Exactions.

5.7.1 <u>Generally</u>. The Project shall only be subject to the Processing Fees and Impact Fees and Exactions as set forth in this <u>Section 5.7</u>, and the City shall not impose any new Processing Fees or Impact Fees and Exactions on the development of the Project or impose new conditions or requirements for the right to develop the Project (including required contributions of land, public amenities or services) except as set forth in this Agreement. The Parties acknowledge that the provisions contained in this <u>Section 5.7</u> are intended to implement

the intent of the Parties that Developer have the right to develop the Project pursuant to specified and known criteria and rules, and that the City receive the benefits which will be conferred as a result of such development without abridging the right of the City to act in accordance with its powers, duties and obligations, except as specifically provided in this Agreement.

- 5.7.2 <u>Impact Fees and Exactions</u>. During the Term, as extended by any Litigation Extensions, no Impact Fees and Exactions shall apply to the Project or components thereof except for (i) those Impact Fees and Exactions specifically set forth on Schedule 1, Schedule 2, Exhibit D and Exhibit L, (ii) the SFPUC Capacity Charges, (iii) New City Laws that do not conflict with this Agreement as set forth in Section 5.6, and (iv) as expressly set forth below in this Section. The Impact Fees and Exactions and SFPUC Capacity Charges shall be calculated and determined at the time payable in accordance with the City requirements on that date, and the parties acknowledge and agree that the Impact Fees and Exactions shall be subject to the Planning Department's final confirmation once the applicable final land uses and Gross Floor Area are determined. Accordingly, Developer shall be subject to any increase or decrease in the fee amount payable and any changes in methodology of calculation (e.g., use of a different index to calculate annual increases) but will not be subject to any new types of Impact Fees and Exactions or modification to existing Impact Fees and Exactions after the Effective Date except as described in Section 5.6 and this Section. Developer agrees that any new or reduced impact fee or exaction enacted after the Effective Date that (i) is of City-Wide applicability (e.g., applies to all retail development in the City), (ii) does not pertain to affordable housing, open space or community improvements (for which this Agreement reflects the required Developer contributions), and (iii) would otherwise apply to the Project, shall apply to the Project or the applicable portion thereof.
- 5.7.3 <u>Processing Fees</u>. Developer shall pay all Processing Fees in effect, on a City-Wide basis, at the time that Developer applies for a Later Approval for which such Processing Fee is payable in connection with the applicable part of the Project.

5.8 Changes in Federal or State Laws.

5.8.1 <u>City's Exceptions</u>. Notwithstanding any provision in this Agreement to the contrary, each City Agency having jurisdiction over the Project shall exercise its discretion under this Agreement in a manner that is consistent with the public health and safety and shall at all times retain its respective authority to take any action that is necessary to protect

the physical health and safety of the public (the "Public Health and Safety Exception") or reasonably calculated and narrowly drawn to comply with applicable changes in Federal or State Law affecting the physical environment (the "Federal or State Law Exception"), including the authority to condition or deny a Later Approval or to adopt a new Law applicable to the Project so long as such condition or denial or new regulation (i)(a) is limited solely to addressing a specific and identifiable issue in each case required to protect the physical health and safety of the public, or (b) is required to comply with a Federal or State Law and in each case not for independent discretionary policy reasons that are inconsistent with the Approvals or this Agreement and (ii) is applicable on a City-Wide basis to the same or similarly situated uses and applied in an equitable and non-discriminatory manner. Developer retains the right to dispute any City reliance on the Public Health and Safety Exception or the Federal or State Law Exception. If the Parties are not able to reach agreement on such dispute following a reasonable meet and confer period, then Developer or City may seek judicial relief with respect to the matter.

- 5.8.2 <u>Changes in Federal or State Laws</u>. If Federal or State Laws issued, enacted, promulgated, adopted, passed, approved, made, implemented, amended, or interpreted after the Effective Date have gone into effect and (i) preclude or prevent compliance with one or more provisions of the Approvals or this Agreement, or (ii) materially and adversely affect Developer's or the City's rights, benefits or obligations under this Agreement, then such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal or State Law. In such event, this Agreement shall be modified only to the extent necessary or required to comply with such Law, subject to the provisions of <u>Section 5.8.4</u>, as applicable.
- 5.8.3 <u>Changes to Development Agreement Statute</u>. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute. No amendment of or addition to the Development Agreement Statute that would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights of Developer hereunder, or increase the obligations or diminish the benefits to the City hereunder shall be applicable to this Agreement unless such amendment or addition is specifically required by Law or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected.
- 5.8.4 <u>Effect on Agreement</u>. If any of the modifications, amendments or additions described in this <u>Section 5.8</u> would materially and adversely affect the construction,

development, use, operation, or occupancy of the Project as currently contemplated by the Approvals, or any material portion thereof, such that the Project, or the applicable portion thereof, becomes economically infeasible (a "Law Adverse to Developer"), then Developer shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. If any of the modifications, amendments or additions described in Section 5.8 would materially and adversely affect or limit the Community Benefits (a "Law Adverse to the City"), then the City shall notify Developer and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. Upon receipt of a notice under this Section 5.8.4, the Parties agree to meet and confer in good faith for a period of not less than ninety (90) days in an attempt to resolve the issue. If the Parties cannot resolve the issue in ninety (90) days or such longer period as may be agreed to by the Parties, then the Parties shall mutually select a mediator at JAMS in San Francisco for nonbinding mediation for a period of not less than thirty (30) days. If the Parties remain unable to resolve the issue following such mediation, then either party shall have the right to seek available remedies at law or in equity to maintain the benefit of the bargain or alternatively to seek termination of this Agreement if the benefit of the bargain cannot be maintained in light of the Law Adverse to Developer or Law Adverse to the City.

- 5.9 No Action to Impede Approvals. Except and only as required under Section 5.8, the City shall take no action under this Agreement nor impose any condition on the Project that would conflict with this Agreement or the Approvals. An action taken or condition imposed shall be deemed to be in conflict with this Agreement or the Approvals if such actions or conditions result in the occurrence of one or more of the circumstances identified in Section 5.6.1.
- 5.10 Estoppel Certificates. Developer may, at any time, and from time to time, deliver notice to the Planning Director requesting that the Planning Director certify to Developer, a potential Transferee, or a potential lender to Developer, in writing that to the best of the Planning Director's knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified, and if so amended or modified, identifying the amendments or modifications and stating their date and providing a copy or referring to the recording information; (iii) Developer is not in Default in the performance of its obligations under this Agreement, or if in Default, to describe therein the nature and amount of any such Defaults; and (iv) the findings of the City with respect to the most recent annual review

performed pursuant to <u>Section 8</u>. The Planning Director, acting on behalf of the City, shall execute and return such certificate within twenty (20) days following receipt of the request.

- 5.11 Existing, Continuing Uses and Interim Uses. The Parties acknowledge that the Existing Uses are lawfully authorized uses and may continue as such uses may be modified by the Project, provided that any modification thereof not a component of or contemplated by the Project is subject to Planning Code Section 178 and the applicable provisions of Section 5. Developer may install interim or temporary uses on the Project Site, which uses must be consistent with those uses allowed under the Project Site's zoning, the Approvals, the Project SUD, or any planned unit development authorization granted under the Project SUD, as applicable.
- 5.12 Taxes. Nothing in this Agreement limits the City's ability to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment, provided (i) the City shall not institute, on its own initiative, proceedings for any new or increased special tax or special assessment for a land-secured financing district (including the special taxes under the Mello-Roos Community Facilities Act of 1982 (Government Code Section 53311 et seq.) but not including business improvement districts or community benefit districts formed by a vote of the affected property owners) that includes the Project Site unless the new district is City-Wide or Developer gives its prior written consent to or requests such proceedings, and (ii) no such tax or assessment shall be targeted or directed at the Project, including, without limitation, any tax or assessment targeted solely at all or any part of the Project Site. Nothing in the foregoing prevents the City from imposing any tax or assessment against the Project Site, or any portion thereof, that is enacted in accordance with Law and applies to all similarly-situated property on a City-Wide basis.

6. NO DEVELOPMENT OBLIGATION

There is no requirement under this Agreement that Developer initiate or complete development of the Project, or any portion thereof. There is also no requirement that development be initiated or completed within any period of time or in any particular order, subject to the requirement to complete Associated Community Benefits for each Building (or for any market rate residential unit in excess of three hundred eighty-six (386), as applicable) commenced by Developer as set forth in Section 4.1. The development of the Project is subject to numerous factors that are not within the control of Developer or the City, such as availability of financing, interest rates, access to capital, and similar factors. In *Pardee Construction Co. v. City of*

Camarillo, 37 Cal.3d 465 (1984), the California Supreme Court ruled that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development and controlling the parties' agreement. It is the intent of the Parties to avoid such a result by acknowledging and providing for the timing of development of the Project in the manner set forth herein. Accordingly, the Parties agree that except as expressly set forth in this Agreement and any express construction dates set forth in a Later Approval, (i) Developer shall have the right to develop the Project in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment, (ii) such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement, and (iii) without such a right, Developer's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute, Chapter 56 and this Agreement.

7. MUTUAL OBLIGATIONS

- 7.1 Notice of Completion, Revocation or Termination. Within thirty (30) days after any early revocation or termination of this Agreement (as to all or any part of the Project Site), the Parties agree to execute a written statement acknowledging such revocation or termination, signed by the appropriate agents of the City and Developer, and record such instrument in the Official Records. In addition, within thirty (30) days after Developer's request, when a Building and all of the Associated Community Benefits tied to that Building have been completed, the City and Developer shall execute and record a notice of completion in the form attached as Exhibit G for the applicable Building property.
- General Cooperation; Agreement to Cooperate. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with the Approvals, any Later Approvals and this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of this Agreement, the Approvals and any Later Approvals are implemented. Except for ordinary administrative costs of the City, nothing in this Agreement obligates the City to spend any sums of money or incur any costs other than City Costs or costs that Developer reimburses through the payment of Processing Fees. The Parties agree that the Planning Department will act as the City's lead agency to facilitate coordinated City review of applications for the Project.

- 7.3 Third-Party Challenge. Developer shall assist and cooperate with the City at Developer's own expense in connection with any Third-Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney's sole discretion. Developer shall reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney's Office (at the non-discounted rates then charged by the City Attorney's Office) and any consultants; provided, however, Developer shall have the right to monthly invoices for all such costs.
- judgment is entered limiting Developer's right to proceed with the Project or any material portion thereof under this Agreement (whether the Project commenced or not), including the City's actions taken pursuant to CEQA, Developer may elect to terminate this Agreement. Upon any such termination (or, upon the entry of a judgment terminating this Agreement, if earlier), the City and Developer shall jointly seek to have the Third-Party Challenge dismissed and Developer shall have no obligation to reimburse City defense costs that are incurred after the dismissal (other than, in the case of a partial termination by Developer, any defense costs with respect to the remaining portions of the Project). Notwithstanding the foregoing, if Developer conveys or transfers some but not all of the Project, or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore, there is more than one party that assumes obligations of "Developer" under this Agreement, then only the Party holding the interest in such portion of the Project shall have the right to terminate this Agreement as to such portion of the Project (and only as to such portion), and no termination of this Agreement by such Party as to such Party's portion of the Project shall effect a termination of this Agreement as to any other portion of the Project.
- 7.3.2 The filing of any Third Party Challenge shall not delay or stop the development, processing or construction of the Project or the issuance of Later Approvals unless the third party obtains a court order preventing the activity.
- 7.4 <u>Good Faith and Fair Dealing</u>. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement and implementing the Approvals and any Later Approvals.
- 7.5 Other Necessary Acts. Each Party shall use good faith efforts to take such further actions as may be reasonably necessary to carry out this Agreement, the Approvals and any

Later Approvals, in accordance with the terms of this Agreement (and subject to all applicable Laws) in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

8. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

- 8.1 <u>Annual Review</u>. Pursuant to Section 65865.1 of the Development Agreement Statute and Section 56.17 of the Administrative Code (as of the Effective Date), at the beginning of the second week of each January following final adoption of this Agreement and for so long as the Agreement is in effect (the "Annual Review Date"), the Planning Director shall commence a review to ascertain whether Developer has, in good faith, complied with the Agreement. The failure to commence such review in January in any calendar year shall not waive the Planning Director's right to do so later in the calendar year. The Planning Director may elect to forego an annual review if no significant construction work occurred on the Project Site during that year, or if such review is otherwise not deemed necessary.
- 8.2 <u>Review Procedure</u>. In conducting the required initial and annual reviews of Developer's compliance with this Agreement, the Planning Director shall follow the process set forth in this Section 8.2.
- 8.2.1 <u>Required Information from Developer</u>. Within sixty (60) days following request by the Planning Director, Developer shall provide a letter to the Planning Director explaining, with appropriate backup documentation, Developer's compliance with this Agreement for the preceding calendar year, including, but not limited to, compliance with the requirements regarding Community Benefits. The burden of proof, by substantial evidence, of compliance is upon Developer. The Planning Director shall post a copy of Developer's submittals on the Planning Department's website.
- 8.2.2 <u>City Report</u>. Within sixty (60) days after Developer submits such letter, the Planning Director shall review the information submitted by Developer and all other available evidence regarding Developer's compliance with this Agreement, and shall consult with applicable City Agencies as appropriate. All such available evidence, including final staff reports, shall, upon receipt by the City, be made available as soon as possible to Developer. The Planning Director shall notify Developer in writing whether Developer has complied with the terms of this Agreement (the "City Report"), and post the City Report on the Planning Department's website. If the Planning Director finds Developer not in compliance with this Agreement, then the City may

pursue available rights and remedies in accordance with this Agreement and Chapter 56. The City's failure to initiate or to timely complete the annual review shall not be a Default and shall not be deemed to be a waiver of the right to do so at a later date. All costs incurred by the City under this Section shall be included in the City Costs.

8.2.3 Effect on Transferees. If a Developer has effected a Transfer so that its interest in the Project Site is divided among multiple Developers at the time of an annual review, then that annual review shall be conducted separately with respect to each Developer, each Developer shall submit the materials required by this Article 8 with respect to the portion of the Project Site owned by such Developer, and the City review process will proceed as one for the whole Project. Notwithstanding the foregoing, the Planning Commission and Board of Supervisors shall make its determinations and take its action separately with respect to each Developer pursuant to Chapter 56. If there are multiple Developers and the Board of Supervisors terminates, modifies or takes such other actions as may be specified in Chapter 56 and this Agreement in connection with a determination that a Developer has not complied with the terms and conditions of this Agreement, such action by the Planning Director, Planning Commission, or Board of Supervisors shall be effective only as to the Party to whom the determination is made and the portions of the Project Site in which such Party has an interest. In other words, even when the review process is bundled for multiple Developers, any action determination of noncompliance or default will be made only against the defaulting Party and not against any of the other Developers.

8.2.4 <u>Default</u>. The rights and powers of the City under this <u>Section 8.2</u> are in addition to, and shall not limit, the rights of the City to terminate or take other action under this Agreement on account of a Default by Developer.

9. ENFORCEMENT OF AGREEMENT; DEFAULT; REMEDIES

- 9.1 <u>Enforcement</u>. As of the date of this Agreement, the only Parties to this Agreement are the City and Developer. Except as expressly set forth in this Agreement (for successors, Transferees and Mortgagees), this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.
- 9.2 <u>Meet and Confer Process</u>. Before sending a notice of default in accordance with <u>Section 9.3</u>, the Party which may assert that the other Party has failed to perform or fulfill its obligations under this Agreement shall first attempt to meet and confer with the other Party to discuss the alleged failure and shall permit such Party a reasonable period, but not less than ten

(10) days, to respond to or cure such alleged failure; provided, however, the meet and confer process shall not be required (i) for any failure to pay amounts due and owing under this Agreement, or (ii) if a delay in sending a notice pursuant to Section 9.3 would impair, prejudice or otherwise adversely affect a Party or its rights under this Agreement. The Party asserting such failure shall request that such meeting and conference occur within three (3) business days following the request and if, despite the good faith efforts of the requesting Party, such meeting has not occurred within seven (7) business days of such request, then such Party shall be deemed to have satisfied the requirements of this Section and may proceed in accordance with the issuance of a notice of default under Section 9.3.

9.3 <u>Default</u>. The following shall constitute a "**Default**" under this Agreement: (i) the failure to make any payment within sixty (60) days following notice that such payment was not made when due and demand for compliance; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant of this Agreement and the continuation of such failure for a period of sixty (60) days following notice and demand for compliance. Notwithstanding the foregoing, if a failure can be cured but the cure cannot reasonably be completed within sixty (60) days, then it shall not be considered a Default if a cure is commenced within said 60-day period and diligently prosecuted to completion thereafter. Any notice of default given by a Party shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured (if at all). Notwithstanding any other provision in this Agreement to the contrary, if Developer conveys or transfers some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore there is more than one Party that assumes obligations of "Developer" under this Agreement, there shall be no cross-default between the separate Parties that assumed Developer obligations. Accordingly, a default by one "Developer" shall not be a Default by any other "Developer" that owns or controls a different portion of the Project Site.

9.4 Remedies.

9.4.1 <u>Specific Performance</u>. Subject to, and as limited by, the provisions of <u>Sections 9.4.3</u>, <u>9.4.4</u>, and <u>9.5</u>, in the event of a Default, the remedies available to a Party shall include specific performance of this Agreement in addition to any other remedy available at law or in equity.

9.4.2 <u>Termination</u>. Subject to the limitation set forth in <u>Section 9.4.4</u>, in

the event of a Default, the non-defaulting Party may elect to terminate this Agreement by sending a notice of termination to the other Party, which notice of termination shall state the Default. Any such termination shall be effective upon the date set forth in the notice of termination, which shall in no event be earlier than sixty (60) days following delivery of the notice. Consistent with Sections 9.3 and 12.3, there are no cross-defaults under this Agreement, and therefore if there is more than one "Developer" (as it relates to different parts of the Project Site), then any termination of this Agreement for Default will be limited to the Developer that sent or received the termination notice.

Limited Damages. The Parties have determined that except as set 9.4.3 forth in this Section 9.4.3, (i) monetary damages are generally inappropriate, (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by a Party as a result of a Default hereunder, and (iii) equitable remedies and remedies at law, not including damages but including specific performance and termination, are particularly appropriate remedies for enforcement of this Agreement. Consequently, Developer agrees that the City shall not be liable to Developer for damages under this Agreement, and the City agrees that Developer shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) either Party shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for a Party's failure to pay sums to the other Party as and when due under this Agreement, (2) the City shall have the right to recover actual damages for Developer's failure to make any payment due under any indemnity in this Agreement, (3) to the extent a court of competent jurisdiction determines that specific performance is not an available remedy with respect to an unperformed Associated Community Benefit, the City shall have the right to monetary damages equal to the costs that the City incurs or will incur to complete the Associated Community Benefit as determined by the court, (4) either Party shall have the right to recover reasonable attorneys' fees and costs as set forth in Section 9.6, and (5) the City shall have the right to administrative penalties or liquidated damages if and only to the extent expressly stated in an Exhibit to this Agreement or in the applicable portion of the San Francisco Municipal Code incorporated into this Agreement. For purposes of the foregoing, "actual damages" means the actual amount of the sum due and owing under this Agreement, with interest as provided by Law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

- 9.4.4 <u>City Processing/Certificates of Occupancy</u>. The City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which payments due the City from Developer are past due; provided, however, if Developer has conveyed or transferred some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore, there is more than one party that assumes obligations of "Developer" under this Agreement, then the City shall continue to process requests and take other actions as to the other portions of the Project so long as the applicable Developer as to those portions is current on payments due the City. The City shall have the right to withhold a final certificate of occupancy for a Building until all of the Associated Community Benefits tied to that Building have been completed. For a Building to be deemed completed, Developer shall have completed all of the streetscape and open space improvements described in <u>Exhibit C</u> and <u>Exhibit J</u>, or a Later Approval, for that Building; provided, if the City issues a final certificate of occupancy before such items are completed, then Developer shall promptly complete such items following issuance.
- 9.5 Time Limits; Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict or timely performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of any condition or failure of performance, including a Default, shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such failure. No express written waiver shall affect any other condition, action or inaction, or cover any other period of time, other than any condition, action or inaction and/or period of time specified in such express waiver. One or more written waivers under any provision of this Agreement shall not be deemed to be a waiver of any subsequent condition, action or inaction, and the performance of the same or any other term or provision contained in this Agreement. Nothing in this Agreement shall limit or waive any other right or remedy available to a Party to seek injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm.
 - 9.6 Attorneys' Fees. Should legal action be brought by either Party against the

other for a Default under this Agreement or to enforce any provision herein, the prevailing Party in such action shall be entitled to recover its reasonable attorneys' fees and costs. For purposes of this Agreement, "reasonable attorneys' fees and costs" means the reasonable fees and expenses of counsel to the Party, which may include printing, duplicating and other expenses, air freight charges, hiring of experts and consultants, and fees billed for law clerks, paralegals, librarians, and others not admitted to the bar but performing services under the supervision of an attorney. The term "reasonable attorneys' fees and costs" shall also include, without limitation, all such reasonable fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Agreement, the reasonable fees of attorneys of City Attorney's Office shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the Law for which the City Attorney's Office's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

10. FINANCING; RIGHTS OF MORTGAGEES

- 10.1 <u>Developer's Right to Mortgage</u>. Nothing in this Agreement limits the right of Developer to mortgage or otherwise encumber all or any portion of the Project Site for the benefit of any Mortgagee as security for one or more loans. Developer represents that, as of the Effective Date, there are no Mortgages on the Project Site other than the Existing Mortgage. Prior to commencing construction under the First Construction Document for the Project, Developer shall cause the Existing Mortgage, if then still in effect, and any other then-existing Mortgage(s), to be subordinated to this Agreement.
- Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement (except as set forth in this Section and Section 10.5), a Mortgagee, including any Mortgagee who obtains title to the Project Site or any part thereof as a result of foreclosure proceedings, conveyance or other action in lieu thereof, or other remedial action shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or any part thereof or to guarantee such construction or completion. The foregoing provisions shall not be applicable to any party who, after a foreclosure, conveyance or other action in lieu thereof, or other remedial action obtains title to some or all of the Project Site from or through the

Mortgagee, or any other purchaser at a foreclosure sale other than the Mortgagee itself, on which certain Associated Community Benefits must be completed as set forth in Section 4.1. Nothing in this Section or any other Section or provision of this Agreement shall be deemed or construed to permit or authorize any Mortgagee or any other person or entity to devote the Project Site or any part thereof to any uses other than uses consistent with this Agreement and the Approvals, and nothing in this Section shall be deemed to give any Mortgagee or any other person or entity the right to construct any improvements under this Agreement (other than as set forth above for required Community Benefits or as needed to conserve or protect improvements or construction already made) unless or until such person or entity assumes Developer's obligations under this Agreement.

10.3 Copy of Notice of Default and Notice of Failure to Cure to Mortgagee. Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations under this Agreement, the City shall at the same time forward a copy of such notice or demand to each Mortgagee having a Mortgage on the real property which is the subject of the breach or default who has previously made a written request to the City therefor, at the last address of such Mortgagee specified by such Mortgagee in such notice. In addition, if such breach or default remains uncured for the period permitted with respect thereto under this Agreement, the City shall deliver a notice of such failure to cure such breach or default to each such Mortgagee at such applicable address. A delay or failure by the City to provide such notice required by this Section shall extend for the number of days until notice is given, the time allowed to the Mortgagee for cure. In accordance with Section 2924b of the California Civil Code, the City requests that a copy of any notice of default and a copy of any notice of sale under any Mortgage be mailed to the City at the address for notices under this Agreement. Any Mortgagee relying on the protections set forth in this Article 10 shall send to the City a copy of any notice of default and notice of sale.

10.4 <u>Mortgagee's Option to Cure Defaults</u>. After receiving any notice of failure to cure referred to in <u>Section 10.3</u>, each Mortgagee shall have the right, at its option, to commence within the same period as the Developer to remedy or cause to be remedied any Default, plus an additional period of: (a) sixty (60) days to cure a monetary Default; and (b) one hundred twenty (120) days to cure a non-monetary event of default which is susceptible of cure by the Mortgagee without obtaining title to the applicable property. If an event of default is not cured within the

applicable cure period, the City nonetheless shall refrain from exercising any of its remedies with respect to the event of default if, within the Mortgagee's applicable cure period: (i) the Mortgagee notifies the City that it intends to proceed with due diligence to foreclose the Mortgage or otherwise obtain title to the subject property; and (ii) the Mortgagee commences foreclosure proceedings within sixty (60) days after giving such notice, and thereafter diligently pursues such foreclosure to completion; and (iii) after obtaining title, the Mortgagee diligently proceeds to cure those events of default: (A) which are required to be cured by the Mortgagee and are susceptible of cure by the Mortgagee, and (B) of which the Mortgagee has been given notice by the City. Any such Mortgagee or Transferee of a Mortgagee who shall properly complete the improvements relating to the Project Site or applicable part thereof shall be entitled, upon written request made to the Agency, to a Certificate of Completion.

- anything to the contrary in this Agreement, no Mortgagee shall have any obligations or other liabilities under this Agreement unless and until it acquires title by any method to all or some portion of the Project Site (referred to hereafter as "Foreclosed Property"). A Mortgagee that, by foreclosure under a Mortgage, acquires title to any Foreclosed Property shall take title subject to all of the terms and conditions of this Agreement, to the extent applicable to the Foreclosed Property, including any claims for payment or performance of obligations which are due as a condition to enjoying the benefits of this Agreement and shall have all of the rights and obligations of Developer under this Agreement as to the applicable Foreclosed Property, including completion of the Associated Community Benefits under Section 4.1. Upon the occurrence and continuation of an uncured default by a Mortgagee or Transferee in the performance of any of the obligations to be performed by such Mortgagee or Transferee pursuant to this Agreement, the City shall be afforded all its remedies for such uncured default as provided in this Agreement.
- 10.6 <u>No Impairment of Mortgage</u>. No default by Developer under this Agreement shall invalidate or defeat the lien of any Mortgagee. No foreclosure of any Mortgage or other lien shall defeat, diminish, render invalid or unenforceable or otherwise impair Developer's rights or obligations under this Agreement or constitute a default under this Agreement.
- 10.7 <u>Cured Defaults</u>. Upon the curing of any event of default by any Mortgagee within the time provided in this Article 10 the City's right to pursue any remedies with respect to

the cured event of default shall terminate.

11. AMENDMENT; TERMINATION; EXTENSION OF TERM

- 11.1 <u>Amendment or Termination</u>. This Agreement may only be amended with the mutual written consent of the City and Developer; provided, however, that following a Transfer, the City and Developer or any Transferee may amend this Agreement as it affects Developer or the Transferee and the portion of the Project Site owned by Developer or the Transferee without affecting other portions of the Project Site or other Transferees. Other than upon the expiration of the Term and except as provided in <u>Sections 2.2, 7.3, 9.4.2</u>, and <u>11.2</u>, this Agreement may only be terminated with the mutual written consent of the Parties. Any amendment to this Agreement that does not constitute a Material Change may be agreed to by the Planning Director (and, to the extent it affects any rights or obligations of a City department, with the approval of that City department). Any amendment that is a Material Change will require the approval of the Planning Director, the Planning Commission and the Board of Supervisors (and, to the extent it affects any rights or obligations of a City department, after consultation with that City Department). The determination of whether a proposed change constitutes a Material Change shall be made, on City's behalf, by the Planning Director following consultation with the City Attorney and any affected City Agency.
- 11.2 Early Termination Rights. Developer shall, upon thirty (30) days prior notice to the City, have the right, in its sole and absolute discretion, to terminate this Agreement in its entirety at any time if Developer does not Commence Construction on any part of the Project Site by the date which is five (5) years following the Effective Date as such five (5) year date may be extended by any Litigation Extension. Thereafter, the City shall, upon sixty (60) days prior notice to Developer, have the right, in its sole and absolute discretion, to terminate this Agreement if the Developer has not Commenced Construction; provided Developer can prevent any such termination by the City by providing to the City notice, within the above sixty (60) day period, of Developer's intent to start construction and the Developer thereafter Commences Construction within one hundred twenty (120) days following delivery of Developer's notice to the City, or, if unable to actually Commence Construction within said time period, demonstrates reasonable, good faith and continuing efforts to Commence Construction, such as by pursuing all necessary Later Approvals, and thereafter promptly Commences Construction upon receipt of the Later Approvals.
 - 11.3 Termination and Vesting. Any termination under this Agreement shall

concurrently effect a termination of the Approvals with respect to the terminated portion of the Project Site, except as to any Approval pertaining to a Building that has Commenced Construction in reliance thereon. In the event of any termination of this Agreement by Developer resulting from a Default by the City and except to the extent prevented by such City Default, Developer's obligation to complete the Associated Community Benefits shall continue as to the Building that has Commenced Construction and all relevant and applicable provisions of this Agreement shall be deemed to be in effect as such provisions are reasonably necessary in the construction, interpretation or enforcement to this Agreement as to any such surviving obligations. The City's and Developer's rights and obligations under this Section 11.3 shall survive the termination of this Agreement.

11.4 Amendment Exemptions. No issuance of a Later Approval, or amendment of an Approval or Later Approval, shall by itself require an amendment to this Agreement. And no change to the Project that is permitted under the Project SUD or a planned unit development authorization issued under the Project SUD shall by itself require an amendment to this Agreement. Upon issuance or approval, any such matter shall be deemed to be incorporated automatically into the Project and vested under this Agreement (subject to any conditions set forth in the amendment or Later Approval). Notwithstanding the foregoing, if there is any direct conflict between the terms of this Agreement and a Later Approval, or between this Agreement and any amendment to an Approval or Later Approval, then the Parties shall concurrently amend this Agreement (subject to all necessary approvals in accordance with this Agreement) in order to ensure the terms of this Agreement are consistent with the proposed Later Approval or the proposed amendment to an Approval or Later Approval. The Planning Department and the Planning Commission, as applicable, shall have the right to approve changes to the Project as described in the Exhibits in keeping with its customary practices and the Project SUD, and any such changes shall not be deemed to conflict with or require an amendment to this Agreement or the Approvals so long as they do not constitute a Material Change. If the Parties fail to amend this Agreement as set forth above when required, however, then the terms of this Agreement shall prevail over any Later Approval or any amendment to an Approval or Later Approval that conflicts with this Agreement.

11.5 Extension Due to Legal Action or Referendum; Excusable Delay.

11.5.1 <u>Litigation and Referendum Extension</u>. If any litigation is filed challenging this Agreement or any of the Approvals described on <u>Exhibit E</u> (the "**Initial**"

Approvals") and it directly or indirectly delays this Agreement or such Initial Approval, or if this Agreement or any of the Initial Approvals is suspended pending the outcome of an electoral vote on a referendum, then the Term of this Agreement and the effectiveness of the Initial Approvals (starting from the date of the initial grant of the Initial Approval) shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension to the end of such litigation or suspension (a "Litigation Extension"). The Parties shall document the start and end of a Litigation Extension in writing within thirty (30) days from the applicable dates.

11.5.2 "Excusable Delay" means the occurrence of an event beyond a Party's reasonable control which causes such Party's performance of an obligation to be delayed, interrupted or prevented, including, but not limited to: changes in Federal or State Laws; strikes or the substantial interruption of work because of labor disputes; inability to obtain materials; freight embargoes; civil commotion, war or acts of terrorism; inclement weather, fire, floods, earthquakes, or other acts of God; epidemics or quarantine restrictions; litigation; unforeseen site conditions (including archaeological resources or the presence of hazardous materials); or the failure of any governmental agency, public utility or communication service provider to issue a permit, authorization, consent or approval required to permit construction within the standard or customary time period for such issuing authority following Developer's submittal of a complete application for such permit, authorization, consent or approval, together with any required materials. Excusable Delay shall not include delays resulting from failure to obtain financing or have adequate funds, changes in market conditions, or the rejection of permit, authorization or approval requests based upon Developer's failure to satisfy the substantive requirements for the permit, authorization or approval request. In the event of Excusable Delay, the Parties agree that (i) the time periods for performance of the delayed Party's obligations impacted by the Excusable Delay shall be strictly limited to the period of such delay, interruption or prevention and the delayed Party shall, to the extent commercially reasonable, act diligently and in good faith to remove the cause of the Excusable Delay or otherwise complete the delayed obligation, and (ii) following the Excusable Delay, a Party shall have all rights and remedies available under this Agreement, if the obligation is not completed within the time period as extended by the Excusable Delay. If an event which may lead to an Excusable Delay occurs, the delayed Party shall notify the other Party in writing of such occurrence as soon as possible after becoming aware that such event may result in an Excusable Delay, and the manner in which such occurrence is likely to substantially interfere with the ability of the delayed Party to perform under this Agreement.

12. TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE

Permitted Transfer of this Agreement. At any time, Developer shall have the right to convey, assign or transfer all of its right, title and interest in and to all or part of the Project Site (a "Transfer") to a party (including any Mortgagee) without the City's consent, provided that it also transfers to such party (the "Transferee") all of its interest, rights or obligations under this Agreement with respect to such portion of the Project Site together with any portion required to complete the Associated Community Benefits for such portion (the "Transferred Property"). Developer shall not, by Transfer, separate a portion of the Project Site from the Associated Community Benefits tied to that portion of the Project Site without the prior written consent of the Planning Director. Notwithstanding anything to the contrary in this Agreement, if Developer Transfers one or more parcels such that there are separate Developers within the Project Site, then the obligation to perform and complete the Associated Community Benefits for a Building shall be the sole responsibility of the applicable Developer (i.e., the person or entity that is the Developer for the Development Parcel on which the Building is located); provided, however, that any ongoing obligations (such as open space operation and maintenance) may be transferred to a residential, commercial or other management association ("CMA") on commercially reasonable terms so long as the CMA has the financial capacity and ability to perform the obligations so transferred.

12.2 <u>Notice of Transfer</u>. Developer shall provide not less than ten (10) days' notice to the City before any proposed Transfer of its interests, rights and obligations under this Agreement, together with a copy of the assignment and assumption agreement for that parcel (the "Assignment and Assumption Agreement"). The Assignment and Assumption Agreement shall be in recordable form, in substantially the form attached as <u>Exhibit H</u> (including the indemnifications, the agreement and covenant not to challenge the enforceability of this Agreement, and not to sue the City for disputes between Developer and any Transferee) and any material changes to the attached form will be subject to the review and approval of the Director of Planning, not to be unreasonably withheld or delayed. The Director of Planning shall use good faith efforts to complete such review and grant or withhold approval within thirty (30) days after the Director of Planning's receipt of such material changes. Notwithstanding the foregoing, any

Transfer of Community Benefit obligations to a CMA as set forth in <u>Section 12.1</u> shall not require the transfer of land or any other real property interests to the CMA.

- Agreement (following the City's approval of any material changes thereto if required pursuant to Section 12.2 above), the assignor shall be released from any prospective liability or obligation under this Agreement related to the Transferred Property, as specified in the Assignment and Assumption Agreement, and the assignee/Transferee shall be deemed to be "Developer" under this Agreement with all rights and obligations related thereto with respect to the Transferred Property. Notwithstanding anything to the contrary contained in this Agreement, if a Transferee Defaults under this Agreement, such default shall not constitute a Default by Developer or any other Transferee with respect to any other portion of the Project Site and shall not entitle the City to terminate or modify this Agreement with respect to such other portion of the Project Site, except as otherwise provided herein. Additionally, the annual review provided by Section 8 shall be conducted separately as to Developer and each Transferee and only as to those obligations that Developer or such Transferee has under this Agreement.
- 12.4 Responsibility for Performance. The City is entitled to enforce each and every such obligation assumed by each Transferee directly against the Transferee as if the Transferee were an original signatory to this Agreement with respect to such obligation. Accordingly, in any action by the City against a Transferee to enforce an obligation assumed by the Transferee, the Transferee shall not assert as a defense against the City's enforcement of performance of such obligation that such obligation (i) is attributable to Developer's breach of any duty or obligation to the Transferee arising out of the Transfer or the Assignment and Assumption Agreement or any other agreement or transaction between Developer and the Transferee, or (ii) relates to the period before the Transfer. The foregoing notwithstanding, the Parties acknowledge and agree that a failure to complete a Mitigation Measure may, if not completed, delay or prevent a different party's ability to start or complete a specific Building or improvement under this Agreement if and to the extent the completion of the Mitigation Measure is a condition to the other party's right to proceed, as specifically described in the Mitigation Measure, and Developer and all Transferees assume this risk.
- 12.5 <u>Constructive Notice</u>. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Site is, and shall be,

constructively deemed to have consented to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Site and undertakes any development activities at the Project Site, is, and shall be, constructively deemed to have consented and agreed to, and is obligated by all of the terms and conditions of this Agreement (as such terms and conditions apply to the Project Site or applicable portion thereof), whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site.

12.6 Rights of Developer. The provisions in this Section 12 shall not be deemed to prohibit or otherwise restrict Developer from (i) granting easements or licenses to facilitate development of the Project Site, (ii) encumbering the Project Site or any portion of the improvements thereon by any Mortgage, (iii) granting an occupancy leasehold interest in portions of the Project Site, (iv) entering into a joint venture agreement or similar partnership agreement to fulfill its obligations under this Agreement, or (v) transferring all or a portion of the Project Site pursuant to a foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a Mortgage, and none of the foregoing shall constitute a Transfer for which the City's consent is required.

13. DEVELOPER REPRESENTATIONS AND WARRANTIES

- 13.1 Interest of Developer; Due Organization and Standing. Developer represents that it is the sole owner of the Project Site, with the right and authority to enter into this Agreement. Developer is a limited liability company, duly organized and validly existing and in good standing under the Laws of the State of Delaware. Developer has all requisite power to own its property and authority to conduct its business as presently conducted. Developer represents and warrants that there is no Mortgage, existing lien or encumbrance recorded against the Project Site that, upon foreclosure or the exercise of remedies, would permit the beneficiary of the Mortgage, lien or encumbrance to eliminate or wipe out the obligations set forth in this Agreement that run with applicable land.
- 13.2 <u>No Inability to Perform; Valid Execution</u>. Developer represents and warrants that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement and it has no knowledge of any inability to perform its

obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated hereby by Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

- 13.3 <u>Conflict of Interest</u>. Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the California Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the Term.
- 13.4 Notification of Limitations on Contributions. Through its execution of this Agreement, Developer acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for that contract or twelve (12) months after the date that contract is approved. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

Developer acknowledges that (i) the prohibition on contributions applies to Developer, each member of Developer's board of directors, Developer's chief executive officer, chief financial officer and chief operating officer, any person with an ownership interest of more than ten percent (10%) in Developer, any subcontractor listed in the contract, and any committee that is sponsored or controlled by Developer, and (ii) within thirty (30) days of the submission of

a proposal for the contract, the City department seeking to enter into the contract must notify the Ethics Commission of the parties and any subcontractor to the contract. Additionally, Developer certifies it has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract to the City, and has provided the names of the persons required to be informed to the City department seeking to enter into that contract within thirty (30) days of submitting its contract proposal to the City department receiving that submittal, and acknowledges the City department receiving that submittal was required to notify the Ethics Commission of those persons.

- 13.5 Other Documents. To the current, actual knowledge of Dan Safier, after reasonable inquiry, no document furnished by Developer to the City with its application for this Agreement nor this Agreement contains any untrue statement of material fact or omits a material fact necessary to make the statements contained therein, or herein, not misleading under the circumstances under which any such statement shall have been made.
- 13.6 <u>No Bankruptcy</u>. Developer represents and warrants to the City that Developer has neither filed nor is the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or Laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Developer's knowledge, no such filing is threatened.

14. MISCELLANEOUS PROVISIONS

- 14.1 <u>Entire Agreement</u>. This Agreement, including the preamble paragraph, Recitals and Exhibits, and the agreements between the Parties specifically referenced in this Agreement, constitutes the entire agreement between the Parties with respect to the subject matter contained herein.
- 14.2 <u>Incorporation of Exhibits</u>. Except for the Approvals which are listed solely for the convenience of the Parties, each Exhibit to this Agreement is incorporated herein and made a part hereof as if set forth in full. Each reference to an Exhibit in this Agreement shall mean that Exhibit as it may be updated or amended from time to time in accordance with the terms of this Agreement.
- 14.3 <u>Binding Covenants; Run With the Land</u>. Pursuant to Section 65868 of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to the provisions of this Agreement,

including without limitation <u>Section 12</u>, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. Subject to the provisions of this Agreement, including without limitation <u>Section 12</u>, all provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable Law, including but not limited to California Civil Code Section 1468.

- 14.4 <u>Applicable Law and Venue</u>. This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the Laws of the State of California. All rights and obligations of the Parties under this Agreement are to be performed in the City and County of San Francisco, and the City and County of San Francisco shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.
- 14.5 <u>Construction of Agreement</u>. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both the City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement to this Agreement or any of the Approvals shall be deemed to refer to this Agreement or the Approvals as amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. In the event of a conflict between the provisions of this Agreement and Chapter 56, the provisions of this Agreement will govern and control.
- 14.6 <u>Project Is a Private Undertaking; No Joint Venture or Partnership</u>. The development proposed to be undertaken by Developer on the Project Site is a private development. The City has no interest in, responsibility for, or duty to third persons concerning any of said improvements. Developer shall exercise full dominion and control over the Project Site, subject

only to the limitations and obligations of Developer contained in this Agreement. Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and Developer. Neither Party is acting as the agent of the other Party in any respect hereunder. Developer is not a state or governmental actor with respect to any activity conducted by Developer hereunder.

14.7 <u>Recordation</u>. Pursuant to the Development Agreement Statute and Chapter 56, the Clerk of the Board of Supervisors shall have a copy of this Agreement recorded in the Official Records within ten (10) days after the Effective Date of this Agreement or any amendment thereto, with costs to be borne by Developer.

14.8 <u>Obligations Not Dischargeable in Bankruptcy</u>. Developer's obligations under this Agreement are not dischargeable in bankruptcy.

14.9 <u>Survival</u>. Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provision which, by its express terms, survive the expiration or termination of this Agreement.

14.10 <u>Signature in Counterparts</u>. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

14.11 <u>Notices</u>. Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by registered mail, return receipt requested. Notice, whether given by personal delivery or registered mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon notice to the other Party, designate any other person or address in substitution of the person and address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:

John Rahaim Director of Planning San Francisco Planning Department 1650 Mission Street, Suite 400 San Francisco, California 94102

with a copy to:

Dennis J. Herrera, Esq.

City Attorney

City Hall, Room 234

1 Dr. Carlton B. Goodlett Place

San Francisco, CA 94102

Attn: Real Estate/Finance, 3333 California Project

To Developer:

c/o The Prado Group, Inc.

150 Post Street, Suite 320 San Francisco, CA 94108

Attn: Dan Safier

14.12 Limitations on Actions. Pursuant to Section 56.19 of the Administrative Code, any decision of the Board of Supervisors made pursuant to Chapter 56 shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the Board of Supervisors shall be commenced within ninety (90) days after such decision or determination is final and effective. Any court action or proceeding to attack, review, set aside, void or annul any final decision by (i) the Planning Director made pursuant to Administrative Code Section 56.15(d)(3) or (ii) the Planning Commission pursuant to Administrative Code Section 56.17(e) shall be commenced within ninety (90) days after said decision is final.

- 14.13 Severability. Except as is otherwise specifically provided for in this Agreement with respect to any Laws which conflict with this Agreement, if any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of this Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.
- 14.14 <u>MacBride Principles</u>. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Developer acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.
- 14.15 <u>Tropical Hardwood and Virgin Redwood</u>. The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood

product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

- Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code Section 250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that Developer in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other Laws, Developer shall mark any such materials as such. When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.
- 14.17 <u>Non-Liability of City Officials and Others</u>. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, commissioner, officer, employee, official or agent of City or other City Parties shall be personally liable to Developer, its successors and assigns, in the event of any Default by City, or for any amount which may become due to Developer, its successors and assigns, under this Agreement.
- 14.18 <u>Non-Liability of Developer Officers and Others</u>. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, officer, employee, official, partner, employee, or agent of Developer or any affiliate of Developer shall be personally liable to City, its successors and assigns, in the event of any Default by Developer, or for any amount which may become due to City, its successors and assigns, under this Agreement.
- 14.19 <u>No Third Party Beneficiaries</u>. There are no third party beneficiaries to this Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CIT	Y:	Approved as to form: DENNIS J. HERRERA, City Attorney		
	Y AND COUNTY OF SAN FRANCISCO, inicipal corporation			
Ву:	John Rahaim Director of Planning	By: Carol Wong, Deputy City Attorney		
REC	COMMENDED:			
By:	[Name] Director, MOHCD			
Ву:	Mohammed Nuru Director of Public Works			
	roved on, 20 rd of Supervisors Ordinance No			
DEV	ELOPER:			
	REL HEIGHTS PARTNERS LLC, aware limited liability company			
Ву:	3333 California LP, a Delaware limited partnership, its Manager			
	By: PSKS LH LLC, a Delaware limited liability company its General Partner	·		
	By: Prado I H I I C			

a California limited liability company,
its Manager

By:	 	•

Name: Dan Safier Title: Manager

		verifies only the identity of the individual who signed the truthfulness, accuracy, or validity of that document.
State of California)	
County of San Francisco)	
	, before me,	, a Notary Public
personally appeared		, who proved to me on the basis of
and acknowledged to m	name(s) is/are subscribed to the within instrument executed the same in his/her/their authorized (s) on the instrument the person(s), or the entity ed the instrument.	
I certify under PENALT foregoing paragraph is true		ler the laws of the State of California that the
WITNESS my hand and o	fficial seal.	
Signature		

State of California County of San Francisco)	
personally appeared satisfactory evidence to be the and acknowledged to me	ne person(s) whose nam that he/she/they exec s/her/their signature(s)	, a Notary Public , who proved to me on the basis o me(s) is/are subscribed to the within instrument ecuted the same in his/her/their authorized on the instrument the person(s), or the entity of the instrument.
I certify under PENALTY foregoing paragraph is true a		the laws of the State of California that the
WITNESS my hand and offi	cial seal.	
Signature		

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.

Exhibit A

Project Site Legal Description

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

Project Description

The Project Site is an approximately 446,490-square-foot, or 10.25-acre, parcel bounded by California Street to the north, Presidio Avenue to the east, Masonic Avenue to southeast, Euclid Avenue to the south, and Laurel Street/Mayfair Drive to the west, at the southern edge of San Francisco's Presidio Heights neighborhood in the northwest portion of San Francisco. The project sponsor, Laurel Heights Partners, LLC, owns the site and temporarily leases it to the Regents of the University of California, which uses the Project Site for its University of California San Francisco (UCSF) Laurel Heights Campus. The Project Site does not include the San Francisco Fireman's Credit Union (now called the SF Fire Credit Union) at the southwest corner of California Street and Presidio Avenue, which is on a separate parcel.

The Project Site is currently used as office and related research, child care, and parking. It is developed with a four-story, approximately 455,000-gross-square-foot office building including a three-level, 212-space, an approximately 93,000-gross-square-foot partially below-grade parking garage at the center of the site; a one-story, approximately 14,000-gross-square-foot annex building at the corner of California and Laurel streets; three surface parking lots with a total of 331 spaces connected by internal roadways; two circular garage ramp structures leading to below-grade parking levels; and landscaping or landscaped open space for the USCF Laurel Heights Campus occupants.

The proposed project includes approximately 1,427,832 gross square feet of new and rehabilitated space, comprising approximately 977,437 gross square feet of residential floor area with approximately 744 dwelling units; approximately 34,496 gross square feet of retail floor area; and an approximately 14,665 gross-square-foot child care center use. The proposed project would provide approximately 857 off-street parking spaces (including approximately 10 car share spaces), approximately 762 Class One bicycle spaces, and 77 Class Two bicycle spaces. These proposed uses would be located in 13 new buildings (known as Plaza A, Plaza B, Walnut, Mayfair, Laurel Townhomes, Euclid and Masonic) and in the adaptively reused office building (known as Center A and Center B), which would be divided into two separate buildings and converted to residential use.

25% of the proposed project's units will be deed-restricted, on-site affordable units designated for low-income senior households. These affordable units will be located in the proposed Walnut Building on California Street and consist of 185 studios and 1-bedrooms for seniors plus one (1) on-site manager's unit. The Walnut Building would also include an approximately 175-seat child care facility, including a contiguous outdoor activity area. The project includes approximately 34,496 square feet of neighborhood-serving retail located in the buildings fronting onto California Street (Plaza A, Plaza B and the Walnut Building). This retail

corridor is aligned with the existing Laurel Village shopping center on California Street and will be designed to enhance the retail offerings for the neighborhood.

The proposed project would contain approximately 52 percent of the overall lot area (approximately 236,000 square feet — excluding green roofs) as open area, with portions to be developed with a combination of public open space, common open space (some of which would be open to the public) and private open space for residents. The proposed project would include **2.92 acres of publicly accessible landscaped open space** with multi-purpose plazas, lawns, pathways and streetscape improvements as further described in <u>Exhibit C</u>, which will provide the public with new open space amenities and improve pedestrian connectivity and safety through the neighborhood.

The Project's circulation and open space plan includes multiple new public entrances into and through the Site in order to integrate the Site with the surrounding neighborhood and street network. The proposed north-south pedestrian connection (Walnut Walk) and the proposed east-west pedestrian connection (Mayfair Walk) would be open to the public and would provide the primary points of access to other publicly accessible common open spaces, plazas, squares, and vista points within the Project Site. The proposed Walnut Walk would align with Walnut Street to the north and the intersection of Euclid and Masonic to the south, incorporating the site into the surrounding street grid.

Exhibit B-1

Project Site Plan

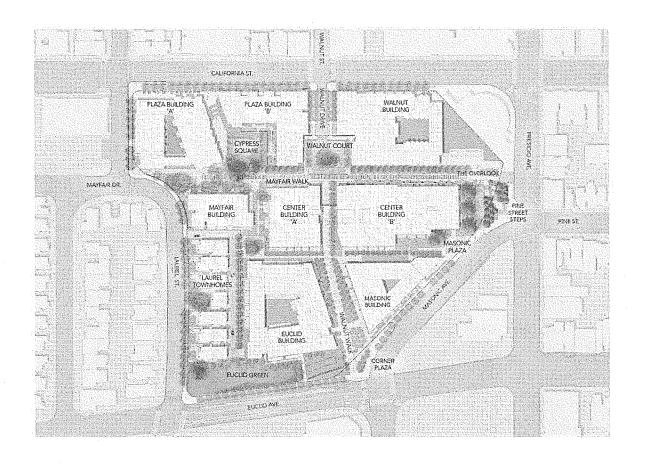


Exhibit C

Project Open Space

The Project would provide the following open space, substantially in accordance with <u>Attachment C-1</u>, <u>Attachment C-3</u>, and <u>Schedule 1</u> to the Agreement:

- 1. <u>Publicly Accessible Private Improvements.</u> The Project would include the construction, operation, and maintenance of the Publicly Accessible Private Improvements, which is comprised of approximately 2.92 acres of open space (1.68 acres of which exceed the Planning Code open space requirements that would otherwise apply for the Project) developed as follows:
 - a. <u>California Plaza</u>: An approximately 4,290 square foot plaza adjacent to California Street and the Plaza A and B retail uses. California Plaza will be improved with a combination of quality hardscape, planters and seating elements adjacent to the City sidewalk and designed to comply with the City's Better Streets policies.
 - b. Cypress Square and Stairs: Cypress Stairs (approximately 1,255 sq. ft.) are one of several pedestrian access points into the Project and would connect pedestrians from California Street to Cypress Square and the network of internal public open spaces throughout the Project Site. There will also be ADA access from California Street to Cypress Square adjacent to the Cypress Stairs. Cypress Square would be an approximately 12,052 square foot south-facing plaza that would retain the existing mature and healthy Cypress trees identified in the landscape plan. It would include hardscaped walkways and a central, paved open plaza area with wood decking, seating and landscaping.
 - c. Mayfair Walk: Mayfair Walk (approximately 31,885 sq. ft.) is the Project's main east-west pedestrian connector that will stitch the site back into the adjacent neighborhood's urban fabric with publicly-accessible landscaped pathways. The Walk includes a connection to Mayfair Drive/Laurel Street to the west with seating, stairs and landscaping, including the retention of existing mature and healthy oak trees and the addition of new trees as identified in the landscape plan. The Walk would include a hardscape pathway with landscaped borders and access to ground floor residential units. The Walk would connect with the ADA-accessible Pine Street Stairs to Presidio Avenue to the east.
 - d. <u>Presidio Overlook</u>: At the east side of the Project Site atop Pine Street Stairs, the Presidio Overlook will provide scenic views of downtown San Francisco for the public and ADA and stair access to Presidio Avenue. The Overlook will consist of approximately 10,450 square feet of open space and would include a large terrace with trees, planters and seating. The Overlook would act as an interconnection and scenic area between the east portion of the Mayfair Walk and the Pine Street Stairs.

- e. <u>Pine Street Steps</u>: The Pine Street Steps would be approximately 7,015 square feet and are inspired by California's indigenous biodiversity and include a grove of mature existing and new Redwood trees. They have been designed to provide the public with an ADA-accessible connection from the east side of the Project Site to the west.
- f. Walnut Walk North and Walnut Walk South: Walnut Walk would consist of a total of approximately 23,730 square feet of open space and will be the Project's main north-south public pedestrian access. Walnut Walk would run through the center of the Project Site from California Street (via Walnut Court) to the Masonic and Euclid Avenue intersection, helping to stitch the site back into the neighborhood's urban fabric. Walnut Walk would be a pedestrian pathway with a network of landscaped open spaces and seating.
- g. Walnut Drive and Walnut Court: Walnut Drive and Walnut Court would consist of approximately 18,445 square feet of open space and would include tree-lined hardscape pedestrian walkways on either side of Walnut Drive leading into Walnut Court, which would include a tree-lined vehicular turnaround plaza with a tree feature at the center. The drive and court areas would provide direct access to California Street, Mayfair Walk and Walnut Walk.
- h. <u>Euclid Green</u>: The new green lawn at the corner of Euclid and Laurel would provide the public with views of downtown San Francisco to the east, and views of the Golden Gate Bridge to the northwest. Euclid Green will consist of approximately 18,004 square feet of open space at the southwest corner of the Project at Laurel Street and Euclid Avenue. The existing green lawn will be renovated and maintained as a large, naturally sloping lawn with plantings and a direct access to the sidewalks on Euclid Avenue and Laurel Street.

The Publicly Accessible Private Improvements will be privately owned but accessible to the public on the terms described in <u>Attachment C-2</u> and <u>Attachment C-3</u>. The Publicly Accessible Private Improvements would be provided substantially as depicted in <u>Attachment C-1</u>, constructed in accordance with the terms of <u>Attachment C-2</u> and <u>Schedule 1</u>, and operated and maintained on the terms of Attachment C-2 and Attachment C-3.

- 2. <u>Streetscape Improvements</u>. The Project would include the streetscape improvements depicted in <u>Attachment C-1</u> to enhance the safety of, and strengthen the network of, existing sidewalks and street crossings that abut the Project Site including Presidio Avenue, Masonic Avenue, Euclid Avenue, Laurel Street, Mayfair Street and California Street.
- 3. <u>Provision of Required Open Space</u>. The amount and phasing of private and/or common usable open space for the residential uses on the Project shall be governed by the Approvals.

Exhibit C-1

Open Space Plan

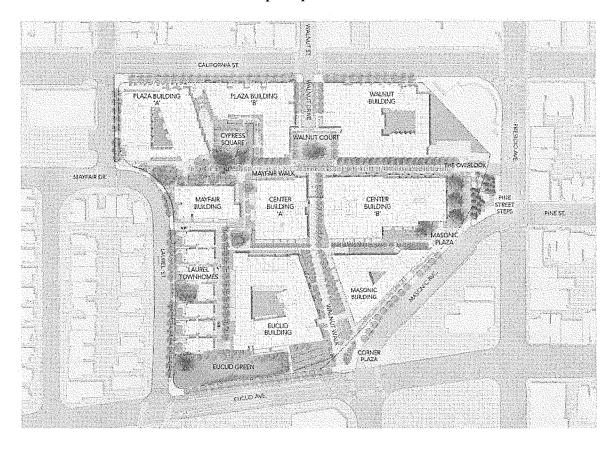


Exhibit C-2

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 (each, a "Publicly Accessible Private Improvements") as defined in Section 1 of this Agreement. The Publicly Accessible Private Improvements are the open spaces proposed for the Project that are privately owned, but will remain accessible to the public, as described in this Exhibit, and include California Plaza, Cypress Stairs, Cypress Square, Euclid Green, Mayfair Walk those portions of the Pine Street Steps that are privately owned, Presidio Overlook, Walnut Drive and Walnut Court, Walnut Walk North, and Walnut Walk South.

- 1. Permitted Uses. Upon completion of a Publicly Accessible Private Improvement in accordance with this Agreement, Developer 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 Developer 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), (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. Developer 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. Developer 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, this Agreement, the Approvals, and any Later Approvals.

- 3. <u>No Discrimination.</u> Developer 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. <u>Maintenance Standard</u>. 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. <u>Temporary Closure.</u> Developer 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 Developer reasonably deems necessary to address either of the circumstances below:
 - a. <u>Emergency</u>; <u>Public Safety</u>. 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). Developer 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. <u>Maintenance and Repairs</u>. Developer may temporarily close a Publicly Accessible Private Improvement (or affected portions thereof) in order to make any repairs or perform any maintenance as Developer, 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 Improvements. Operation of each Publicly Accessible Private Improvement shall be subject to the additional requirements of this Paragraph.
 - a. Hours of Operation. 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 Agreement (including, without limitation, Paragraphs 4 and 5(b) of these Regulations), or (iii) reasonably imposed by Developer, 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.
- <u>Signs.</u> Developer shall post signs at the major public entrances to each of its Publicly Accessible Private Improvement, indicating that it is a privately-owned public open space ("<u>POPOS</u>") 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.
- 7. Permissive Use. Developer may post at each entrance to each of its 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 Agreement. 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.
- 8. Arrest or Removal of Persons. Developer 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, Developer 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. Developer 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.

- 9. Project Security During Period of Non-Access. Developer 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 Developer's obligations under Applicable Law, Developer 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 Developer's right to install security cameras and monitoring devices anywhere on the Project.
- 10. Removal of Obstructions. Developer 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 Agreement, 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.
- 11. <u>Temporary Structures</u>. Subject to Developer'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.

Exhibit C-3

Public Access Declaration

Exhibit D

Affordable Housing Program

This Exhibit D describes the affordable housing program for the Project (the "Housing Plan"). All initially-capitalized, undefined terms used in this Exhibit D shall have the meanings given to them in the Development Agreement to which it is attached.

Recognizing the City's pressing need for housing — market rate and affordable - the Developer has agreed to (1) increase the total number of residential units for the Project from the 558 residential units initially proposed to 744 residential units; (2) construct 185 studio and one-bedroom affordable residential units for Senior Households at the Project Site (the "BMR Units") in order to make 25% of the Project residential units affordable, rather than the Section 415 (as defined below) requirement of providing 18% on-site affordable residential units or paying the City in-lieu affordable housing fees, together with 1 Manager Unit (as defined below); and (3) fund all predevelopment costs and gap financing required to complete the BMR Units.

The BMR Units will be deed-restricted to be affordable to qualified senior households with an average income not more than 59% of MOHCD AMI (as defined below) and will be constructed before the Developer can receive a CofO (as defined below) on more than three hundred eighty-six (386) Market Rate Units (as defined below).

1. Definitions.

- "Adjustment Date" means each anniversary of the Effective Date.
- "Affordable Housing Developer" means Mercy Housing California, a non-profit California corporation, or any other non-profit affordable housing developer with experience developing and operating affordable housing in San Francisco.
- "Affordable Rent" means a monthly rental charge for a BMR Unit (including the Utility Allowance applicable to the Household Size of such BMR Unit but excluding parking charges if a Parking Space is allocated to such BMR Unit) that does not exceed thirty percent (30%) of the maximum MOHCD AMI permitted for such BMR Unit, based on Household Size.
- "Approved Legal Description" means a legal description of the Walnut Land that substantially conforms to the depiction attached as <u>Attachment D-1</u> and is approved by the City's Director of Property and the MOHCD Director.
- "CofO" means a first certificate of occupancy issued by City's Department of Building Inspection, including any temporary certificate of occupancy.
- "CPI Increase" means, for the first Adjustment Date, the difference between the published CPI Index in effect at the time of the first Adjustment Date and the published CPI Index in effect at the time of the Effective Date. For each following Adjustment Date, the "CPI Increase" means the difference between the published CPI Index in effect at the time of an

applicable Adjustment Date and the published CPI Index in effect at the time of the immediately-preceding Adjustment Date.

"CPI Index" means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics or, if the Consumer Price Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Consumer Price Index had not been discontinued or revised.

"Development Agreement" shall mean the body of the Development Agreement to which this Housing Plan is attached.

"Development Fee Deferral Surcharge Rate" means an amount determined by DBI under Building Code Section 107A.13.3.2.

"First Construction Document" shall be as defined in San Francisco Building Code Section 107A.13.1(a)(8).

"Fair Market Value" shall have the meaning given such term in Attachment D-2.

"Household" means one or more related or unrelated individuals who live together or intend to live together in a Senior Unit as their primary dwelling.

"Household Size" means the number of persons in a Household as calculated under the MOHCD Manual.

"Housing Entity" means a limited partnership with the Affordable Housing Developer (or a subsidiary entity owned or controlled by Affordable Housing Developer) as the general partner.

"HUD" means the United States Department of Housing and Urban Development, or any successor agency.

"LIHTC" means the federal low income housing tax credit 4% program.

"Manager Unit" means the 2-bedroom unit for the Walnut Affordable Housing Building manager.

"Market Rate Unit" means any Project Site residential unit that is not a BMR Unit.

"MOHCD AMI" means median income as published annually by MOHCD, which is derived from the income limits determined by HUD for the San Francisco area, adjusted solely for household size but not high housing cost area. If HUD ceases to publish such data for 18 or more months, MOHCD and the Housing Entity will make good faith efforts to agree on other publicly available and credible substitute data for MOHCD AMI.

"MOHCD Director" means the Director of the Mayor's Office of Housing and Community Development.

"MOHCD Manual" means the City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual, as published by MOHCD and as updated from time to time.

"Outside Date" means the 12th anniversary of the Effective Date.

"Ownership Gap Fee" means an amount equal to (i) the Gross Floor Area (as defined in Planning Code Section 401) for an applicable ownership Market Rate Unit multiplied by (ii) an amount equal to, at the time of calculation, (A) [insert an amount equal to MOHCD's published under Planning Code Section 415.5(b)(2) as of the effective date of the BOS legislation approving the Development Agreement, currently \$199.50 per square foot of Gross Floor Area of residential use], which shall be adjusted each anniversary of the Effective Date by the CPI Increase multiplied by (B) the lower of (1) [insert an amount equal to Planning Code Section 415.5 percentage for ownership units as of the effective date of the BOS legislation approving the Development Agreement] and (2) the percentage of off-site affordable ownership units that would otherwise be used for the Project if calculated under Planning Code Section 415.5(b).

"Parking Space" means a parking space assigned to a Senior Unit.

"Property Covenants" is defined in Section 2.A.

"Rental Gap Fee" means an amount equal to (i) the Gross Floor Area (as defined in Planning Code Section 401) for an applicable rental Market Rate Unit multiplied by (ii) an amount equal to, at the time of calculation, (A) [insert an amount equal to MOHCD's published under Planning Code Section 415.5(b)(2) as of the effective date of the BOS legislation approving the Development Agreement, currently \$199.50 per square foot of Gross Floor Area of residential use], which shall be adjusted each anniversary of the Effective Date by the CPI Increase, multiplied by (B) the lower of (1) [insert an amount equal to Planning Code Section 415.5 percentage for rental units as of the effective date of the BOS legislation approving the Development Agreement] and (2) the percentage of off-site affordable rental units that would otherwise be used for the Project if calculated under Planning Code Section 415.5(b).

"Section 415" means the City's Inclusionary Affordable Housing Program (Planning Code Sections 415 and 415.1 through 415.11), as amended from time to time.

"Senior Households" means a household that is 62 years old or older, or as otherwise defined by the requirements of any funding source used to construct or operate the Walnut Affordable Housing Building.

"Substantially Completed" means, with respect to any Senior Unit, the issuance of a CofO for that Senior Unit.

"Tax Credit Closing" means the date by which the Housing Entity has received (i) an LIHTC allocation for the Walnut Affordable Housing Building and (ii) all financing needed to commence and complete the construction of the Walnut Affordable Housing Building.

"Title Policy" is defined in Section 4.F.

"Utility Allowance" means a dollar amount determined in a manner acceptable to the California Tax Credit Allocation Committee, which may include an amount published periodically by the San Francisco Housing Authority or successor based on standards established by HUD, for the cost of basic utilities for households, adjusted for Household Size. If both the San Francisco Housing Authority and HUD cease publishing a Utility Allowance, then Developer may use another publicly available and credible dollar amount approved by MOHCD.

"Walnut Affordable Housing Building" is defined in Section 2.A.

"Walnut Child Care Parcel" is defined in Section 2.A.

"Walnut Housing Parcel" is defined in Section 2.A.

"Walnut Retail Parcel" is defined in Section 2.A.

"Walnut Land" is defined in Section 2.A.

2. Walnut Affordable Housing Building

A. <u>Description</u>. The 185 BMR Units and the Manager Unit will all be located in a single residential building (the "Walnut Affordable Housing Building") that will be located within a condominium parcel (the "Walnut Housing Parcel") on the portion of the Project Site depicted as the "Walnut Land" on <u>Attachment D-1</u> (the "Walnut Land"). The Walnut Affordable Housing Building will be comprised only of the BMR Units, the Manager Unit (which shall only be occupied by the Walnut Affordable Housing Building manager or, to the extent permitted under law, other property management staff), and the common and parking area for the BMR Units and Manager Unit. A condominium parcel for retail uses (the "Walnut Retail Parcel") and a condominium parcel for child care uses (the "Walnut Child Care Parcel") will also be located on the Walnut Land. The Walnut Housing Parcel, the Walnut Retail Parcel, and the Walnut Child Care Parcel will be created through a final map prepared under the Tentative Map as required in the Subdivision Map.

Before obtaining a First Construction Document for any portion of the Project or transferring the Walnut Land or the Walnut Housing Parcel to the Housing Entity, the Developer shall obtain legal descriptions for the Walnut Housing Parcel and the Walnut Child Care Parcel that are reasonably acceptable to City, cause the Walnut Land to be made a separate legal parcel, and record a declaration of restrictions (in a form approved by City and using such approved legal descriptions) that limits the use of the Walnut Housing Parcel to the construction and operation of the Walnut Affordable Housing Building and the Walnut Child Care Parcel to the construction and operation of a child care facility. In connection with the development of the Project, Developer shall have the right to enter into commercially reasonable licenses, easements, covenants, conditions and restrictions, reciprocal easement agreements, and similar agreements that affect the Walnut Housing Parcel to the extent necessary for the use or operation of any portion of the Walnut Housing Parcel (each, a "Property Covenant"); provided, however, that (i) Developer shall deliver the final version of each proposed Property Covenant to the MOHCD Director at least thirty (30) days before it is fully executed or recorded in the

Official Records of San Francisco County and (ii) all maintenance, repair, replacement and installation costs to be paid under a Property Covenant for the common area benefitting the Walnut Retail Parcel, the Walnut Housing Parcel, and the Walnut Child Care Parcel shall be proportionately allocated to the owners of the Walnut Retail Parcel, the Walnut Housing Parcel, and the Walnut Child Care Parcel based on the relative size of their respective parcel or any other commercially reasonable allocation that is approved in advance by the MOHCD Director, which approval shall not be unreasonably withheld.

- B. Housing Entity. Before commencing the construction of the Project's first Market Rate Unit, the Housing Entity will be formed and the Developer will contribute the Walnut Housing Parcel (subject to the requirements of the Development Agreement) to the Housing Entity. As a non-profit affordable housing developer and operator, the Affordable Housing Developer will operate the Walnut Affordable Housing Building to only serve Senior Households with incomes below 80% of MOHCD AMI, with an overall average of not more than 59% of MOHCD AMI.
- C. Financing. The Housing Entity will structure equity and debt financing for construction, and the Developer will fund all predevelopment costs and gap financing required to complete the construction, of the Walnut Affordable Housing Building. The Housing Entity will seek LIHTC and City-issued tax-exempt bond financing for construction. The Developer or the Housing Entity may apply to the following state funding programs for constructing the Walnut Affordable Housing Building without the City's prior written consent: the Multifamily Housing Program (MHP) and the Infill Infrastructure Grant Program (IIG). At the time of such application, the Developer or the Housing Entity shall provide the MOHCD Director with written notification of such application and a commitment that the award of such funding would lower the average MOHCD AMI for the Walnut Affordable Housing Building. Neither the Developer nor the Housing Entity can seek other federal or other state resources for constructing the Walnut Affordable Housing Building without the prior written consent of the MOHCD Director, which consent may be withheld if the award of such funding would not result in a lower average MOHCD AMI for the Walnut Affordable Housing Building or applying for the proposed funding would compete with the application of a MOHCD-supported project. A failure to obtain LIHTC, MHP, IIG, or non-competitive federal or state resources for constructing the Walnut Affordable Housing Building shall not decrease the Developer's affordable housing or other obligations under the Development Agreement. City has no obligation to provide any funding for the Walnut Affordable Housing Building. Developer may collaborate with other entities to obtain additional funding sources to the extent that those sources contribute to the feasibility, production speed, or increase the affordability of the Walnut Affordable Housing Building
- D. <u>Project Phasing</u>. The Developer may not obtain CofO for more than three hundred eighty-six (386) Market Rate Units until DBI issues a CofO for the Walnut Affordable Housing Building. In addition, the Developer must obtain a CofO for the Walnut Affordable Housing Building before the expiration of the Term.
- E. <u>Equivalency</u>. The Walnut Affordable Housing Building shall be substantially equivalent to the Project's other multi-unit residential buildings in exterior appearance and overall quality of construction. All BMR Units must be wired for telephone, cable, and internet

access and have substantially equivalent interior features and amenities (e.g. balconies, outdoor patios, number of bathrooms) as the studio and 1-bedroom rental Market Rate Units. Equivalency shall be guided by the MOHCD Manual as applicable to this Housing Plan, except that the terms set forth in the Development Agreement (including this Housing Plan) shall prevail (including the parties' agreement that all BMR Units will be studio or 1-bedroom residential units located in the Walnut Affordable Housing Building).

- F. Rental; Affordability. The initial rental and re-rental of the BMR Units shall comply with the lottery preferences and other provisions utilized by MOHCD under the MOHCD's Housing Preferences and Lottery Procedures Manual, as published by MOHCD and as each may be updated from time to time, to the extent permitted by law, and the reporting and monitoring requirements of the MOHCD Manual, to the extent permitted by law. The BMR Units must be provided at Affordable Rents and in accordance with the rent requirements in the MOHCD Manual and MOHCD's Hold Harmless Policy for MOHCD's Income Limits and Maximum Rents, effective as of May 3, 2019, as may be updated from time to time. The Developer or the Housing Entity shall record affordability and leasing restrictions that are senior to any financing documents and remain in effect for the life of the Walnut Affordable Housing Building against each of the BMR Units, in a form and priority approved by MOHCD, before their occupancy. The Housing Entity shall carry appropriate insurance to allow for the reconstruction of the Walnut Affordable Housing Building if there is any damage or casualty.
- G. <u>Outreach</u>. Given the Project's Site's location, the Parties desire that, to the greatest extent permitted by MOHCD's then-applicable policies and procedures, pre-marketing and marketing programs for BMR Units target residents of Supervisorial District 2 and/or residents residing within three-quarter (0.75) miles of the Project Site. In addition, the Parties desire that residents of District 2 and residents residing within three-quarter (0.75) miles of the Project Site be given the maximum neighborhood preference for leasing of BMR Units permitted under MOHCD's then-applicable policies and procedures.
- H. Compliance with Planning Code Section 415. Except for Planning Code Section 415.6(a)-(f), (h) and (i), the Parties shall implement the affordable housing requirements for the Walnut Affordable Housing Building in accordance with the provisions of Planning Code Section 415 and the MOHCD Manual. The following changes shall be deemed to conflict with the Development Agreement and therefore shall not apply to the Project: (i) any increase in the required number or percentage of affordable housing units beyond what is required by the Development Agreement; and (ii) any change in the minimum or maximum AMI percentage levels for the affordable housing pricing or income eligibility. The Parties acknowledge and agree that MOHCD will monitor and enforce the requirements applicable to BMR Units under this Housing Plan in accordance with Planning Code Section 415.9, except that all references to Section 415 will be deemed to refer to the requirements under this Housing Plan. To the extent there are implementation issues that have not been addressed in this Housing Plan, then the provisions of Section 415 and the MOHCD Manual shall govern and control such issues.
- 3. <u>Fees.</u> Before obtaining a First Construction Document for any portion of the Project, the parties shall select a mutually-agreeable third-party escrow (the "Escrow Account") to hold and disburse the Rental Gap Fees and Ownership Gap Fees under the requirements of this Housing Plan. Subject to the last sentence of this Section, for each Market Rate Unit the Developer

D-6

commences to construct before the Tax Credit Closing, the Developer shall, at its sole election, either deposit an amount equal to the Rental Gap Fee or Ownership Gap Fee, as applicable, for that unit in the Escrow Account before obtaining a First Construction Document for that unit, or deposit an amount equal to the Rental Gap Fee or Ownership Gap Fee, as applicable, for that unit and the Development Fee Deferral Surcharge for such Rental Gap Fee or Ownership Gap Fee (as calculated by DBI at the time of the Developer deposits such Rental Gap Fee or Ownership Gap Fee) in the Escrow Account between obtaining the First Construction Document and the CofO for that unit.

At any time within thirty (30) days after Developer's written request (accompanied by reasonable supporting materials), City shall authorize the release of funds from the Escrow Account to reimburse Developer for reasonable and customary Walnut Affordable Housing Building pre-development costs incurred prior to the Tax Credit Closing, such as, but not limited to, design drawings, schematic drawings, and commercially reasonable costs for financing that expedites the construction of the Walnut Affordable Housing Building. If the Tax Credit Closing occurs, all remaining funds in the Escrow Account needed to finance the construction of the Walnut Affordable Housing Building shall be disbursed to pay construction and development costs that are approved by the Walnut Affordable Housing Building construction lender at the time such costs are due and payable. If the Developer provides reasonable documentation to City that there are excess Escrow Account funds that are not required to finance the construction of the Walnut Affordable Housing Building, such excess Escrow Account funds shall be disbursed to the Developer.

If the Tax Credit Closing does not occur by the Outside Date, subject to extension for any applicable Excusable Delay, then City shall have the right to receive the Escrow Account funds by delivering written notice to the Escrow Account holder any time after the Outside Date for deposit in City's Citywide Affordable Housing Fund established in San Francisco Administrative Code Section 10.100-49. Within three (3) business days of receiving such written notice, the Escrow Account holder shall deliver the funds to the address specified by the MOHCD Director.

4. Transfer of Walnut Land to City.

A. <u>Transfer Notice</u>. If the Tax Credit Closing does not occur by the Outside Date, subject to extension for any applicable Excusable Delay, and construction of any Building occurs during the Term, then City shall have the right to acquire, and Developer agrees to transfer to the City, fee ownership of the Walnut Land pursuant to the form of grant deed (the "Grant Deed") attached as <u>Attachment D-2</u>, with the Approved Legal Description attached to it as Exhibit A. City shall have the right to exercise its right to acquire the Walnut Land by giving Developer, between the Outside Date and the last day of the Term, written notice of the City's request to acquire the Walnut Land pursuant to this Section (the "Transfer Notice"). If City receives the Walnut Land pursuant to this Section, and Developer later obtains all financing needed to commence and complete construction of retail improvements on the Walnut Retail Parcel (or child care improvements on the Walnut Child Care Parcel), City shall transfer fee ownership of the Walnut Retail Parcel or the Walnut Child Care Parcel, as applicable, to Developer within ten (10) business days of Developer's receipt of a First Construction Document for such improvements.

- B. <u>Developer's Representations</u>. Developer represents that it has the full right to make the commitments set forth in this Section without the consent or approval of any third party (or, if required, Developer has obtained all necessary consents and approvals).
- C. <u>Subordination; Condition of Title</u>. The rights of any Mortgagee secured by a Mortgage that encumbers all or part of the Walnut Land shall be subordinate to the City's rights under this Housing Plan. The City accepts the condition of the Walnut Land's title as set forth on the attached <u>Attachment D-3</u> and subject to any Property Covenant that complies with the requirements of Section 2.A above. Developer further agrees to deliver the Walnut Land to the City generally in the condition that it is in on the Effective Date, provided it shall be free of all tenants and occupants. The Developer agrees that all contracts entered into by the Developer relating to the Walnut Land shall be terminated by Developer, at no cost to City, on or before the transfer unless the City agrees to assume the same.
- D. Cooperation. The Developer agrees to cooperate with City and to take all such actions as may be needed to promptly transfer the Walnut Land to City as set forth in this Section. To secure the Developer's obligations under this Section, before obtaining a First Construction Document for any portion of the Project or transferring the Walnut Land or the Walnut Housing Parcel to the Housing Entity, the Developer shall deliver a duly executed and acknowledged deed of trust to the City in substantially the form attached as Attachment D-4, with the Approved Legal Description attached to it as Exhibit A. City shall have the right to record the deed of trust in the Official Records of San Francisco County. There will be no conditions or City obligations relative to the Developer's transfer of the Walnut Land to City, and the form of any other transfer documents other than the Grant Deed needed to transfer fee ownership of the Walnut Land to City in the manner contemplated in this Section (collectively, the "Transfer Documents") will be subject to the reasonable approval of the Director of Property and the MOHCD Director, following consultation with the City Attorney's Office. By approving the Development Agreement, the City's Board of Supervisors authorizes the City's Director of Property and the MOHCD Director to enter into the Transfer Documents, if any, without additional action by City's Board of Supervisors as long as the Transfer Documents are consistent with the terms outlined in this Section.
- E. <u>Costs and Fees</u>. The Developer shall pay (1) all actual costs incurred by the City relating to the negotiation of Transfer Documents, if any, and all transfer taxes, recording fees, and escrow fees, and (2) the premium for the CLTA Title Policy. The Developer shall further indemnify the City for all costs and losses, including reasonable attorney's fees and costs, resulting from (i) any claim with respect to the Walnut Land relating to the period before the transfer of the Walnut Land to City, (ii) any contest to the Developer's right to transfer the Walnut Land as contemplated by this Section, and (iii) any failure by the Developer to satisfy the requirements of this Section. This indemnification shall survive the transfer of the Walnut Land to City.
- F. <u>Closing</u>. The Developer shall have a period of 60 days after Developer's receipt of the Transfer Notice (the "**Closing Period**") to (i) provide to City a CLTA policy of title insurance, insuring City's fee interest in the Walnut Land in an amount equal to the fair market value of the Walnut Land, as reasonably determined by City, with only the exceptions permitted

under <u>Section 4.C</u> above (the "**Title Policy**"), and (ii) to execute and deliver the Grant Deed and the Transfer Documents, if any, to City. Within 7 days after the City's receipt of the Title Policy, the duly executed and acknowledged Grant Deed, and, if any, the Transfer Documents, duly executed and acknowledged as applicable, City shall execute and return one (1) fully executed original of any Transfer Document to the Developer.

- G. City's Remedies. If the Developer fails to transfer the Walnut Land to City in accordance with this Section, then City shall have the right to specific performance to compel the transfer of the Walnut Land to City in accordance with this Section or to exercise its rights under the Deed of Trust to foreclose and take title to the Walnut Land. Following any specific performance to transfer the Walnut Land to City or any foreclosure of the Walnut Land by City under the Deed of Trust, Developer's obligations under this Section shall be satisfied; provided if the Developer is not able to transfer the Walnut Land to City in the condition required by this Section (a "Condition Preventing Transfer"), then City, as its sole remedy for a Condition Preventing Transfer, shall instead accept an in lieu payment in the amount of Fair Market Value. City's exercise of its remedy for a Condition Preventing Transfer shall be by delivering written notice of such exercise to Developer, with a statement explaining the basis for the determination that the Walnut Land cannot be transferred in accordance with this Section. If City delivers such notice, the Developer shall pay City an in lieu payment in the amount of Fair Market Value made within 60 days following the determination of the Fair Market Value. Any failure by Developer to make such in lieu payment when due shall accrue interest at 10% per annum from the date it is due until paid.
- H. <u>Fulfillment of Developer's Obligations</u>. On City's receipt of (i) fee ownership of the Walnut Land through an action for specific performance or foreclosure under the Deed of Trust or a payment of an in lieu payment due to a Condition Preventing Transfer, and (ii) the funds deposited in the Escrow Account as required in <u>Section 3</u> above, City shall have no further rights or remedies under the Development Agreement resulting from Developer's failure to timely commence or complete construction of the Walnut Affordable Housing Building. If the Developer obtains a First Construction Document for any Market Rate Unit after the Outside Date, nothing in the foregoing sentence shall limit the Developer's obligation to pay the fee calculated under Section 415.5 for such Market Rate Unit.

5. Costa-Hawkins Rental Housing Act

A. Non-Applicability of Costa-Hawkins Act. Chapter 4.3 of the California Government Code directs public agencies to grant concessions and incentives to private developers for the production of housing for lower income households. The Costa-Hawkins Rental Housing Act, California Civil Code Sections 1954.50 et seq. (the "Costa-Hawkins Act"), provides for no limitations on the establishment of the initial and all subsequent rental rates for a dwelling unit with a certificate of occupancy issued after February 1, 1995, with exceptions, including an exception for dwelling units constructed pursuant to a contract with a public agency in consideration for a direct financial contribution or any other form of assistance specified in Chapter 4.3 of the California Government Code (Section 1954.52(b)). The Parties agree that the Costa-Hawkins Act does not and in no way shall limit or otherwise affect the restriction of rental charges for the BMR Units. The Development Agreement falls within the express exception to the Costa-Hawkins Act, Section 1954.52(b) because the Development Agreement is a contract

with a public entity in consideration for contributions and other forms of assistance specified in Chapter 4.3 (commencing with Section 65919 of Division 1 of Title 7 of the California Government Code). The City and Developer would not be willing to enter into the Development Agreement without the understanding and agreement that Costa-Hawkins Act provisions set forth in California Civil Code Section 1954.52(a) do not apply to the BMR Units as a result of the exemption set forth in California Civil Code Section 1954.52(b) for the reasons specified above.

- B. General Waiver. Developer, on behalf of itself and all of its successors and assigns of all or any portion of the Project Site, agrees not to challenge and expressly waives, now and forever, any and all rights to challenge the requirements of the Development Agreement related to the establishment of the BMR Units under the Costa-Hawkins Act (as the Costa-Hawkins Act may be amended or supplanted from time to time). If and to the extent such general covenants and waivers are not enforceable under Law, the Parties acknowledge and that they are important elements of the consideration for the Development Agreement and the Parties should not have the benefits of the Development Agreement without the burdens of the Development Agreement. Accordingly, if Developer challenges the application of this covenant and waiver, then such breach will be an Event of Default and City shall have the right to terminate the Development Agreement in its entirety.
- C. <u>Notification</u>. Developer shall notify any potential buyer of all or part of the Project Site of the provisions of this Housing Plan. By acquiring any interest in the Project Site, a buyer agrees to these provisions, and agrees to the specific waiver, releases and indemnifications set forth herein. If Developer fails to notify a buyer of these provisions and a buyer alleges that it is not subject to the requirements of this Housing Plan because it was not made aware of these provisions before it acquired an interest in the Project Site, the Developer shall indemnify and defend the City against any and all claims or losses resulting from such allegation.

6. Nondiscrimination Based on Section 8, Household Size, or Source of Income

For all housing units within the Project Site, Developer shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing program under Section 8 of the Housing Act (42 U.S.C. §1437 et. seq.), or any successor program or similar federal, state or local governmental assistance program. Developer shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective tenants. Developer shall not collect security deposits or other deposits from Section 8 certificate or voucher holders in excess of that allowed under the Section 8 program. Developer shall not discriminate against tenant applicants on the basis of legal source of income (e.g., TANF, Section 8 or SSI), and Developer shall consider a prospective tenant's previous rent history of at least one year as evidence of the ability to pay the applicable rent (i.e., ability to pay shall be demonstrated if such a tenant can show that the same percentage or more of the tenant's income has been consistently paid on time for rent in the past as will be required to be paid for the rent applicable to the unit to be occupied, provided that such tenant's expenses have not increased materially).

Exhibit D-1

Walnut Parcel Title Condition

Exhibit D-2

Baseball Arbitration Appraisal Process

Exhibit D-3

Form of Deed of Trust

Exhibit E

List of Approvals

Final approval actions by the City and County of San Francisco Board of Supervisors [(File No. []): (1) Approving a Development Agreement between the City and County of San Francisco and Laurel Heights Partners LLC; (2) waiving or modifying certain provisions of the Administrative Code and Planning Code, and approving specific development impact fees; and (3) adopting findings under the California Environmental Quality Act and findings of consistency with the General Plan and Planning Code priority policies.)): Amending the Planning Code, the Zoning Map, 2. Ordinance [] (File No. [and the Height Map to add the 3333 California Project Special Use District and adopting findings under the California Environmental Quality Act and findings of consistency with the General Plan and Planning Code priority policies. _____]): Approving Major Encroachment Permit to 3. Ordinance [[File No. [Laurel Heights Partners LLC for improvements on Final and Related Approval Actions of City and County of San Francisco Planning Commission (referenced by Motion Number "M No." or Resolution Number "R No.") 1. M No. []: Certifying the Final Environmental Impact Report for the 3333 California Mixed-Use District Project.]: Adopting Findings and Statement of Overriding Considerations under the California Environmental Quality Act.]: Approving a Conditional Use Authorization/Planned Unit Development 3. M No. [for the 3333 California Project.]: Recommending to the Board of Supervisors approval of amendments to the Planning Code to establish the 3333 California Project Special Use District and approval of amendments to Sectional Maps SU03 to refer to the 3333 California Project Special Use District and HT03 of the Zoning Map. 1: Recommending to the Board of Supervisors approval of a Development Agreement between the City and Laurel Heights Partners LLC. Final and Related Approval Actions of City and County of San Francisco Municipal **Transportation Agency Board of Directors** 1. Resolution Number consenting to a Development Agreement between the City and Laurel Heights Partners LLC, including the Transportation Exhibit.

Final and Related Approval Actions of City and County of San Francisco Public Utilities Commission

1. Resolution Number [_____] consenting to the AWSS Schedule in the Development Agreement between the City and Laurel Heights Partners LLC.

Final and Related Approval Actions by San Francisco Public Works

1. Approval of Tentative Map

Exhibit F

MMRP

Exhibit G

Notice of Completion and Termination

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:	
[address]	
Attn:	
. (Space above this line reserved for Recorder's use only)
THIS NOTICE OF COMPLETION OF BUILD "Notice") dated for reference purposes only as of by and between the CITY AND COUNTY OF a municipal corporation of the State of California (Department, and, a	this day of, 20, is made SAN FRANCISCO, a political subdivision and (the "City"), acting by and through its Planning
of, 20 and recorded in the Ot Francisco on, as Document Nu	umber (Book No, Reel No. pitalized terms used in this Notice that are not
2. Under Section 7.1 of the Develop have been completed and all of the Associated Conhave also been completed, the City agreed, uponotice of completion as it relates to the applicable	n Developer's request, to execute and record a
3. The City confirms that the Buildin described in the attached Exhibit A (the "Affecte Community Benefits tied to that Building, h Development Agreement. All parties with an in rely on this Notice.	ave been completed in accordance with the
CITY:	Approved as to form:
CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation	[DENNIS J. HERRERA], City Attorney
By:	By:
Director of Planning	Deputy City Attorney

Exhibit A

[attach legal description of Affected Property]

Exhibit H

Form of Assignment and Assumption Agreement

RECORDING REQUESTED BY CLERK OF THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO (Exempt from Recording Fees Pursuant to Government Code Section 27383)

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

ASSIGNMENT AND ASSUMPTION AGREEMENT

	day of	, 20, by and between	, a
	(" Assignor ") and	, a	
("Assignee").			
	REC	TITALS	
A	, a	and the City and Count corporation of the State of California (the	y of San
Francisco, a politica	al subdivision and municipal	corporation of the State of California (the	"City").
entered into that ce	ertain Development Agreem	ent (the "Development Agreement") dat	ed as of
entered into that ce, 20 for re	ertain Development Agreem reference purposes, with resp	ent (the "Development Agreement") dat ect to certain real property owned by Assi	ed as of gnor, as
entered into that ce , 20 for re such property is mo	ertain Development Agreem eference purposes, with respore particularly described in	ent (the "Development Agreement") dat ect to certain real property owned by Assi the Development Agreement (the "Projec	ed as of gnor, as t Site").
entered into that ce, 20 for re such property is mo The Development A	ertain Development Agreem eference purposes, with respore particularly described in Agreement was recorded in	ent (the "Development Agreement") dat ect to certain real property owned by Assi the Development Agreement (the "Projec the Official Records of the City and Count	ed as of gnor, as t Site").
entered into that ce, 20 for re such property is mo The Development A	ertain Development Agreem eference purposes, with respore particularly described in	ent (the "Development Agreement") dat ect to certain real property owned by Assi the Development Agreement (the "Projec the Official Records of the City and Count	ed as of gnor, as t Site").
entered into that ce, 20 for re such property is mo The Development A Francisco on	ertain Development Agreem eference purposes, with responence particularly described in Agreement was recorded in a second as Document No.	ent (the "Development Agreement") dat ect to certain real property owned by Assi the Development Agreement (the "Projec the Official Records of the City and Count	ed as of gnor, as t Site"). y of San

(i) Transfer all or a portion of the Project Site, (ii) assign all of its rights, title, interest and obligations under the Development Agreement to a Transferee with respect to the portions of the Project Site transferred to the Transferee, and (iii) upon the recordation of an approved Assignment and Assumption Agreement, to be released from any prospective liability or obligation under the

The Development Agreement provides that Developer (Assignor) has the right to:

Development Agreement related to the Transferred Property as set forth in Section ____ of the Development Agreement.

- C. Assignor intends to convey certain real property as more particularly identified and described on Exhibit A attached hereto (hereafter the "**Transferred Property**") to Assignee. The Transferred Property is subject to the Development Agreement.
- D. Assignor desires to assign and Assignee desires to assume Assignor's right, title, interest, burdens and obligations under the Development Agreement with respect to and as related to the Transferred Property, as more particularly described below.

ASSIGNMENT AND ASSUMPTION

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

- 1. <u>Defined Terms</u>. Initially capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Development Agreement.
- 2. <u>Assignment of Development Agreement</u>. Assignor hereby assigns to Assignee, effective as of Assignor's conveyance of the Transferred Property to Assignee, all of the rights, title, interest, burdens and obligations of Assignor under the Development Agreement with respect to the Transferred Property, including any Community Benefits that are tied to Buildings on the Transferred Property. Assignor retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect to all other portions of the Project Site owned by Assignor.
- 3. <u>Assumption of Development Agreement</u>. Assignee hereby assumes, effective as of Assignor's conveyance of the Transferred Property to Assignee, all of the rights, title, interest, burdens and obligations of Assignor under the Development Agreement with respect to the Transferred Property, including its associated Community Benefits, and agrees to observe and fully perform all the duties and obligations of Assignor under the Development Agreement with respect to the Transferred Property, and to be subject to all the terms and conditions thereof with respect to the Transferred Property. The parties intend that, upon the execution of this Assignment and conveyance of the Transferred Property to Assignee, Assignee shall become the "Developer" under the Development Agreement with respect to the Transferred Property.
- 4. <u>Reaffirmation of Indemnifications</u>. Assignee hereby consents to and expressly reaffirms any and all indemnifications of the City set forth in the Development Agreement, including without limitation Section of the Development Agreement.
- 5. Housing Obligations. Assignee has read and understands the obligations set forth in Exhibit of the Development Agreement as they relate to the Transferred Property. Without limiting the foregoing, Assignee agrees (1) to the terms and provisions of such Exhibit , including the indemnities, waivers and releases set forth therein, and (2) that the Development Agreement falls within the express exception to the Costa-Hawkins Act, Section 1954.52(b) because it is a contract with a public entity in consideration for contributions and other forms of assistance specified in Chapter 4.3 (commencing with Section 65919 of Division 1 of Title 7 of

the California Government Code). Assignee understands that the City would not have been willing to enter into the Development Agreement without the provisions of such Exhibit D.

- 6. <u>Assignee's Covenants</u>. Assignee hereby covenants and agrees that: (a) Assignee shall not challenge the enforceability of any provision or requirement of the Development Agreement; (b) Assignee shall not sue the City in connection with any and all disputes between Assignor and Assignee arising from this Assignment or the Development Agreement, including any failure to complete all or any part of the Project by any party; and (c) Assignee shall indemnify the City and its officers, agents and employees from, and if requested, shall defend them against any and all Losses resulting directly or indirectly from any dispute between Assignor and Assignee arising from this Assignment or the Development Agreement.
- 7. <u>Binding on Successors</u>. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

8. Agreement s		The notice address for Ass	signee under Section	of the Development
		Attn:		
With	copy to:			
		Attn		

- 8. <u>Counterparts</u>. This Assignment may be executed in as many counterparts as may be deemed necessary and convenient, and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument.
- 9. <u>Governing Law.</u> This Assignment and the legal relations of the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of California, without regard to its principles of conflicts of law.

IN WITNESS HEREOF, the parties hereto have executed this Assignment as of the day and year first above written.

ASSIGNOR:

[insert signature block]

ASSIGNEE:

[insert signature block]

Exhibit I

Workforce Agreement

Exhibit J

Transportation

This Transportation Exhibit outlines the Project's transportation commitments in two areas: (i) the Transportation Demand Management Plan and (ii) the reconfiguration of two slip lanes.

1. Transportation Demand Management Plan

The Developer shall implement a site-specific Transportation Demand Management Plan included as Attachment 1 to this exhibit. While the Project would be subject to Planning Code Section 169.3(e)(1) and required to implement 50% of applicable target points, the Developer commits through this Agreement, to be subject to Planning Code Section 169.3(e)(2) and to implement 75% of applicable target points. Otherwise, the Project remains subject to all of the provisions of Planning Code Section 169 et seq.

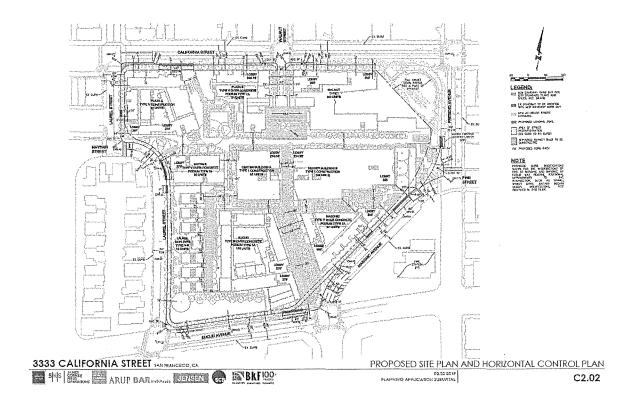
2. Reconfiguration of Slip Lanes

A key element of the Project's Public Improvements includes the reconfiguration of existing traffic slip lanes at the intersections of Presidio Avenue and Pine Street/Masonic Avenue and at Masonic Avenue and Euclid Avenue. These Public Improvements consist of bulb outs and other sidewalk improvements where two separate slip lanes are currently located. With the Public Improvements, the slip lane areas will remain publicly accessible, but will no longer be accessible to motorized vehicles. The parties, including the SFMTA Board of Directors through its consent to the Development Agreement, agree to the slip lane and sidewalk reconfiguration concept level plans that are included as Attachment 2 to this Exhibit. The Developer will work with DPW and SFMTA to obtain all necessary review, approvals and construction permits.

Attachment 1

Transportation Demand Management Plan

Attachment 2
Proposed Site Plans and Horizontal Control Plan



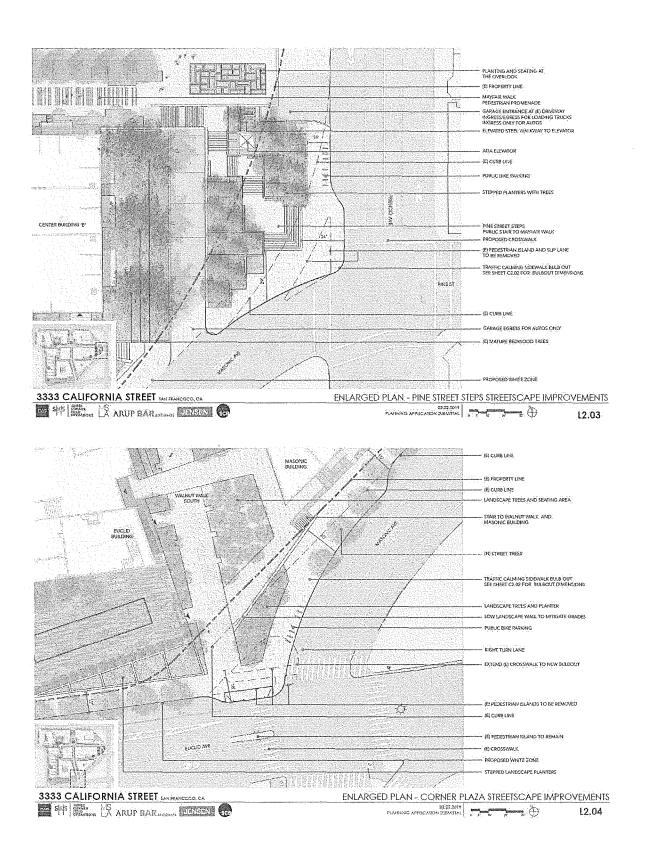


Exhibit K

Schedule Template for Later Approvals

Exhibit L

Child Care Program

- 1. Developer to provide approximately 14,000 gross square feet of rentable area for a child care facility built on the Walnut Child Care Parcel with an adjacent open space for child care use (as required by local/State law). Developer will deliver the child care facility in warm shell condition (for example, with the space demised to meet occupancy separation requirements (minus finishes on wall, floor and ceiling), stubs for standard utilities, path to a location for mechanical equipment, storefront and rear access as required, and other items required to obtain a temporary certificate of occupancy to allow tenant to proceed with their improvements). The child care provider would specify the tenant improvements necessary for the space, which Developer would not be responsible for providing under this Agreement.
- 2. A State-licensed child care provider shall operate in the space under the following terms, provided that all Later Approvals and applicable operating and licensing and other requirements as may be necessary are first obtained.
 - a. Provider shall comply with all State guidelines and applicable local guidelines for operating a child care facility.
 - b. Provider shall operate a facility licensed to serve approximately 175 children with the final number to be determined based on state and any local licensing requirements.
 - c. In accordance with Planning Code Section 414.13, Developer shall include (and require compliance with) a provision in its lease with the child care provider requiring the provider to reserve at least ten percent (10%) of the maximum capacity of the child care facility (as determined by the license for the facility issued by the California Department of Social Services) to be affordable to children of households of low income. Operators are encouraged to work with the San Francisco Office of Early Care and Education to learn about Early Learning Scholarships for low- and moderate-income families as well as other operator resources.
 - d. Programs shall serve a broad range of age groups, including infants and toddlers.
 - e. Slots shall be made available to the general public on the same terms and conditions as those for Project residents, employees and users.
- 3. The operating term for the child care facility shall equal the life of the Walnut Building. Subject to the provisions of this Exhibit L, the Developer shall use commercially reasonable efforts to lease the space to a child care operator at all times for the life of the Walnut Building. The operating term may be fulfilled by more than one child care operator

over the life of the Walnut Building. The Developer shall comply with the terms below during initial leasing and periods of operator turnover and/or vacancy periods.

- a. (i) On the earlier to occur of (A) applying for a First Construction Document (as defined in San Francisco Building Code Section 107A.13.1(a)(8)) for the Walnut Building and (B) 15 business days before initially offering the facility for rent and (ii) within 15 business days following the expiration or termination of a child care operator's lease for the facility, the owner of the facility shall notify governmental and nonprofit entities that can assist in publicizing the availability of the facility (the "Child Care Marketers") of the opportunity to lease it, including, at a minimum, the following entities: the San Francisco Office of Early Care and Education (or any successor agency), the Family Child Care Association of San Francisco, the Children's Council, and Wu Yee Children's Services.
- b. If the child care space remains vacant for more than three years after DBI has issued of a first certificate of occupancy (including any temporary certificate of occupancy) for the Walnut Building despite Developer's commercially reasonable efforts to lease it at prevailing child care facility market terms (comparable to other similarly-sized and geographically proximate licensed child care facilities) to an initial child care operator, and Developer wishes to be released from its obligation to lease the facility to a child care operator, then Developer shall have the right to pay City an amount equal to \$2,101,489.55 [in lieu child care facility fee that would otherwise be due at the Effective Date if the fee was not waived], proportionately adjusted to reflect any increase between the published CPI Index in effect as of the Effective Date and the published CPI Index in effect at the time such payment is made (as adjusted, the "Base Fee"), plus an amount equal to 10% of the Base Fee, for deposit in the Child Care Capital Fund established under Planning Code Section 414.14. On paying such amount to City under this subsection, the Developer may use the facility for any use permitted under the Project SUD.
- c. If after having leased the facility to at least one child care operator, the child care space remains vacant for more than three years after the termination or earlier expiration of the most recent child care operator's lease despite Developer's commercially reasonable efforts to lease the facility at prevailing child care facility market terms (comparable to other similarly-sized and geographically proximate licensed child care facilities) to a child care operator, and Developer wishes to be released from its obligation to lease the facility to a child care operator, then Developer shall have the right to pay City an amount equal to the Base Fee prorated over a fifteen (15) year period, with a credit for any time the facility was operated by a child care provider in compliance with this Agreement. On paying such amount to City under this subsection, the Developer may use the facility for any use permitted under the Project SUD.

- 4. Developer or subsequent owner of the Walnut Building cannot charge rent (including security, common building charges and utilities, etc.) to the child care operator that exceeds prevailing market rent comparable to other similarly-sized and geographically proximate licensed child care facilities.
- 5. Developer or subsequent owner of the Walnut Building shall execute the Notice of Special Restrictions included in the Approvals to dedicate the space for child care use ("NSR"). The NSR shall be recorded against the Walnut Child Care Parcel at the earlier to occur of the time that the final map that includes the Walnut Child Care Parcel is recorded or the First Construction Document is issued for the Building to be constructed on the Walnut Child Care Parcel.
- 6. In consideration of this community benefit, the Project shall not be subject to the residential child care fee (Planning Code Sec. 414A) and that fee shall be waived.
- 7. Phasing/performance requirements for the child care facility will be detailed in <u>Schedule 1</u> (Community Benefits Linkages and Impact Fees). If DBI has not issued a certificate of occupancy (including any temporary certificate of occupancy) for the child care facility prior to the expiration of the Term but Developer has received First Construction Document for any Building, then Developer shall pay to City an amount equal to the Base Fee plus 20% of the Base Fee at the end of the Term.

Attachment 1

Notice of Special Restrictions

Exhibit M

SUD Ordinance and Conditional Use/Planned Unit Development Exceptions

Schedule 1

Community Benefits Linkages and Impact Fees Schedule

Pursuant to Section 4.1 of the Agreement, the Developer's Community Benefits obligations are tied to specific Buildings or number of Market Rate Units (as defined in Exhibit D) that will be developed over the course of the Project and during the Term of the Agreement. The linkages between the specific Community Benefits and the associated Buildings or Market Rate Units are detailed below, as well as within any referenced exhibits. The development impact fees that apply to the Project are detailed below.

COMMUNITY BENEFITS

- 1. Publicly Accessible Private Improvements. The Developer shall complete the Publicly Accessible Private Improvements described in Exhibit C and generally depicted in Attachment C-1 prior to obtaining a first certificate of occupancy (including any temporary certificate of occupancy) for any non-retail portion, if any, of specific Buildings as described below (or, in the case of Publicly Accessible Private Improvements to be delivered only after completion of more than one Building, then prior to obtaining the first certificate of occupancy for the later Building); provided, however, that if Developer wishes to receive a first certificate of occupancy (or the equivalent thereof) for a Building (or later Building, as applicable) before completing its associated Publicly Accessible Private Improvement, then, notwithstanding anything to the contrary in this Schedule, Developer may complete this obligation after that certificate of occupancy for the associated Building (or later Building, as applicable) by providing to the City, prior to issuance of the first certificate of occupancy for that Building (or later Building, as applicable), 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, and shall diligently and continuously pursue that Publicly Accessible Private Improvement to completion following which such bond will be released.
 - a. <u>California Plaza</u> with the completion of Plaza A Building
 - b. Cypress Square with the completion of Plaza B Building
 - c. <u>Cypress Stairs</u> with the later completion of either Plaza A Building or Plaza B Building
 - d. <u>Mayfair Walk</u> the Mayfair Walk extends the entire width of the Project Site and shall be completed in segments tied to the completion of the adjacent Buildings as depicted in <u>Attachment C-1</u> (the later of Mayfair Building or Plaza A Building, the later of Plaza B Building or Center A Building, and the completion of Center B Building)
 - e. Presidio Overlook with the completion of Center Building B

- f. Pine Street Steps with the completion of Center Building B
- g. Northern Walnut Walk with the later completion of Center A Building or Center B Building
- h. <u>Southern Walnut Walk</u> with the later completion of the Euclid Building or Masonic Building
- i. Walnut Drive and Walnut Court with the later completion of Plaza B Building or Walnut Affordable Housing Building (as defined in Exhibit D)
- j. <u>Euclid Green</u> with the completion of the Project's final Building; provided, however, that if the Developer receives a first certificate of occupancy (including any temporary certificate of occupancy) for any Building(s) without completing all proposed Buildings during the Term, then Euclid Green shall be completed by the end of the Term.
- k. Pedestrian Access if Developer receives a first certificate of occupancy (including any temporary certificate of occupancy) for any Building(s) without completing all proposed Buildings during the Term that would otherwise require the completion of Walnut Walk North, Walnut Walk South, and Mayfair Walk as described above, then Developer, 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 Developer shall construct such alternative plan improvements prior to the end of the Term.
- 2. Streetscape Improvements. The Developer shall complete each of the Streetscape Improvements described in Exhibit C and generally depicted in Attachment C-1 (and as will be more specifically set forth in the building permit application for the Streetscape Improvements associated with the applicable Building) before obtaining any first certificate of occupancy (including any temporary certificate of occupancy) for the applicable Building (or later of adjacent Buildings, if applicable) for such Streetscape Improvement as depicted in <u>Attachment C-1</u>; provided, however, that if Developer wishes to receive a first certificate of occupancy for a Building before completing its associated Streetscape Improvement, then, notwithstanding anything to the contrary in this Schedule, Developer may complete its associated Streetscape Improvement after that certificate of occupancy by providing a surety performance bond or other security to City, prior to issuance of the first certificate of occupancy for that Building, in form acceptable to the City and in an amount equal to 100% of the reasonably estimated cost to complete that Streetscape Improvement, and the Developer shall diligently and continuously pursue that Streetscape Improvement to completion following which the bond shall be released. Such requirement shall be in addition to any security or bonding requirements required under

- the street improvement permit issued by City's Department of Public Works for the performance of such Streetscape Improvement.
- 3. <u>Maintenance and Operation.</u> The Developer shall cause the appropriate party (e.g., a master association) to enter into agreements for the ongoing operation, maintenance and repair of the Publicly Accessible Private Improvements to the standards described in Attachment C-2 and Attachment C-3.
- 4. <u>Housing Plan.</u> The Project's BMR Units shall be complete as set forth in <u>Exhibit D</u>, the Affordable Housing Program.
- 5. <u>AWSS Community Benefit Fee.</u> The Project's AWSS Community Benefit Fee shall be paid as set forth in Schedule 2.
- 6. <u>Workforce Agreement.</u> The workforce requirements will apply to the Project as set forth in <u>Exhibit I</u>, the Workforce Program.
- 7. <u>Transportation Demand Management.</u> The Transportation Demand Management Plan shall be implemented as set forth in <u>Exhibit J</u>, the Transportation Exhibit, and the Approvals described in <u>Exhibit E</u>.
- 8. Child Care Program. The Developer shall have constructed the child care facility to warm shell condition, as described in Exhibit L, on the Walnut Child Care Parcel (as defined in Exhibit D) by the earlier of receiving a first certificate of occupancy (including any temporary certificate of occupancy) for the Walnut Affordable Housing Building (as defined in Exhibit D) and obtaining a first certificate of occupancy (including any temporary certificate of occupancy) for more than three hundred eighty-six (386) Market Rate Units (as defined in Exhibit D). In addition, if the Developer receives a first certificate of occupancy (or a temporary certificate of occupancy) for any Building, the Developer must obtain a first certificate of occupancy (or a temporary certificate of occupancy) for the child care facility before the expiration of the Term. The child care facility shall be operated on the terms described in Exhibit L.

DEVELOPMENT IMPACT FEES

The following development impact fees apply to the Project: Transportation Sustainability Fee (Planning Code Section 411A) and Jobs Housing Linkage Fee (Section 413). The Residential Child Care Impact Fee (Planning Code Section 414A) and the Affordable Housing Fee (Planning

Code Section 415) have been waived in consideration of the on-site provision of a child care facility and affordable housing as described in Exhibit L and Exhibit D, respectively.

Schedule 2

AWSS Community Benefit Fee

1. Background and Need

The Auxiliary Water Supply System ("AWSS") is a water distribution system used by the San Francisco Fire Department ("SFFD") for fire suppression. The AWSS delivers water under high pressure for firefighting and is independent from the San Francisco's domestic water system. The design elements of the AWSS, such as restrained pipeline joints and earthquake resistant ductile iron pipe make it more resistant to earthquake damage. The San Francisco Public Utilities Commission ("SFPUC") operates and maintains the AWSS citywide.

Life safety is the paramount concern of the SFFD, followed by the protection of property. When new developments are proposed in San Francisco with high density structures, adequate and readily available water supplies for firefighting are imperative. The Project is a proposed new development within San Francisco which will have both high occupancy and a significant amount of wood frame construction. The closest AWSS main runs east to west on Sacramento Street with AWSS/High Pressure ("HP") hydrants at each corner from Presidio Avenue to Arguello Boulevard. The closest HP hydrant to the entrance of the proposed Project is currently located at the northwest corner of Walnut and Sacramento Streets, approximately 400 feet away from the Project's closest property line. SFFD fire engines carry a maximum of 1,000 feet of fire hose.

One new HP fire hydrant must be installed on California Street at the southern intersection of Walnut and California Streets with a connection back to the AWSS main on Sacramento Street in order for SFFD to perform firefighting and rescue operations at the Project. This HP hydrant would allow one fire engine to obtain AWSS water supply and immediately initiate firefighting and rescue operations to any area within the development upon arrival. During a greater alarm fire when fire operations demand more water than a domestic water hydrant can supply, the AWSS HP hydrant will support the need for additional water volume and pressure. Following a major event, when additional fire engines are not available, a fire crew can use the HP hydrants and still have ample water pressure and volume for firefighting operations.

2. AWSS Requirement for 3333 California Project

The SFFD and SFPUC have analyzed the Project and determined that AWSS is not required or appropriate for installation within the Project's property line. This is due to (1) confirmation that a standard 1,000 fire hose is able to serve the entire site from one new HP hydrant at the southern intersection of Walnut and California Streets; and (2) the fact that the Project will be privately-owned and no public right of ways will be created within which AWSS could be installed, owned, and maintained by SFPUC.

The SFPUC and SFFD have determined that in order to serve the Project the following new AWSS infrastructure (the "AWSS Scope") will be required: a new HP hydrant on the public sidewalk at Walnut and California Streets, and a connection to be installed on Walnut Street from the new HP hydrant to the existing AWSS main running east to west on Sacramento Street. This new infrastructure will be designed and installed by the SFPUC, with contributory fair-share funding paid by the Developer.

The Developer and SFPUC will coordinate on the installation and timing of installation of this AWSS Scope in relation to the ultimate development phasing and improvements. The intent is to have the AWSS Scope coordinated with Project's street improvements on California Street or adjacent streets to minimize or eliminate the need to demolish newly constructed improvements related to the Project.

3. AWSS Community Benefit Fee

The AWSS Community Benefit Fee will offset the cost of bringing AWSS to the Project boundary and providing any additional water supply and storage that is required due to a direct result of the Project. The SFPUC has developed an initial capital cost estimate of the AWSS Scope (including contingencies) totaling approximately \$1,055,000 in 2018 dollars. In consideration of the AWSS Scope that the Project requires to be adequately served and protected by SFFD, the Developer shall pay an AWSS Community Benefit Fee of \$1,055,000.

4. Fee Payment Terms

The Developer shall pay the AWSS Community Benefit Fee as a proportion of Gross Square Feet ("GSF") developed in the Project. Based on the Project's total of 1,434,098 GSF, the Developer shall pay the AWSS Community Benefit Fee at a rate of \$.735 per GSF. Payment shall be made to SFPUC on a Building by Building basis and shall be determined by the total GSF of each Building. Payment shall be due prior to and as a condition to the Developer obtaining a temporary Certificate of Occupancy or Certificate of Final Completion for each Building.

MEMORANDUM OF UNDERSTANDING # ______ 3333 Cal

THIS MEMORANDUM OF UNDERSTANDING (this "MOU") dated as of _______, 2017, is made by and between the City and County of San Francisco, a municipal corporation, acting by and through its Office of Economic and Workforce Development ("OEWD") and Laurel Heights Partners LLC, a Delaware limited liability company ("Project Sponsor") in connection with the proposed project located at 3333 California Street in San Francisco.

RECITALS

This MOU is made with regard to the following facts, intentions and understandings:

- A. On March 29, 2016, Project Sponsor filed an environmental evaluation application (Case No. 2015.014028ENV) for a mixed-use development plan covering one parcel of approximately 10.25 acres bounded by California Street to the north, Presidio Avenue to the east, Masonic Avenue to the southeast, Euclid Avenue to the south, and Laurel Street to the west (as described in the application, and as may be revised and updated from time to time, the "**Project**").
- B. The Project currently contemplates the construction of 558 new dwelling units, approximately 49,999 square feet of office space, approximately 52,250 square feet of retail space, approximately 13,400 square feet of day care space, and approximately 252,650 square feet of open space. The proposed project would include demolition of the existing annex building located on the portion of the project site at the corner of California and Laurel Streets and the existing surface parking lots, and the adaptive reuse of the existing, approximately 455,000 square foot office building as a residential building with ground floor amenity spaces and potential commercial uses. The proposed Project would provide additional dwelling units in new buildings along Laurel Street and along Euclid and Masonic Avenues. The final scope of the Project is not fixed at this stage in the public process. Accordingly, Project Sponsor and OEWD understand and agree that the Project may be refined and modified through the community and stakeholder review, environmental review, and planning processes.
- C. Project Sponsor intends to apply for the approval of a special use district and planning code and zoning map amendments, and to negotiate for other City agreements related to development of the Project. These agreements will require review and approval by the City's Planning Commission and Board of Supervisors, and may require approval of other City agencies.
- D. OEWD is currently working with Project Sponsor, as well as the City Attorney's Office and other City agencies, to determine the appropriate scope of all of the Project transaction and entitlement documents. This MOU is to provide a payment mechanism for Project Sponsor to reimburse OEWD and other City agencies (including the City Attorney's Office) for staff time and materials expended on any component of the Project.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, OEWD and Project Sponsor agree to the following:

1. Negotiations and Entitlement Process. OEWD, working in close consultation with the Planning Department, shall act as the lead representative of the City in negotiating the substance of the proposed entitlement package and any other related transaction or approval documents (such documents shall be referred to as the "Project Documents"). OEWD shall consult with staff from affected City agencies, including, without limitation, the San Francisco Municipal Transportation Agency, the San Francisco Department of Public Works, the San Francisco Fire Department, and the San Francisco Public Utilities Commission, and such City agencies shall contribute personnel and staff time as may be directed by their respective directors or department heads and work with Project Sponsor and such City agencies on planning processes for the Project and the Project Documents. Following negotiations, all Project Documents shall be subject to review and approval of the Planning Commission, applicable City agencies, and the Board of Supervisors, each in their sole discretion.

2. <u>Reimbursement of City Costs.</u>

- (a) Project Sponsor shall reimburse OEWD for the actual costs incurred by the City for all work associated with preparing, adopting or negotiating the Project Documents for the Project. Eligible costs shall include, without limitation, the (1) fees and expenses of the City Attorney's Office staff at the rates charged by the City Attorney's Office to third party outside developers from time to time, (2) actual fees and expenses of any outside counsel and third party consultants, advisors, and professionals (including, but not limited to, real estate appraisers), (3) actual costs related to public outreach and information; and (4) costs of staff time for the City agencies consulted in communication with the Project Documents. Eligible costs shall not include costs that are paid or reimbursed through Planning Department or other project applications. Before engaging any outside counsel or consultants, OEWD shall obtain Project Sponsor's approval regarding the proposed engagement, which approval shall not be unreasonably withheld. OEWD shall be responsible for coordinating the billing of all City agencies as described in this section.
- (b) OEWD will provide Project Sponsor with quarterly invoices. These invoices shall indicate the hourly rate for each OEWD or City staff member at that time, the total number of hours spent by each City staff member on the tasks during the invoice period, any additional costs incurred by the City and a brief non-confidential description of the work completed.
- (c) The parties anticipate that OEWD and other City staff time to be reimbursed under subsection (a)(1)-(4) above shall not exceed \$250,000 per fiscal year, based on following staffing (under a 40-hour work week): up to 10% of Director of Development's time and up to 30% of the Project Manager or Managers' time. See Appendix A for current billing rates (subject to change).

- (d) Project Sponsor shall pay the invoiced amount within forty-five (45) calendar days after receipt of the applicable invoice from OEWD, provided that (i) the maximum amount payable shall not exceed the budget established in subsection (c) above, as the same may be revised from time to time as provided in this Section 2(d), (ii) if the City's costs and expenses exceed the amounts set forth in the approved budget, then, notwithstanding anything in this MOU to the contrary, the City shall have the right to suspend additional work on the Project until the parties reach agreement on a revised budget and additional payments to be made by Project Sponsor, including any amounts due by Project Sponsor for work previously performed, and (iii) if the parties cannot reach agreement on a revised budget, or if Project Sponsor fails to pay any amounts due and owing hereunder, then the City shall have the right to terminate this MOU without cost or liability.
- (e) If Project Sponsor in good faith disputes any portion of an invoice, then, within thirty (30) calendar days after receipt of the invoice, Project Sponsor shall provide written notice of the amount disputed and the reason for the dispute, and the parties shall use good faith efforts to reconcile the dispute as soon as practicable. Project Sponsor shall have no right to withhold the disputed amount. If any dispute is not resolved within ninety (90) days after Project Sponsor's notice to City of the dispute, Project Sponsor may pursue all remedies at law or in equity to recover the disputed amount. Project Sponsor shall have no obligation to reimburse City for any cost that is not invoiced to Project Sponsor within forty-eight (48) months from the date the cost was incurred.
- (f) If Project Sponsor submits an application for a development agreement, the parties may terminate this MOU and revise the payment mechanisms for the reimbursement of all City costs consistent with San Francisco Administrative Code Chapter 56.
- 3. <u>City Limitation</u>. Nothing in this MOU shall obligate OEWD or any other City department to expend funds or resources, nor shall anything in this MOU be construed as a limitation on any party's authority to contribute staff, funds or other resources to the processing, review and consideration of the Project. Nothing in this MOU shall limit the discretion to be exercised by City staff and City officials in connection with the Project.
- 4. <u>No Liability; Termination.</u> The parties are entering into this MOU in order to cooperate in negotiating the substance of an entitlement package with respect to the Project. The parties understand and agree that the City would not be willing to enter into this MOU if it could result in any liability or cost to the City. Accordingly, in the event that Project Sponsor believes that the City has violated any of the terms of this MOU, Project Sponsor's sole remedy shall be to terminate this MOU. Project Sponsor shall be responsible for the eligible costs incurred by any of the City agencies before the termination notification. Notwithstanding anything to the contrary in this MOU, either party shall have the right to terminate this MOU at any time and for any reason without cost or liability by providing not less than seven (7) days advance written notice of termination to the other party, provided any such termination shall not relieve Project Sponsor of its reimbursement obligations with respect to work performed before the date of termination.

- 5. <u>City Discretion</u>. Project Sponsor acknowledges and agrees that by entering into this MOU, OEWD is not committing itself or agreeing to approve any land use entitlements or undertake any other acts or activities relating to the subsequent independent exercise of discretion by the Planning Commission, the Board of Supervisors, the Mayor, or any other City agency, commission or department, and that the Project Documents and approvals are subject to the prior approval of the Planning Commission, the Board of Supervisors, and the Mayor (and perhaps other City agencies, as applicable), each in their sole and absolute discretion.
- 6. <u>Assignment</u>. Project Sponsor may assign its rights and obligations under this MOU to an affiliate or subsidiary entity at any time with notice to but without the consent of OEWD, provided, if such affiliate or subsidiary fails to pay amounts due hereunder, then Project Sponsor shall remain liable for such payment.
- 7. Environmental Review. The final project ultimately proposed by OEWD and Project Sponsor shall be subject to a process of thorough public review and input and all necessary and appropriate approvals; that process must include environmental review under CEQA before a City department, commission, or any other City decision-maker may consider approving a project; and the Project will require discretionary approvals by a number of government bodies after public hearings and environmental review. Nothing in this MOU commits, or shall be deemed to commit, the City or a City official to approve or implement any project, and they may not do so until environmental review of the Project as required under CEQA has been completed. Accordingly, all references to the "Project" in this MOU shall mean the proposed project as revised and subject to future environmental review and consideration by the City. The City and any other public agency with jurisdiction over any part of the Project shall have the absolute discretion before approving that project to: (i) make such modifications to the Project as may be necessary to mitigate significant environmental impacts; (ii) select other feasible alternatives to avoid or substantially reduce significant environmental impacts; (iii) require the implementation of specific measures to mitigate any specific impacts of the Project; (iv) balance the benefits of the Project against any significant environmental impacts before taking final action if such significant impacts cannot otherwise be avoided; and (v) determine whether or not to proceed with the Project.
- 8. <u>Notices</u>. Unless otherwise indicated elsewhere in this MOU, all written communications sent by the parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To OEWD: Ken Rich

Director of Development c/o Leigh Lutenski, Project Manager Office of Economic and Workplace Development City Hall, Room 448 One Dr. Carlton B. Goodlett Place San Francisco, CA 94102 Phone: 415.554.5194 Email: ken.rich@sfgov.org

To Project Sponsor:

c/o The Prado Group, Inc. 150 Post Street, Suite 320 San Francisco, CA 94108 Attention: Daniel J. Safier Email: dsafier@pradogroup.com

with a simultaneous copy to:

SKS Investments 601 California Street, Suite 1310 San Francisco, California 94108 Attention: Daniel Kingsley Email: dkingsley@sksre.com

Any notice of default must be sent by certified mail, return receipt requested. Each notice shall be deemed to have been received or given on the earlier to occur of actual delivery or the date on which delivery is refused. Any party may, at any time, change its Notice Address (other than to a post office box address) by giving the other parties written notice of the new address.

- 9. <u>California Political Reform Act</u>. The parties acknowledge that payments pursuant to this MOU from Project Sponsor to OEWD are payments to the City, not to any individual employee or officer of the City, and that the payments therefore are not "income" to any City employee or officer under the California Political Reform Act, California Government Code Section 81000, et seq.
- 10. Notification of Limitations on Contributions. Project Sponsor acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City whenever such transaction would require approval by a City elective officer or the board on which that City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Project Sponsor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more.
- 11. <u>No Joint Liability</u>. Nothing in this MOU shall be construed as giving a party the right or ability to bind other parties and nothing in this MOU shall be construed to create any joint liability with regard to, or as a result of, the activities undertaken by any of the parties, their employees, officers and/or agents. All employees, officers and/or agents of a party shall remain employees, officers and/or agents of that party and shall be subject to the laws, procedures, rules and policies governing that party's employees, officers and/or agents.

- 12. <u>Sunshine</u>. Project Sponsor understands and agrees that under the City's Sunshine Ordinance (S.F. Administrative Code Chapter 67) and the State Public Records Law (Gov't Code section 6250 et seq.) apply to this MOU and any and all records and materials submitted to the City in connection with this MOU.
- 13. <u>Miscellaneous</u>. (a) This MOU may be modified only in writing and by mutual consent of all parties. (b) This MOU shall become effective when signed by all OEWD and Project Sponsor. It shall remain in effect until terminated in writing by either party. (c) There are no intended third party beneficiaries of this MOU. The parties acknowledge and agree that this MOU is entered into for their benefit and not for the benefit of any other party. (d) This MOU shall be governed by the applicable laws of California without regard to provisions regarding conflicts of laws. Exclusive jurisdiction over and venue of any suit arising out of or relating to this Agreement will be in the Superior Court of San Francisco. (e) This MOU contains all of the representations and the entire agreement between the parties with respect to the subject matter of this MOU. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to such subject matter are superseded in total by this MOU. (f) This Agreement may be executed in one or more counterparts, all of which taken together shall be deemed to be one original. The parties agree to accept facsimile or "pdf" signatures as originals.

[Signatures on Following Page.]

IN WITNESS WHEREOF, the parties have executed this MOU on the date set forth herein.

municipal corporation, acting by and through its Office of Economic and Workforce Development
By:Todd Rufo, Director
Laurel Heights Partners LLC, a Delaware limited liability company
By: 3333 California LP, a Delaware limited partnership, its managing member
By: PSKS LH LLC, a Delaware limited liability company, its general partner
By: Prado LH LLC, a California limited liability company, its managing member
By:
APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney
By:
Charles Sullivan, Deputy City Attorney

City and County of San Francisco, a

Appendix A

OEWD / Other City Staff – Billing Rates (Hourly rates as of July 1, 2017)

OEWD Project Manager \$125

OEWD Admin Assistant \$85

Deputy City Attorney \$375

MTA Project Manager \$158.65



Laurel Heights Improvement Association of San Francisco. Inc.

BY HAND and E-MAIL

October 16, 2019

San Francisco Board of Supervisors Land Use and Transportation Committee c/o Erica Major, Clerk City and County of San Francisco City Hall, Room 244 San Francisco, CA 94102

Re: 3333 California Street, San Francisco, CA

File No. 190845 - Proposed Development Agreement

Hearing Date: October 21, 2019

Record Number: 2015-014028CUA/PCA/MAP/DUA

Dear Chair Peskin, Vice Chair Safai and Member Haney:

Based on the formula provided by OEWD, attached is our calculation of the in lieu fee that would be owed by this project if the fee was calculated pursuant to the provisions of Planning Code section 415.5.

Respectfully submitted,

Laurel Heights Improvement Association of SF, Inc.

By: Kathryn Devincenzi, President

Kathyn Devincenze

Attachment



In Lieu Fee per LL

1 message

Richard Frisbie <frfbeagle@gmail.com>
To: Kathy Devincenzi <krdevincenzi@gmail.com>

Wed, Oct 16, 2019 at 1:07 PM

The City's current in-lieu fee is calculated based on the project's residential gross square feet (977,437) x MOHCD affordable housing fee (\$199.50/gsf) x inclusionary percentage (30% for rental gsf or 33% for ownership gsf). However, this project does not include a fee-out option for the affordable housing requirement.



Laurel Heights Improvement Association of San Francisco. Inc.

BY HAND and E-MAIL

October 16, 2019

San Francisco Board of Supervisors Land Use and Transportation Committee c/o Erica Major, Clerk City and County of San Francisco City Hall, Room 244 San Francisco, CA 94102

Re: 3333 California Street, San Francisco, CA

File No. 190844 - Proposed Special Use District

Hearing Date: October 21, 2019

Record Number: 2015-014028CUA/PCA/MAP/DUA

Dear Chair Peskin, Vice Chair Safai and Member Haney:

- 1. The Committee Should Recommend that the Proposed Special Use District Be Modified Because the Public Necessity, Convenience and General Welfare Do Not Require the Extinguishment of Legislated Set Back Lines and Planning Commission Resolution 4109 Restrictions on Types of Commercial Use.
 - A. The Committee Should Recommend Against Extinguishment of the Legislated Set Back Lines Set Forth in Planning Code Resolution 4109 and Recorded in Stipulations as to Character of Improvements.

The proposed Special Use District (SUD) would break the deal forged between the City and the community in Resolution 4109 which led to the development of a historically significant resource. The landscaping and building comprise an integrated resource in which the window-walled modern building was designed to create a seamless connection between the indoor and outdoor spaces. (See Ex. A, confirmation of listing on California Register and excerpts from approved nomination for listing.) The acclaimed landscape architects of Eckbo, Royston & Williams designed the site to have over 100 trees and green landscaped areas surrounding the main building, which have been used by the public for recreational purposes since the resource was constructed.

The public necessity and welfare do not require locating new buildings on the green landscaped areas that have been used by the public for recreational purposes, in part because

there are large areas of parking lots along California Street where substantial new construction can be located and which are proposed for increased height limits, and the main building can be converted to residential use. (Ex. B hereto and Ex. F to Laurel Heights Improvement Association (LHIA)'s August 28, 2019 submission to Planning Commission, August 20, 2019 TreanorHL Preservation Alternative Feasibility Evaluations.)

Similarly, design changes to the developer's site plan can achieve 744 residential units including 185 units of senior affordable housing. The Community Preservation Lookalike Variant (744 units) would build new buildings along California Street and set back the developer's proposed Euclid building approximately 30 feet to avoid the green space and remove 2 Laurel duplexes from the top of the hill in the developer's site plan. (Ex. C hereto, Community Preservation Lookalike Variant) This 744-unit variant would preserve the Eckbo Terrace and avoid new construction on the historically significant green spaces along Laurel Street, Euclid and Presidio Avenues and add a one-story set back addition to the main building with a portal through the building instead of a cut all the way through it; it would have approximately 20,000 gross square feet more of residential use than the developer's July 3, 2019 proposed 744-unit Variant Project, and involve much less excavation. (Ex. C hereto, Community Preservation Lookalike Variant; Ex. E to October 7, 2019 LHIA appeal of certification of FEIR, and Ex. A to LHIA's August 28, 2019 submittal to Planning Commission.)

Since it is feasible to design the project to retain the green landscaped areas surrounding the main building which the public have used for recreational uses, the public necessity does not require extinguishment of the legislated 100-foot set backs along Laurel Street and Euclid Avenue, and the Committee should recommend that these aspects of Resolution 4109, which were recorded as Stipulations as to Character of Improvements, should remain in effect and be incorporated into any Special Use District.

B. The Committee Should Recommend Against Extinguishment of the Use Restrictions Set Forth in Planning Code Resolution 4109.

The public necessity and convenience do not require extinguishing the use restrictions set forth in Resolution 4109 which currently prohibits retail uses to be conducted on the site, because there is an existing 1,183 asf café on the property and a wealth of retail uses adjacent to the site. Resolution 4109 limits commercial uses on the site to office, professional and institutional uses. Those aspects of Resolution 4109 should be retained.

The project site is directly adjacent to Laurel Village shopping center and near Sacramento Street shops, Trader Joe's, Target, and Geary Street and Presidio Avenue retail stores, so retail is not needed on the project site. The retail sector is in decline and competition from project retail uses could adversely impact the viability of existing retail uses in the adjacent

Laurel Village. A Laurel Village merchant told me that after Target moved into the nearby City Center, business at Laurel Village declined. Also, recently there have been approximately four vacancies within a short period of time in Laurel Village, which is an unprecented situation. Owners of Bryan's and Cal-Mart have stated that the surrounding neighborhoods are now well served by a diversity of retail businesses in Laurel Village, Sacramento Street, Presidio Avenue, Trader Joe's, and Target at an expanding City Center. (Ex. D hereto and Ex. B to October 7, 2017 LHIA appeal of conditional use authorization)

Also, under Planning Code section 304, a Planned Unit Development may include commercial uses only to the extent that such uses are necessary to serve residents of the immediate vicinity. Although the project was approved as a Planned Unit Development, the Special Use District incorporates NC-S controls, which "are intended to serve as small shopping centers or supermarket sites which provide retail goods and services for primarily car-oriented shoppers" under Planning Code section 713. Thus, the type of NC controls used in the SUD are not intended to serve residents of the immediate vicinity.

Retail uses are also not necessary or desirable because the number of project retail parking spaces has been reduced from 188 spaces to 74 spaces. (Ex. A to October 7, 2017 LHIA appeal of conditional use authorization, Responses to Comments on Draft EIR 2.33, excerpt) The reduction in retail parking spaces is not necessary or desirable for the Laurel Village merchants and community because the reduction will likely cause project retail customers to park in the adjacent Laurel Village parking lot, which is an above-ground lot. Also, Laurel Village does not charge for parking in its lot, whereas the project would charge for retail parking.

This reduction in retail parking was disclosed late in the proceeding. The Project's July 3, 2019 plan sheet VAR.01b states that the proposed project variant would have 74 retail parking spaces, 29 childcare parking spaces, 744 residential parking spaces, no office parking spaces, and no commercial parking spaces, for a total of 857 parking spaces. (Ex. C to LHIA October 7, 2019 appeal of conditional use authorization, July 3, 2019 plan sheet VAR.01b) The Draft EIR stated that the proposed 744-unit Project Variant would provide 188 retail parking spaces, 744 residential parking spaces and 29 "Other Non-residential (Daycare)" parking spaces, for a total of 961 parking spaces. DEIR4.C.77.

The volume of traffic from the retail uses at the Project would also be undesirable. The Draft EIR projected that the project retail uses would cause 8,153 daily auto trips. Ex. M to October 7, 2019 LHIA appeal of conditional use authorization, DEIR Traffic Appendix Chart. Even though the retail uses were reduced in the Special Use District from 54,117 square feet to 34,496 square feet, the proportionally reduced retail traffic would still be substantial at 5,196 auto trips per day from retail uses. (Ex. C to LHIA October 7, 2019 appeal of conditional use authorization, 8-17-2017 Plan sheet G3.02a and 8-30-2019 plan sheet)

For these reasons, the Committee should recommend against changing the use restrictions of Planning Commission Resolution 4109 to allow any kind of retail uses on the property.

- 2. In the Alternative, the Committee Should Recommend that the Proposed Special Use District Be Modified to Incorporate NC-1 Controls Rather than the More Intensive NC-S Controls.
- NC-1 District controls are prescribed for retail uses authorized in Residential districts in Planned Unit Developments under Planning Code section 304:

In R Districts, include Commercial Uses only to the extent that such uses are necessary to serve residents of the immediate vicinity, **subject to the limitations for NC-1 Districts under this Code**. (Ex. D to LHIA October 7, 2019 appeal of conditional use authorization, excerpts Planning Code section 304, emphasis added)

NC-1 Districts "are intended to serve as local neighborhood shopping districts" under Planning Code section 710 and permit operations from 6 a.m. to 11 p.m, with conditional use authorization for operations from 11 p.m. to 2 a.m. (Ex. E to LHIA October 7, 2019 appeal of conditional use authorization, excerpts Planning Code section 710)

NC-S Districts are more intensive and "are intended to serve as small shopping centers or supermarket sites which provide retail goods and services for primarily car-oriented shoppers under Planning Code section 713. (Ex. F to LHIA October 7, 2019 appeal of conditional use authorization, excerpts Planning Code section 713) NC-S controls are intended to serve "the immediate and nearby neighborhoods" but Planned Unit development authorizations are allowed "only to the extent that such uses are necessary to serve residents of the immediate vicinity." Planning Code section 304.

Also, NC-S districts permit operations from 6 a.m. to 2 a.m., with conditional use authorization for 24-hour operations. (Ex. F to LHIA's October 7, 2019 appeal of conditional use authorization) These controls are not desirable for the area, which is predominantly residential.

NC-1 controls would be consistent with the SUD's description of "34,396 square feet of neighborhood-serving retail."

Thus, in the alternative, the Committee should recommend that the NC-S controls be changed to "NC-1 controls."

3. Alternatively, the Committee Should Recommend Limiting Permitted Hours of Operation to 6 a.m. to 11 pm.

The Committee should recommend that the permitted hours of operation for non-residential uses in the Special Use District be changed to 6 a.m. to 11 p.m., as allowed for NC-1 Districts authorized for a Planned Unit Development (with conditional use authorization from 11 p.m. to 2 a.m.), rather than 6 a.m. to 2 a.m., which would be allowed in an NC-S District, with conditional use authorization for 24-hour operations.

4. Alternatively, the Committee Should Recommend Elimination of Flexible Retail and Social Service and Philanthropic Facilities from the Special Use District Because They Were Not Disclosed in the EIR and Are Not Required for the Public Necessity.

The EIR did not disclose potential Flexible Retail, Social Service or Philanthropic Facility use, and such uses are not permitted in an NC-S District. (Planning Code section 713) It is not necessary or desirable to add such uses to the Special Use District, as the project would not provide parking for office uses, which Social Service or Philanthropic Facility uses are classified as under Transportation Demand Management Program. (Ex. G to LHIA October 7, 2019 appeal of conditional use authorization, TDM excerpts.) The EIR disclosed only general retail uses, full-service restaurant uses and composite restaurant uses.

Flexible retail uses are not desirable in the area because they would not require neighborhood notification for multiple uses in the same space (with 2 uses required and up to 5 permitted) unless the underlying zoning classification required notice. (Board of Supervisors File 180806)

Alternatively, the Committee should recommend elimination of Flexible Retail Uses and Social Service and Philanthropic Facilities from the proposed Special Use District.

5. The Committee Should Recommend that the SUD Be Modified to Require Public Notification and Allow Requests for Discretionary Review for Major Modifications to the Project.

Planning Commission Resolution No. 20514 states at page 2 that the proposed SUD "specifies director determination and discretionary review controls." Subdivision (d)(7) of the proposed SUD states that:

(7) Discretionary Review. No requests for discretionary review shall be accepted or heard for projects within the SUD.

This provision is unreasonable as to a major change in the plan and would deprive residents of due process rights available to residents of other areas faced with requests for major changes in a project. The Committee should recommend that the SUD be modified to specify the Planning Code section 311 notice, or its equivalent, be provided with respect to all requests for a major change of the site plan, as recommended by the Planning Commission on September 5, 2019, and that requests for discretionary review shall be accepted and heard for any such material changes.

6. Alternatively, to Conform With the Historical Resource Design Guidelines, the Committee Should Recommend That the SUD Be Modified to Limit the Proposed Rooftop Addition to the Main Building to One Story Rather than Two to Three Stories and to Limit the Height Limit Increase for the Main Building to 10 Feet Over Its Existing Height.

The historically significant site is listed on the California Register of Historical Places. (Ex. A) The Secretary of the Interior's Standards for Treatment of Historic Properties (Secretary's Standards) are the standards used by CEQA to mitigate impacts upon historic resources to below a level of significance. 14 Cal.Code Regs. Section 15126.4(b)(1) and (2). (Ex. H to LHIA's October 7, 2019 appeal as to adequacy of EIR, excerpts, Secretary's Standards) The Secretary's Standards recommend "Limiting a rooftop addition to one story in height to minimize its visibility and its impact on the historic character of the building." (Ex. E hereto and Ex. H to LHIA's October 7, 2019 appeal as to adequacy of EIR, excerpts, Secretary's Standards)

Thus, instead of a two-story and a three-story addition to a divided main building which would result in heights of 80 or 90 feet, respectively (DEIR 2.7), the Committee should modify the proposed project to utilize a one-story addition to an undivided main building with heights of no more than 10 feet above the existing roof of the main building. The Commission's attempt to characterize increased heights of 20 to 30 feet as a "minor deviation from the provisions for measurement of height" is absurd. This Committee should recommend that the Board overturn that finding in LHIA's appeal of the conditional use authorization. (Motion No. 20516, p. 21.)

7. Alternatively, the Committee Should Recommend that the Project Description Be Modified to Remove New Construction From the Green Spaces at the Top of Laurel Street and along Euclid Avenue.

The Proposed Special Use District states that the open space plan depicted in subsection (c)(2) of the SUD generally sets forth the approximate location and size of the proposed privately owned, publicly accessible open space to be developed in accordance with the Development Agreement for the project. (See SUD p. 4) In this depiction, approximately 30 feet of the southerly row of the Euclid Building and the two Laurel duplexes at the top of the hill,

would be constructed on the green space along Euclid and Laurel streets that is currently open space used by the public for recreational purposes. (7-3-2019 plan sheets G1.04, G1.05, L0.01, A8.02) The Committee should recommend that the SUD and project be modified to set the Euclid Building back approximately 30 feet from its proposed location to avoid impairment to the Euclid green space and remove 2 Laurel Duplexes from the top of the green at Laurel Street to preserve the natural green space in those areas. (Ex. I to LHIA October 7, 2019 appeal of conditional use authorization, rendering showing areas to be left open).

8. Alternatively, the Committee Should Recommend a Portal Cut Through the First Two Floors of the Main Building With a Light Well on Top, Rather than an Approximate 40-Foot Cut Through the Top of the Main Building.

The Special Use District states that the SUD will replace a large-scale office building with "a series of smaller buildings" and its site plan shows a publicly accessibly pathway cut through the main building. SUD p. 3-4. The Project proposes to significantly impair the historic main building by cutting a 40-foot pathway through it that would divide the building into two pieces. The EIR admits that the Project would cause a substantial adverse change in the significance of a historic resource. DEIR 4.B.41. One of the character-defining features of the main building is its horizontality. (Ex. D to October 7, 2019 LHIA appeal of certification of Final EIR.) As stated above, adding a set-back, one story addition would conform with the Secretary's Standards for treatment of historic properties.

As explained in LHIA's appeal of certification of the Final EIR, the Planning Department only requested a north/south portal and did not request a cut all the way through the main building. Changing the 40-foot cut to a portal would also reduce construction time and cost.

A 40-foot cut all the way through the main building is not required for the public convenience.

9. The Committee Should Recommend Against the Height Limit Increases For the Main Building Set Forth in the SUD Because Under No Circumstances May a Planned Unit Development Be Excepted From a Height Limit, and the Proposed Height Limit Increases for the Main Building Are Not Required for the Public Necessity.

The Planned Unit Development criteria of Planning Code section 304(d)(6) state that the proposed development "shall":

(6) Under no circumstances be excepted from any height limit established by Article 2.5 of this Code, unless such exception is explicitly authorized by the terms of this Code.

The Special Use Districts would allow heights or 92 feet, 80 feet, 67 feet and 45 feet, which are greater than the 40-foot height limit now applicable to the site. (Ex. J to LHIA's October 7, 2019 appeal of conditional use authorization, proposed height map) The Committee should recommend against the SUD's proposed increases in height limits because increased heights are not consistent with the criteria for authorization of a Planned Unit Development.

Increased heights on the main building are also not necessary or desirable because adding two additional stories to the top of a divided main building would impair the characteristic horizontality of the historic resource.

10. The Committee Should Recommend Against the Proposed Open Space Plan in the SUD Because the Shaded Open Spaces are Not Required for the Public Necessity.

The Board should also recommend against the open space plan in the SUD because significant portions of open space in the project would be shaded most of the time and are not desirable. The Initial Study admits that "the network of proposed new common open spaces, walkways, and plazas within the project site" "would be shaded mostly by proposed new buildings for much of the day and year." Initial Study p. 161; Ex. K to LHIA's appeal of conditional use authorization, open space plan and excerpts of project shadow study).

Further, the project would not provide open space usable by the occupants and, where appropriate, by the general public, at least equal to the open spaces required by this Code, as required for a planned unit development by Planning Code section 304(d)(3). Significant portions of the open spaces proposed by the Project would be shaded most of the day.

11. The Committee Should Recommend Against the Site Plan Set Forth in the SUD Because it Would Significantly Alter the Existing Topography of Laurel Hill, Contrary to the Residential Design Guidelines.

The Residential Design Guidelines apply to the site because the site is zoned RM-1. The project is not required for the public necessity because it conflicts with the Residential Design Guideline that "New buildings and additions to existing buildings cannot disregard or significantly alter the existing topography of the site. The surrounding context guides the manner in which new structures fit into the streetscape, particularly along slopes and hills. This can be achieved by designing the building so it follows the topography in a manner similar to surrounding buildings." (Residential Design Guidelines, p. 11) These guidelines must be followed in Residential Districts. Planning Code section 311.

The project would excavate substantial portions of Laurel Hill, in violation of this

Guideline. (Ex. L to LHIA's October 7, 2019 appeal of conditional use authorization, plan sheet G2.08) Such excavation would also increase the time spent in construction/excavation activities. Thus, site plan contained in page 4 of the SUD is not required by the public necessity or convenience.

12. If the Board Overturns the Planning Commission's Certification of the Final EIR, the Board May Not Approve the SUD and Must Also Overturn the Approval of the Conditional Use/PUD Authorization by the Planning Commission.

For the reasons stated in LHIA's October 7, 2019 appeal of the Planning Commission's certification of the Final EIR for 3333 California Street, the Final EIR is inadequate, and if overturned by the Board of Supervisors, the Board may not approve the proposed SUD and must grant LHIA's appeal of the approval of the conditional use/planned unit development authorization. The Final EIR is the CEQA document upon which the approval of the SUD and conditional use/PUD would be based, and if the Final EIR is overturned, the approval of the conditional use/PUD must necessarily also be overturned and the proposed SUD cannot be approved. The Final EIR identified significant adverse impacts which the Project would have, so CEQA review must have been completed in a lawful manner before the conditional use/PUD authorizations can be valid and the proposed SUD could be lawfully approved.

The Preliminary Project Assessment explains that only the Board of Supervisors can change the height limits requested by the Project or change the Planning Commission Resolution 4109 that prohibits development of the parcel in the manner proposed by the Project. (Ex. M to June 8, 2018 Comments of Devincenzi on 3333 California Street Initial Study, PPA excerpts) Therefore, zoning changes are required to be approved by the Board of Supervisors for the project to proceed.

Planning Commission Resolution No. 20514 adopted on September 5, 2019 states at page 1 that a proposed Ordinance introduced on July 30 and amended on September 3, 2019 "would enable the Project" and at page 10 that "the Commission recommends approval of the proposed Ordinance" with certain modifications. Thus, the Planning Commission did not approve the rezoning needed for the project to be approved, and the proposed SUD would be needed to enable the project to be approved.

Conclusion

For the reasons stated herein, the Committee should recommend against the Planning Code amendments set forth in the proposed Special Use District, including without limitation the proposed changes to the height limit map for the main building, extinguishment of the legislated

setbacks and use restrictions of Resolution 4109, site plan set forth in the proposed SUD and any other Planning Code amendments recommended by the Commission. The public necessity, convenience and general welfare do not require the proposed SUD because the project was not designed in accordance with the Secretary's Standards, which would serve as feasible mitigation for the project's impacts on the historic resource, and alternatives are feasible that would reduce or avoid the project's impacts on the historic resource. However, the Planning Commission erroneously rejected such alternatives, as more fully discussed in LHIA's appeal as to certification of the Final EIR.

Further, the project would not provide open space usable by the occupants and, where appropriate, by the general public, at least equal to the open spaces required by this Code, as required for a planned unit development by Planning Code section 304(d)(3). Significant portions of the open spaces proposed by the Project would be shaded most of the day.

The proposed project would also be inconsistent with provisions of the Urban Design Element and Housing Element of the General Plan because the bulk of the buildings does not relate to the prevailing scale of development and would have an overwhelming or dominating appearance, and the height of buildings does not relate to important attributes of the city patterns and the height and character of existing development. Urban Design Element Policies 3.5 and 3.6. Policy 3.6 explains that it was intended to avoid disruption to the city's character from buildings that reach extreme bulk, by exceeding the prevailing height and prevailing horizontal dimensions of existing buildings in the area which "can overwhelm other buildings."

Respectfully submitted,

Laurel Heights Improvement Association of SF, Inc.

By: Kathryn Devincenzi, President

Kathum Devenera

Attachments: A through E

3333 California Street, San Francisco, CA File No. 190844 - Proposed Special Use District

Hearing Date: October 21, 2019

Record Number: 2015-014028CUA/PCA/MAP/DUA

EXHIBITS A-E

OFFICE OF HISTORIC PRESERVATION DEPARTMENT OF PARKS AND RECREATION

P.O. BOX 942896 SACRAMENTO, CA 94296-0001 (916) 445-7000 Fax: (916) 445-7053 calshpo@parks.ca.gov



August 31, 2018

John Rothman, President Kathryn Devincenzi, Vice President Laurel Heights Improvement Association of San Francisco 22 Iris Avenue San Francisco, California 94118

RE: Fireman's Fund Insurance Company, Determination of Eligibility National Register of Historic Places

Dear Mr. Rothman and Ms. Devincenzi:

I am writing to inform you that on August 29, 2018, Fireman's Fund Insurance Company was determined eligible for the National Register of Historic Places (National Register). As a result of being determined eligible for the National Register, this property has been listed in the California Register of Historical Resources, pursuant to Section 4851(a)(2) of the California Code of Regulations.

There are no restrictions placed upon a private property owner with regard to normal use, maintenance, or sale of a property determined eligible for the National Register. However, a project that may cause substantial adverse changes in the significance of a registered property may require compliance with local ordinances or the California Environmental Quality Act. In addition, registered properties damaged due to a natural disaster may be subject to the provisions of Section 5028 of the Public Resources Code regarding demolition or significant alterations, if imminent threat to life safety does not exist.

If you have any questions or require further information, please contact Jay Correia of the Registration Unit at (916) 445-7008.

Sincerely,

Julianne Polanco

State Historic Preservation Officer

Fireman's Fund Insurance Company Name of Property San Francisco, CA County and State

located in the center of the property. There is also a much smaller, one-story Service Building in the northwest corner of the property. The two buildings were designed to complement each other in character and materials. The Office Building is a glass walled structure with an open character. The Service Building is a brick building with a closed character. The Office Building is an International Style structure which despite its size is built into its sloping hillside site in such a way as to minimize its presence. Its four wings, each built for different functions, range from three floors to seven floors. It is characterized by its horizontality, its bands of windows separated by the thin edges of projecting concrete floors, and brick trim. The wings of the building frame outdoor spaces whose landscape design connects the outdoors with the indoors both functionally and conceptually. The landscape design includes outdoor spaces for use by employees, parking lots, circulation paths, and vegetation. The principal outdoor spaces are the Entrance Court, the Terrace, and small areas around the Auditorium.

Narrative Description

Section 7 - Table of Contents

SETTING	6
BUILDINGS Office Building Plan Structure, Materials, and Mechanical Systems Architecture	7 9
Service Building	10
LANDSCAPE	11
Landscape Features Associated with the Mid-1950s Design	11
Brick Wall	11
Parking Lots and Internal Circulation.	11
Topography in Relationship to the Spatial Organization and Function of the Site	12
Major Vegetation Features	12
Entrance Court	12
Terrace	13
Landscape Features Associated with the Mid-1960s Design	13
INTEGRITY	۳ ا ۱۵
Buildings	15
Landscape	10
Combined Buildings and Landscape	12

United States Department of the Inter.

National Park Service / National Regis..., of Historic Places Registration Form
NPS Form 10-900

OMB No. 1024 0018

Fireman's Fund Insurance Company
Name of Property

San Francisco, CA County and State

The Service Building is a steel frame and reinforced concrete structure enclosed in brick. Its openings are limited to glass and aluminum doors, a few window openings, and ventilating louvers in the boiler room.

LANDSCAPE

Landscape Features Associated with the Mid-1950s Design

The landscape was an integral part of the original design for the new corporate headquarters commissioned by Fireman's Fund in the mid-1950s. The San Francisco-based firm of Eckbo, Royston, and Williams (ERW) was the landscape architect for the original landscape design, completed in 1957, and its successor firm Eckbo, Dean, Austin, and Williams (EDAW) designed the landscape associated with the mid-1960s additions. The landscape setting around the modernist Office Building integrates functional needs (such as parking lots and internal circulation) with large areas of lawns and structured outdoor spaces (the Terrace, Entrance Court, and the Auditorium's outdoor spaces). The landscape is designed to promote the integration between architecture and landscape and uses forms and materials that are characteristic of modernist designs from the mid-twentieth century. (See Map 2 and Map 3)

Brick Wall

A brick wall, which takes different forms, provides a continuous and unifying element around the edges of the site. It exists as a retaining wall along the perimeter of the property's northeast, north, and west sides. Three gated entrances—one for the employees on California Street and the service and executive/visitor entrances on Laurel Street—are integrated into these sections of the wall. Each of these three entrances has a separate vehicular and pedestrian opening framed by brick pillars and secured by a double-leaf, metal rail gate when the property is closed. On the south side of the Executive/Visitor Gate, the perimeter wall is transformed into low retaining walls that define a series of planting beds along the west end and south side of the Executive Wing. The wall continues along the outer edge of the Terrace garden, along the bank that parallels Masonic Avenue, and then reconnects to the southeast corner of the Office Wing (east). Here rectangular brick planting beds have been incorporated into the wall, creating a zig-zag alignment similar to that found in other locations (i.e., on the bank along Laurel Street in the vicinity of the Entrance Court, on the southwest side of the Terrace, and in the bench wall that frames the eastern side of the Terrace).

Parking Lots and Internal Circulation

Two parking lots occupy the land in front (north) of the Office Building. The East Parking Lot and the West Parking Lot sit on either side of the entry drive, which aligns with the Employee Gate and an employee entrance (E2) into the Office Building

*United States Department of the Inter

National Park Service / National Register of Historic Places Registration Form
NPS Form 10-900

OMB No. 1024 0016

Fireman's Fund Insurance Company Name of Property

San Francisco, CA County and State

Executive/Visitor Entrance and was one of the two structured outdoor spaces in ERW's mid-1950s design. A narrow, rectangular planting bed (10' x 55') at the center of the asphalt paving creates a U-shaped drive, which connects to the Executive/Visitor Gate on Laurel Street. Sidewalks (exposed aggregate concrete) and narrow planting beds (with Japanese maple trees, azaleas, rhododeudron, New Zealand flax, and decorative rocks) line the sides of the Entrance Court's parking lot.

Terrace

In ERW's mid-1950s design, the principal structured outdoor space was the Terrace, which was intended as a place for employees to sit outside during lunch and at breaks. The Terrace is framed by the south side of the Office Wing and the east side of the Cafeteria Wing, where it is protected from the prevailing west wind and provides views to the east and south of San Francisco. This garden area has two levels. The lower level contains a biomorphic-shaped lawn and a paved patio, which wraps around the lawn's north and east sides. Steps along the east side of the upper-level terrace connect down to the lower level of the garden. Both the terrace and patio are paved with exposed aggregate concrete which is divided into rectangular panels by inlaid rows of red brick aligned with the window frames of the building. A brick retaining wall runs along the east and north sides of the lower-level patio. A raised planting bed, to the east of this wall, provides a visual boundary along the Terrace garden's east side. Three raised, circular beds (one on the upper-level terrace, one at the western edge of the lawn, and one at the north end of the lawn) each contain a tree; the sides of these circular beds are constructed of modular sections of pre-cast concrete. (See Map 3)

The plan for the Terrace provides a classic modernist composition. The biomorphic-shaped lawn contrasts with the rectilinear pattern of the pavement and the geometric form of the three, three circular tree beds, the zig-zag alignment of the wall along its eastern edge, and the curved arch of hedge in the raised planting bed along its eastern edge. The triangular relationship between the three circular tree beds adds yet another level to the geometry of the composition.

Benches, which appear to have been custom-built for the mid-1950s design, are attached to the interior face of the wall along the Terrace's east side. The wooden boards for the seat and back are attached by metal bolts to a metal frame, which is attached to the wall; both the wood and metal are painted black. Benches of a similar design (three wood boards mounted on a bent metal frame) are mounted onto the patio at various places along its inner edge.

Landscape Features Associated with the Mid-1960s Design

EDAW, the successor firm to the ERW partnership which was dissolved in 1958, prepared the landscape design that accompanied the mid-1960s additions to the Office Building. Just as the mid-1960s architectural additions were intended to be compatible with the original Office

United States Department of the Inte

National Park Service / National Regulation Floridation Floridat

Fireman's Fund Insurance Company Name of Property San Francisco, CA County and State

for sidewalks, the exposed aggregate concrete divided into panels by rows of brick in the pavement at the Terrace and in the Auditorium's west-side sitting area; the metal for the entrance gates; the custom-designed wood benches found in the Terrace and at the Entrance Court's outdoor sitting area; and the circular tree beds constructed of modular sections of concrete found in the Terrace the Auditorium's west-side sitting area.

Combined Buildings and Landscape

Together the buildings and landscape of the Fireman's Fund Home Office constitute a single resource that possesses integrity as measured by the seven aspects of integrity, as follows:

- 1) Location: The property is in its original location. It has not been moved.
- 2) Design: The property retains the essential elements of its design and the relationship between the parts of the design. Alterations to the design since the period of significance are relatively minor. It retains integrity of design.
- 3) Setting: The setting of the property is the same in all major respects as at the time it was first built. It retains integrity of setting.
- 4) Materials: The materials used in the buildings and landscape during the period of significance are all present. The property retains integrity of materials.
- 5) Workmanship: Evidence of workmanship, both from craftsmanship (brick and landscape features) and industrial processes (glass manufacture, concrete finishing, extrusion of aluminum) are all present. The property retains integrity of workmanship.
- 6) Feeling: Because the property as a whole its buildings and landscape are little altered and have been well-maintained, it retains integrity of feeling from the period of significance.
- 7) Association: Apart from the lettering on the outside wall near two entrance gates with the name of the current owner and occupant of the property, the property is almost indistinguishable from the time of its ownership by Fireman's Fund Insurance Company. Thus it retains integrity of association.

CHARACTER DEFINING FRATURES

Office Building

Plan of the building with wings open along the sides to the immediate landscape and to views of the distant city

Horizontality of massing

Horizontal lines of projecting edges of concrete floors

United States Department of the Inte National Park Service / National Regisser of Historic Places Registration Form NPS Form 10-900 OMB No 1024-0018

Fireman's Fund Insurance Company

Name of Property

San Francisco, CA
County and State

Horizontal bands of nearly identical window units

Uninterrupted glass walls

Window units of aluminum and glass

Circular garage ramps

Exposed concrete piers over the Garage

Wrought iron deck railings that match gates in the landscape

Brick accents and trim

Service Building

Massing of rectangular volumes

Brick walls with a minimum of openings

Landscape

Terrace, as the "centerpiece" of the landscape, designed to integrate the architecture of the building with the site and with the broader setting (through views of San Francisco); key character-defining features include its biomorphic-shaped lawn surrounded by a paved terrace and patio (paved with exposed aggregate concrete divided into panels by rows of brick); brick retaining wall and large planting bed around the east and north sides of the paved patio, custom-designed wood benches, and three circular tree beds constructed of modular sections of concrete.

Entrance Court, providing a connection between the Executive/Visitors Gate on Laurel Street and an entrance to the building on the west side of the Cafeteria Wing; key character-defining features include a central paved parking lot surrounded on its north, east, and west sides by narrow planting beds; exposed aggregate sidewalks along the north, east, and west sides of the parking lot; and a low free-standing brick wall along its north side.

Two outdoor sitting areas—one on the east side of the Auditorium and one on its west side—that connect to entrances into the Auditorium; key character-defining features for the area on the west side of the Auditorium include the pavement (exposed aggregate divided into panels by rows of bricks), circular tree bed constructed of modular sections of concrete; and metal benches; key character-defining features for the area on the east side of the Auditorium include the pavement (concrete divided into panels by wood inserted into expansion joints).

United States Department of the Into National Park Service / National Regular of Historic Places Registration Form NPS Form 10-900 OMP No. 1024-0018

Fireman's Fund Insurance Company Name of Property San Francisco, CA County and State

opportunities to adapt the modernist vocabulary for gardens to the new parks, educational and commercial campuses, and civic spaces being developed in the post war economic boom. This expansion in the profession of landscape architecture was led by a new generation of landscape architects, which included at its forefront Garrett Eckbo, Robert Royston, and Ed Williams—the three partners in the firm responsible for the landscape design of the Fireman's Fund site.

Landscape of the Corporate Headquarters

A new type of cultural landscape, created by a synthesis of modernist buildings and landscape design, developed during the post-World War II era as corporate headquarters moved out of the central city. Louise A. Mozingo, professor of landscape architecture at the University of California, Berkeley and the author of several articles and a book on this development, has noted that corporations moved out of the urban core for a number of reasons. First and foremost, the larger sites available in the suburbs allowed corporations to construct new buildings that fit their current management structure and operational needs. "Efficient office organization now required flexible, expandable offices with movable partitions rather than fixed walls. The dense, constricted downtown became untenable." 102

By the early 1950s, insurance companies had spearheaded this exodus from the central business district to the peripheral residential areas of the city or to suburban sites. An article in Business Week in 1951, quoted by Mozingo in her article "The Corporate Estate in the USA, 1954-1964," noted that there were not enough downtown spaces "in the right places" to meet companies' needs for expansion. The management of these insurance companies believed that it was hard to "hire first class personnel" to work in downtowns that were viewed as undesirable environments ("Management thinks workers will be happier looking at trees instead of grimy buildings and listening to birds instead of honking taxis." 103) The integration of the architecture and landscape typically featured a low-rise, centrally-sited, modernist building(s), an entry drive and large parking lots which were a reflection of the domination of the automobile as the preferred means of transportation for employees and visitors, and an enveloping landscape setting or "green surround" which was often designed to resemble an idealized suburban space. 104 The buildings and parking lots occupied only a fraction of a site's acreage and the landscaped lawns and outdoor spaces contributed to the "seamlessness between the interior and exterior space, which was a common goal of the modernist architectural aesthetic." 105 Mozingo noted that corporations "considered the designed landscape essential to the functioning of their management

¹⁰² Mozingo, Campus, Estate, and Park, 258

¹⁰³ Mozingo, The Corporate Estate, 28

¹⁰⁴ Ibid , 34.

¹⁰⁵ Ibid., 44.

Fireman's Fund Insurance Company Name of Property

San Francisco, CA County and State

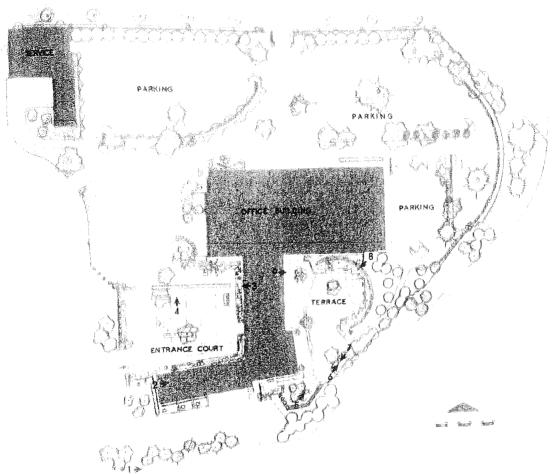


Figure 2. Site Plan showing features ca. 1957–1963. Source: Garrett Eckbo, *Urban Landscape Design*, 1964

TREANORHL

August 20, 2019

3333 California Street San Francisco, California

Preservation Alternative - Feasibility Evaluations

The Laurel Heights Improvement Association asked TreanorHL to assist in further developing their Preservation Alternative and Community Variant for 3333 California Street in San Francisco. Additionally, the organization wished us to verify that the Preservation Alternative and Community Variant are feasible by confirming the possible number of units per building and the approximate size of the various units.

EXISTING PLAN REVIEW

- 1. TreanorHL reviewed the existing building drawings on file for 3333 California Street at the Records Department of the San Francisco Building Department.
 - The review of the plans indicated the light courts in the Preservation Alternative and Community Variant should be relocated to facilitate the retention of the existing stairwells and elevator banks.

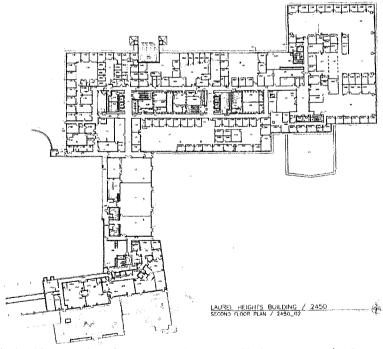


Figure 1. The red dashed boxes identify proposed location of light courts in the Preservation Alternative and Community Variant.

- Reviewing the existing drawings confirmed that the structural columns are fairly regular throughout the main building and wing. Adapting the spaces for residential use can easily be done without impacting the existing column grid.
- The existing column grid in the main part of the building has a 30-foot spacing. The proposed project calls for creating a 40-foot passthrough all the way up the existing building in the north south direction. This proposed 40-foot wide passthrough in the existing building would be expensive as it does not align with the existing grid. Maintaining the 30-foot grid in the proposed passthrough would require less structural modification to the existing building.
- The building was likely designed to accommodate the current structure, not additional stories. So, increasing the height of the building by adding additional floors will require significant effort to upgrade the existing structure.¹
- 2. The Preservation Alternative and Community Variant retain the southern wing of the existing structure. The existing wing has a more irregular structural column grid than the main part of the building. However, adapting the wing space for residential use will not be any more challenging than in any other part of the structure.
 - Exiting was not reviewed, but if additional exiting is needed there are ample opportunities for an additional stair in the wing.
 - Accessibility would be provided, as in the rest of the building, by means of elevators and other features that meet the California Accessibility code.
 - If water damage is present in the wing it can be remediated and corrected.

FEASIBILITY EVALUATIONS

- The attached analysis shows that the Preservation Alternative scheme and the Community Variant are feasible in terms of providing equivalent residential units to that of the proposed project. To do this, TreanorHL compared the gross square footage with a reasonable net square footage for the proposed building type, and then calculated how many units of various sizes (studio, one and two bedrooms, etc.) could reasonably fit into the net square footage.
 - The California Street buildings (both front and back) were calculated using the high end and low end of the efficiency factor for residential construction. This did not change the number of units per building, but it did affect the size of the units within the structures.
 - Both the Preservation Alternative scheme and the Community Variant provide units that are comparable in size and type to those identified in the proposed project.

¹ Merrill, Fred H. "Fireman's Fund Insurance Company - 3333 California Street." Received by Mr. D. L. Devincenzi, 7 Feb. 1964.

CALIFORNIA - FRONT (BASE)		em Herricheuter gest spesielse	CAUFORNIA - FRONT (VARIANT)	Täikesti saaditti 1994essa Seeta	Charles at the large	Full Preserva	arian e sale e	nikala mananan	######################################	Community V	WHITE CONTRACTOR	Chapterth the research	Promoved Com.	and the second of	en en la	Samura and Haberranas T	2400000	5210909-10000909	-Ericana Promosinanos	of Earlies in the Section of the Sec	somethic record
Floor Plate Area:	30,000 SF	Appellation of the Control of Con	Floor Plate Area:	30,000 SF	NAMES DESCRIPTION	Total NSF:	tion unit a		90,000	Total NSF:	variant Uni				vation Unit 8	reakdown (.B			Variant Uni		
Number of Floors:	4 Floors		Number of Floors:	4 Floors		Total # Units			56	Total # Units:			90,000 64	Total NSF: Total # Uni		1.0	12,000 56	Total NSF:		-	102,000
Total Gross SF:	120,000 SF		Total Gross SF:	120,000 SF		TOTAL W CHIES	•		30	TOTAL IF OTHES:	·		64	lotal # Onl	ts:		56	Total # Unit	s:		64
			7000 07000 07	120,000 31			SF	Units	Total		SF	Units	Total			11-14-					
Efficiency Factor:	0.75	0.85	Efficiency Factor:	0.75	0.85	Junior	<u> 31</u>	OHIES	TULBI	Junior	35	Units	<u>Total</u>	Junior	<u>SF</u>	<u>Units</u>	Total	Junior	SF	<u>Units</u>	Total
Total NSF:	90,000 SF	102,000 SF	Total NSF:	90,000 SF	102,000 SF	1-Bed				1-Bed											v
	,	,	100011011	30,000 31	102,000 31	2-Bed	896	7	6,272	2-Bed	896	14	12,544	1-Bed 2-Bed	1,100	7	7,700	1-Bed 2-Bed	1.150	14	16,100
Full Preservation Unit # Total	56	56	Community Variant Unit # Total:	64	64	3-Bed	1.410		31,020	2-bed 3-Bed	1.410		12,544 52,170	2-860 3-86d	1,100		7,700 34.100	2-Bed	1,150		57,350
Average Unit SF:	1.607 SF	1,821 SF	Average Unit SF:	1,406 SF	1,594 SF	4-Bed	1,410		52,785	4-Bed	2,000		26,000	4-Sed	2,200		i9,400	4-Bed	2,200		28,600
•	•		, manage a mesor,	1,400 31	1,554 51	TOTAL	7,555		90,077	TOTAL	2,000	64		TOTAL	2,200	56 10		TOTAL	2,200		102,050
						TOTAL		HOLOMBIA CITA	20,000	TOTAL	308	Witchest P. 2012/2016	20,714	TOTAL	189	Samuel Park	(1)EUM	IOIAL	250		102,030
CALIFORNIA - BACK (BASE)			CALIFORNIA - BACK (VARIANT)			Full Preserva	tion Unit R	eakdown (.)	51	Community V	Jariant Uni	t Breakdown	(.75)	Full Presen	vation Unit R	reakdown (.85	5)	Community	Variant Uni	Breakdown	n (85)
Floor Plate Area:	19,293 SF		Floor Plate Area:	19,293 SF		Total NSF:	3.047.04.02		57,879	Total NSF:	· unionit gam		57,879	Total NSF:	Turium unas p		5,596	Total NSF:			65,596
Number of Floors	4		Number of Floors:	4		Total # Units			52	Total # Units:			60	Total # Uni	ts:		52	Total # Unit	t:		60
Total Gross SF	77,172 SF		Total Gross SF	77.172 SF		7-12777 - 1112															
				,			SF	Units	Total		SF	Units	Total		SF	Units	Total		SE	Units	Total
Efficiency Factor:	0.75	0.85	Efficiency Factor:	0.75	0.85	Junior	_			Junior				Junior				Junior	-		
Total NSF	57,879 SF	65,596 SF	Total NSF	57,879 SF	65,596 SF	1-Bed	600	8	4,800	1-Bed	600	22 :	13,200	1-Bed	700	8	5,600	1-Bed	625	22	13,750
						2-Bed	896	20	17,920	2-Bed	896	15 :	13,440	2-Bed	1,000	20 2	0,000	2-Bed	925	15	13,875
Full Preservation Unit # Total	52	52	Community Variant Unit # Total:	60	60	3-Bed	1.450		34,800	3-Bed	1,410	16	22,560	3-Bed	1,650	24 3	19,600	3-Bed	1,500	16	24,000
Average Unit SF:	1,113 SF	1,261 SF	Average Unit SF:	965 SF	1,093 SF	4-Bed	_,			4-Bea	2,000	7 :	14,000	4-Bed				4-8ed	2,000	7	14,000
•						TOTAL		52	57,520	TOTAL	-	60 (53,200	TOTAL		52 6	5,200	TOTAL		60	65,625
MAYFAIR BUILDING (BASE)	regular ya mada a 1900 ya 1911, amin'a ya 1911 ya 1911 Diguna (1911) a Talahan a 1911 ya 1911 ya 1911 ya 1911		MAYFAIR BUILDING (VARIANT)			Full Preserva	tion Unit B	eakdown		Community V	/arlant Uni	t Breakdown	430.40								
Floor Plate Area:	13,500 SF		Floor Plate Area:	13.500 SF		Total NSF.			40,500	Total NSF:			10,500								
Number of Floors	4 Floors		Number of Floors:	4 Floors		Total # Units			40	Total # Units:			52								
Total Gross SF	54,000 SF		Total Gross SF:	54,000 SF																	
1 4 1 4 1 4 1 4 1 4 1 4 1 4 1 4 1 4 1 4	- /						SF	Units	Total		SF	Units	Total								
Efficiency Factor	0.75		Efficiency Factor:	0.75		junior	200		_	Junior	_										
Total NSF:	40,500 NSF		Total NSF:	40,500 NSF		1-Bed	800	10	8,000	1-Bed	600	23 :	13,800								
Total No.	14,505 1101		1010711117	10,000		2-Bed	1,100		33,000	2-Bed	900	27 2	24,300								
Full Preservation Unit # Total*	40		Community Variant Unit # Total:	52		3-Bed				3-Bed	1,400	2	2,800								
Average Unit SF:	1,013 NSF		Average Unit SF:	779 NSF		4-Bed				4-Bed		_									
Andreas States	-7					TOTAL	7	40	41,00D	TOTAL	75	52	10,900								
WALNUT BUILDING - PORTICO R	ETAINED (BASE)	marity description	WALNUT BUILDING - PORTICO RET.	AINED (VARIANT)	W. Carlotte	Full Preserva	tion Unit B	eakdown		Community V	ariant Uni										
WALNUT BUILDING - PORTICO R			WALNUT BUILDING - FORTICO RET	AINED (VARIANT) 31,825 SF		Full Preserva	tion Unit B		95,475	Total NSF:			57,081								
Floor Plate Area:	31,825 SF	manus en Description							95,475 118												
		mano e e e e e e e e e e e e e e e e e e e	Floor Plate Area:	31,825 SF		Total NSF:			118	Total NSF:		71	57,081 228								
Floor Plate Area: Number of Floors:	31,825 SF 4 Floors	majora a These estimates	Floor Plate Area: Number of Floors:	31,825 SF 7 Floors		Total NSF:	<u>SF</u>	<u>Units</u>	118 Total	Total NSF: Total # Units:	<u>SF</u>	<u>Units</u>	57,081 228 <u>Total</u>								
Floor Plate Area: Number of Floors:	31,825 SF 4 Floors		Floor Plate Area: Number of Floors:	31,825 SF 7 Floors 222,775 SF 0.75		Total NSF: Total # Units	<u>동</u> 525	<u>Units</u> 17	118 <u>Total</u> 8,925	Total NSF: Total # Units: Junior	<u>SF</u> 525	Units 17	57,081 228 <u>Total</u> 8,925								
Floor Plate Area: Number of Floors: Total Gross SF	31,825 SF 4 Floors 1,27,300 SF		Floor Plate Area: Number of Floors: Total Gross SF	31,825 SF 7 Floors 222,775 SF		Total NSF: Total # Units Junior 1-Bed	<u>SE</u> 525 600	<u>Units</u> 17 44	118 <u>Total</u> 8,925 26,400	Total NSF: Total # Units: Junior 1-Bed	<u>SF</u> 525 600	Units 17 143	57,081 228 <u>Total</u> 8,925 35,800								
Floor Plate Area: Number of Floors: Total Gross SF- Efficiency Factor	31,825 SF 4 Floors 1,27,300 SF 0,75		Floor Plate Area: Number of Floors: Total Gross SF- Efficiency Factor:	31,825 SF 7 Floors 222,775 SF 0.75 167,081 NSF		Total NSF: Total # Units Junior 1-Bed 2-Bed	<u>SE</u> 525 600 900	<u>Units</u> 17 44 40	118 <u>Total</u> 8,925 26,400 36,000	Total NSF: Total # Units: Junior 1-Bed 2-Bed	<u>SF</u> 525 600 900	Units 17 143 8	77,081 228 <u>Total</u> 8,925 35,800								
Floor Plate Area: Number of Floors: Total Gross SF- Efficiency Factor	31,825 SF 4 Floors 1,27,300 SF 0,75		Floor Plate Area: Number of Floors: Total Gross SF- Efficiency Factor:	31,825 SF 7 Floors 222,775 SF 0.75 167,081 NSF		Total NSF: Total # Units Junior 1-Bed 2-Bed 3-Bed	<u>SE</u> 525 600	<u>Units</u> 17 44 40	118 <u>Total</u> 8,925 26,400	Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed	<u>SF</u> 525 600 900 1,300	Units 17 143 4 47 4	7,081 228 <u>Total</u> 8,925 35,800 12,300								
Floor Plate Area: Number of Floors: Total Gross SF Efficiency Factor Total NSF:	31,825 SF 4 Floors 1.27,300 SF 0.75 95,475 NSF		Floor Plate Area: Number of Floors: Total Gross SF- Efficiency Factor: Total NSF:	31,825 SF 7 Floors 222,775 SF 0.75 167,081 NSF		Total NSF: Total # Units Junior 1-Bed 2-Bed 3-Bed 4-Bed	<u>SF</u> 525 600 900 1,450	<u>Units</u> 17 44 40 17	118 <u>Total</u> 8,925 26,400 36,000 24,650	Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed	<u>SF</u> 525 600 900	Units 17 143 4 47 4 14 :	7,081 228 <u>Total</u> 8,925 35,800 12,300 18,200 12,600								
Floor Plate Area: Number of Floors: Total Gross SF Efficiency Factor Total NSF: Full Preservation Unit # Total:	31,825 SF 4 Floors 1,27,300 SF 0,75 95,475 NSF		Floor Plate Area: Number of Floors: Total Gross SF Efficiency Factor: Total NSF: Community Variant Unit # Total:	31,825 SF 7 Floors 222,775 SF 0.75 167,081 NSF		Total NSF: Total # Units Junior 1-Bed 2-Bed 3-Bed	<u>SF</u> 525 600 900 1,450	<u>Units</u> 17 44 40	118 <u>Total</u> 8,925 26,400 36,000 24,650	Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed	<u>SF</u> 525 600 900 1,300	Units 17 143 4 47 4	7,081 228 <u>Total</u> 8,925 35,800 12,300 18,200 12,600								
Floor Plate Area: Number of Floors: Total Gross SF Efficiency Factor Total NSF: Full Preservation Unit # Total: Average Unit SF:	31,825 SF 4 Floors 127,300 SF 0.75 95,475 NSF 118 809 NSF		Floor Plate Area: Number of Floors: Total Gross SEP- Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF:	31,825 SF 7 Floors 222,775 SF 0.75 167,081 NSF 228 733 NSF		Total NSF: Total # Units Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL	SE 525 600 900 1,450	Units 17 44 40 17	118 <u>Total</u> 8,925 26,400 36,000 24,650	Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL	\$ <u>F</u> 525 600 900 1,300 1,800	Units 17 143 1 47 4 14 7	7015 7015 7015 8,925 35,800 12,300 12,300 12,300 12,600 12,600								
Floor Plate Area: Number of Floors: Total Gross SF* Effliciency Factor Total NSF: Full Preservation Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING = POR	31,825 SF 4 Floors 127,300 SF 0.75 95,475 NSF 118 809 NSF		Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - PORTIG	31,825 SF 7 Floors 222,775 SF 0.75 167,081 NSF 228 733 NSF		Total NSF: Total # Units Junior 1-8ed 2-8ed 3-8ed 4-8ed TOTAL	SE 525 600 900 1,450	Units 17 44 40 17	118 Total 8,925 26,400 36,000 24,650 95,975	Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL	\$ <u>F</u> 525 600 900 1,300 1,800	Units 17 143 4 47 4 14 : 7 : 228 1	70tal 8,925 35,800 12,300 18,200 12,600 57,825								
Floor Plate Area: Number of Floors: Total Gross SF- Efficiency Factor Total NSF: Full Preservation Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING = POR Floor Plate Area:	31,825 SF 4 Floors 1,27,300 SF 0.75 95,475 NSF 118 809 NSF		Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - PORTIG Floor Plate Area:	31,825 SF 7 Floors 222,775 SF 0.75 167,081 NSF 228 733 NSF		Total NSF: Total # Units Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Full Pricerys Total NSF:	5 <u>F</u> 525 600 900 1,450	Units 17 44 40 17	Total 8,925 26,400 36,000 24,650 95,975	Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Community V Total NSF:	\$ <u>F</u> 525 600 900 1,300 1,800	Units 17 143 4 47 4 14 : 7 : 228 1	77,081 228 Total 8,925 35,800 12,300 18,200 12,600 57,825								
Floor Plate Area: Number of Floors: Total Gross SF* Effliciency Factor Total NSF: Full Preservation Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING = POR	31,825 SF 4 Floors 1.27,300 SF 0.75 95,475 NSF 118 809 NSF		Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - PORTIG Floor Plate Area: Number of Floors:	31,825 SF 7 Floors 222,775 SF 0.75 167,081 NSF 228 733 NSF		Total NSF: Total # Units Junior 1-8ed 2-8ed 3-8ed 4-8ed TOTAL	5 <u>F</u> 525 600 900 1,450	Units 17 44 40 17	118 Total 8,925 26,400 36,000 24,650 95,975	Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL	\$ <u>F</u> 525 600 900 1,300 1,800	Units 17 143 4 47 4 14 : 7 : 228 1	70tal 8,925 35,800 12,300 18,200 12,600 57,825								
Floor Plate Area: Number of Floors: Total Gross SF- Efficiency Factor Total NSF: Full Preservation Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING = POR Floor Plate Area:	31,825 SF 4 Floors 1,27,300 SF 0.75 95,475 NSF 118 809 NSF		Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - PORTIG Floor Plate Area:	31,825 SF 7 Floors 222,775 SF 0.75 167,081 NSF 228 733 NSF		Total NSF: Total # Units Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Full Pricerys Total NSF:	\$E 525 600 900 1,450 450 Unit Br	<u>Units</u> 17 44 40 17 118 eakdown	118 Total 8,925 26,400 36,000 24,650 95,975 53,610 292	Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Community V Total NSF:	5E 525 600 900 1,300 1,800	Units 17 143 1 47 4 14 : 7 : 228 1 t Breakdown	701 228 Total 8,925 35,800 12,300 12,500 12,600 57,825 53,610 340								
Floor Plate Area: Number of Floors: Total Gross SF- Efficiency Factor Total NSF- Full Preservation Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - POR Floor Plate Area: Number of Floors	31,825 SF 4 Floors 1.27,300 SF 0.75 95,475 NSF 118 809 NSF TICO RETAINED (BASE) SF Floors 362,300 SF		Floor Plate Area: Number of Floors: Total Gross SP Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - PORTIC Floor Plate Area: Number of Floors: Total Gross SF:	31,825 SF 7 Floors 222,775 SF 0.75 167,081 NSF 228 733 NSF CO RETAINED (VARIANT) SF Floors 362,300 SF		Total NSF: Total # Units Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Full Preserva Total MSF: Total # Units	SE 525 600 900 1,450 tion Unit B	Units 17 44 40 17 118 eakdown	118 Total 8,925 26,400 36,000 24,650 95,975 53,610 292 Total	Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Community V Total NSF: Total # Units:	\$F 525 600 900 1,300 1,800 1,800	Units 17 143 47 14 7 228 11 t Breakdown 2!	77,081 228 Total 8,925 35,800 12,300 12,300 12,600 57,825 53,610 340								
Floor Plate Area: Number of Floors: Total Gross SF- Efficiency Factor Total NSF- Full Preservation Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - POR Floor Plate Area: Number of Floors	31,825 SF 4 Floors 1.27,300 SF 0.75 95,475 NSF 118 809 NSF TICO RETAINED (BASE) SF Floors 362,300 SF		Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - PORTH Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor:	31,825 SF 7 Floors 222,775 SF 0.75 167,081 NSF 228 733 NSF CORTAINED IVARIANT SF Floors 362,300 SF		Total NSF: Total # Units Junior 1-8ed 2-8ed 3-8ed 4-8ed TOTAL Full Preserva Total NSF: Total # Units	\$\frac{\subseteq}{525} \\ \frac{600}{900} \\ \frac{1}{450} \end{array}\$	Units 17 44 40 17 118 eakdown 2	118 Total 8,925 26,400 36,000 24,650 95,975 53,610 292 Total 5,500	Total NSF: Total # Units: Junior 1-8ed 2-8ed 3-8ed 4-8ed TOTAL Community V Total NSF: Total # Units: Junior	SE 525 600 900 1,300 1,800 1,800 2ariant Uni	Units 17 143 1 47 4 14 : 7 228 10 t Breakdown 2!	77,081 228 Total 8,925 35,800 12,300 12,600 57,825 53,610 340 Total 5,100								
Floor Plate Area: Number of Floors: Total Gross SF- Efficiency Factor Total NSF: Full Preservation Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - POR Floor Plate Area: Number of Floors Total Gross SF-	31,825 SF 4 Floors 1.27,300 SF 0.75 95,475 NSF 118 809 NSF TICO RETAINED (BASE) SF Floors 362,300 SF		Floor Plate Area: Number of Floors: Total Gross SP Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - PORTIC Floor Plate Area: Number of Floors: Total Gross SF:	31,825 SF 7 Floors 222,775 SF 0.75 167,081 NSF 228 733 NSF CO RETAINED (VARIANT) SF Floors 362,300 SF		Total NSF: Total # Units Junior 1-8ed 2-8ed 3-8ed 4-8ed TOTAL FULL PRESENTE Total # Units Junior 1-8ed	5E 525 600 900 1,450 (tion Unit B)	Units 17 44 40 17 118 eakdown 2 Units 10 145	118 Total 8,925 26,400 24,650 24,650 25,975 53,610 292 Total 5,500 94,250	Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Community V Total NSF: Total # Units: Junior 1-Bed	5 <u>F</u> 525 600 900 1,300 1,800 72 Pariant Uni	Units 17 228 11 18 reakdown 22 Units 10 204 11	77,081 228 Total 8,925 35,800 12,300 18,200 17,600 57,825 53,610 340 Total 5,100 22,400								
Floor Plate Area: Number of Floors: Total Gross SF- Effliciency Factor Total NSF: Full Preservation Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - POR: Floor Plate Area: Number of Floors Total Gross SF- Efficiency Factor.	31,825 SF 4 Floors 1.27,300 SF 0.75 95,475 NSF 118 809 NSF TICO RETAINED (BASE) SF Floors 362,300 SF		Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - PORTIS Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor: Total NSF:	31,825 SF 7 Floors 222,775 SF 0.75 167,081 NSF 228 733 NSF 20 RETAINED IVARIANT) SF Floors 362,300 SF 0.70 253,610 NSF		Total NSF: Total # Units Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Full Preservi Total NSF: Total # Units Junior 1-Bed 2-Bed	\$\subseteq \frac{\subseteq \subseteq \subseteq \frac{\subseteq \subseteq \frac{\subseteq \subseteq \frac{\subseteq \subseteq \subseteq \subseteq \frac{\subseteq \subseteq \subseteq \subseteq \frac{\subseteq \subseteq \	Units 17 44 40 17 118 eskdown 10 145 97	118 Total 8,925 26,400 36,000 24,650 95,975 53,610 292 Total 5,500 94,250 97,000	Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Community V Total NSF: Total # Units: Junior 1-Bed 2-Bed	\$E 525 600 900 1,300 1,800 24Hant Uni \$E 510 600	Units 17 143 47 47 14 14 27 228 31 48 48 49 21 21 21 21 21 21 21 21 21 21 21 21 21	57,081 228 <u>Total</u> 8,925 35,800 12,300 12,300 12,600 57,825 53,610 340 <u>Total</u> 5,100 22,400 82,800								
Floor Plate Area: Number of Floors: Total Gross SF- Effliciency Factor Total NSF: Full Preservation Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - POR: Floor Plate Area: Number of Floors Total Gross SF- Efficiency Factor.	31,825 SF 4 Floors 1.27,300 SF 0.75 95,475 NSF 118 809 NSF TICO RETAINED (BASE) SF Floors 362,300 SF 0.70 253,610 NSF		Floor Plate Area: Number of Floors: Total Gross St- Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - PORTIS Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor: Total NSF: Community Variant Unit # Total:	31,825 SF 7 Floors 222,775 SF 0.75 167,081 NSF 228 733 NSF CO RETAINED IVARIANT1 SF Floors 362,300 SF 0.70 253,610 NSF		Total NSF: Total # Units Junior 1-8ed 2-8ed 3-8ed 4-8ed TOTAL Full PIRSENZ Total # Units Junior 1-8eo 2-8ed 3-8ed	5E 525 600 900 1,450 (tion Unit B)	Units 17 44 40 17 118 eskdown 10 145 97	118 Total 8,925 26,400 24,650 24,650 25,975 53,610 292 Total 5,500 94,250	Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Community V Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed	5 <u>F</u> 525 600 900 1,300 1,800 72 Pariant Uni	Units 17 143 47 47 14 14 27 228 31 48 48 49 21 21 21 21 21 21 21 21 21 21 21 21 21	77,081 228 Total 8,925 35,800 12,300 18,200 17,600 57,825 53,610 340 Total 5,100 22,400								
Floor Plate Area: Number of Floors: Total Gross SF- Efflidency Factor Total NSF: Full Preservation Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING = POR: Floor Plate Area: Number of Floors Total Gross SF- Efficiency Factor. Total NSF:	31,825 SF 4 Floors 1.27,300 SF 0.75 95,475 NSF 118 809 NSF TICO RETAINED (BASE) Floors 362,300 SF 0.70 253,610 NSF		Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - PORTIS Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor: Total NSF:	31,825 SF 7 Floors 222,775 SF 0.75 167,081 NSF 228 733 NSF 20 RETAINED IVARIANT) SF Floors 362,300 SF 0.70 253,610 NSF		Total NSF: Total II Units Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Full Presenva Total NSF- Total II Units Junior 1-Beo 2-Bed 3-Bed 3-Bed	SE 525 600 900 1,450 William Unit Bi	Units 17 40 17 118 eakdown 10 145 97 40	118 Total 8,925 26,400 36,000 24,650 95,975 53,610 292 Total 5,500 94,250 97,000 56,400	Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Community V. Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed 4-Bed	\$E 525 600 900 1,300 1,800 24Hant Uni \$E 510 600	Units 17 143 1 47 6 14 : 7 : 228 1 § Breakdown 2! Units 10 204 1: 92 : 34 .	77,081 228 Total 8,925 35,800 12,300 12,600 37,825 53,610 340 Total 5,100 22,400 82,800 43,350 0								
Floor Plate Area: Number of Floors: Total Gross SF Efficiency Factor Total NSF: Full Preservation Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - POR Floor Plate Area: Number of Floors Total Gross SF Efficiency Factor. Total NSF: Full Preservation Unit # Total-	31,825 SF 4 Floors 1.27,300 SF 0.75 95,475 NSF 118 809 NSF TICO RETAINED (BASE) SF Floors 362,300 SF 0.70 253,610 NSF		Floor Plate Area: Number of Floors: Total Gross St- Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - PORTIS Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor: Total NSF: Community Variant Unit # Total:	31,825 SF 7 Floors 222,775 SF 0.75 167,081 NSF 228 733 NSF CO RETAINED IVARIANT1 SF Floors 362,300 SF 0.70 253,610 NSF		Total NSF: Total # Units Junior 1-8ed 2-8ed 3-8ed 4-8ed TOTAL Full PIRSENZ Total # Units Junior 1-8eo 2-8ed 3-8ed	SE 525 600 900 1,450 William Unit Bi	Units 17 44 40 17 118 eskdown 10 145 97	118 Total 8,925 26,400 36,000 24,650 95,975 53,610 292 Total 5,500 94,250 97,000 56,400	Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Community V Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed	\$E 525 600 900 1,300 1,800 24Hant Uni \$E 510 600	Units 17 143 47 47 14 14 27 228 31 48 48 49 21 21 21 21 21 21 21 21 21 21 21 21 21	77,081 228 Total 8,925 35,800 12,300 12,600 37,825 53,610 340 Total 5,100 22,400 82,800 43,350 0								
Floor Plate Area: Number of Floors: Total Gross SF- Efficiency Factor Total NSF: Full Preservation Unit # Total: Average Unit SF: HISTORIC_MAIN BUILDING - POR Floor Plate Area: Number of Floors Total Gross SF- Efficiency Factor Total NSF: Full Preservation Unit # Total- Average Unit SF:	31,825 SF 4 Floors 1.27,300 SF 0.75 95,475 NSF 118 809 NSF TICO RETAINED (BASE) SF Floors 362,300 SF 0.70 253,610 NSF		Floor Plate Area: Number of Floors: Total Gross SP: Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - PORTIC Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF:	31,825 SF 7 Floors 222,775 SF 0.75 167,081 NSF 228 733 NSF CO RETAINED IVARIANT1 SF Floors 362,300 SF 0.70 253,610 NSF		Total NSF: Total II Units Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Full Presenva Total NSF- Total II Units Junior 1-Beo 2-Bed 3-Bed 3-Bed	SE 525 600 900 1,450 William Unit Bi	Units 17 40 17 118 eakdown 10 145 97 40	118 Total 8,925 26,400 36,000 24,650 95,975 53,610 292 Total 5,500 94,250 97,000 56,400	Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Community V. Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed 4-Bed	\$E 525 600 900 1,300 1,800 24Hant Uni \$E 510 600	Units 17 143 1 47 6 14 : 7 : 228 1 § Breakdown 2! Units 10 204 1: 92 : 34 .	77,081 228 Total 8,925 35,800 12,300 12,600 37,825 53,610 340 Total 5,100 22,400 82,800 43,350 0								
Floor Plate Area: Number of Floors: Total Gross SF- Effliciency Factor Total NSF: Full Preservation Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - POR: Floor Plate Area: Number of Floors Total Gross SF- Effliciency Factor. Total NSF: Full Preservation Unit # Total- Average Unit SF: BASE	31,825 SF 4 Floors 1.27,300 SF 0.75 95,475 NSF 118 809 NSF ITCO RETAINED (BASE) Floors 362,300 SF 0.70 253,610 NSF	drawings A6.00	Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: #ISTORIC MAIN BUILDING . PORTIG Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: VARIANT	31,825 SF 7 Floors 222,775 SF 0.75 167,081 NSF 228 733 NSF 2733 NSF 20 RETAINED IVARIANT) SF Floors 362,300 SF 0.70 253,610 NSF 340 746 NSF		Total NSF: Total II Units Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Full Presenva Total NSF- Total II Units Junior 1-Beo 2-Bed 3-Bed 3-Bed	SE 525 600 900 1,450 William Unit Bi	Units 17 40 17 118 eakdown 10 145 97 40	118 Total 8,925 26,400 36,000 24,650 95,975 53,610 292 Total 5,500 94,250 97,000 56,400	Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Community V. Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed 4-Bed	\$E 525 600 900 1,300 1,800 24Hant Uni \$E 510 600	Units 17 143 1 47 6 14 : 7 : 228 1 § Breakdown 2! Units 10 204 1: 92 : 34 .	77,081 228 Total 8,925 35,800 12,300 12,600 37,825 53,610 340 Total 5,100 22,400 82,800 43,350 0								
Floor Plate Area: Number of Floors: Total Gross SF Efficiency Factor Total NSF: Full Preservation Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - POR Floor Plate Area: Number of Floors Total Gross SF Efficiency Factor. Total NSF: Full Preservation Unit # Total: Average Unit SF: BASE Proposed Project Unit Count	31,825 SF 4 Floors 1.27,300 SF 0.75 95,475 NSF 118 809 NSF Floors 362,300 SF 0.70 253,610 NSF 292 869 NSF	drawings A6.00	Floor Plate Area: Number of Floors: Total Gross SF- Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: HISTOBIC MAIN BUILDING - PORTIF Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: VARIANT Proposed Project Unit Count	31,825 SF 7 Floors 222,775 SF 0.75 167,081 NSF 228 733 NSF SF Floors 362,300 SF 0.70 253,610 NSF 340 746 NSF	lve Unit Count	Total NSF: Total II Units Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Full Presenva Total NSF- Total II Units Junior 1-Beo 2-Bed 3-Bed 3-Bed	SE 525 600 900 1,450 William Unit Bi	Units 17 40 17 118 eakdown 10 145 97 40	118 Total 8,925 26,400 36,000 24,650 95,975 53,610 292 Total 5,500 94,250 97,000 56,400	Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Community V. Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed 4-Bed	\$E 525 600 900 1,300 1,800 24Hant Uni \$E 510 600	Units 17 143 1 47 6 14 : 7 : 228 1 § Breakdown 2! Units 10 204 1: 92 : 34 .	77,081 228 Total 8,925 35,800 12,300 12,600 37,825 53,610 340 Total 5,100 22,400 82,800 43,350 0								
Floor Plate Area: Number of Floors: Total Gross SF- Efficiency Factor Total NSF: Full Preservation Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - POR Floor Plate Area: Number of Floors Total Gross SF- Efficiency Factor. Total NSF: Full Preservation Unit # Total- Average Unit SF: BASE Proposed Prolect Unit Count Junior 27	31,825 SF 4 Floors 1.27,300 SF 0.75 95,475 NSF 118 809 NSF Floors 362,300 SF 0.70 253,610 NSF 292 869 NSF	drawings A6.00	Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - PORTIS Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: VARIANT Proposed Project Unit Count Junior 27	31,825 SF 7 Floors 222,775 SF 0.75 167,081 NSF 228 733 NSF CORTAINED (VARIANT) SF Floors 362,300 SF 0.70 253,610 NSF 340 746 NSF	<u>ive Unit Count</u> 27	Total NSF: Total II Units Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Full Presenva Total NSF- Total II Units Junior 1-Beo 2-Bed 3-Bed 3-Bed	SE 525 600 900 1,450 William Unit Bi	Units 17 40 17 118 eakdown 10 145 97 40	118 Total 8,925 26,400 36,000 24,650 95,975 53,610 292 Total 5,500 94,250 97,000 56,400	Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Community V. Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed 4-Bed	\$E 525 600 900 1,300 1,800 24Hant Uni \$E 510 600	Units 17 143 1 47 6 14 : 7 : 228 1 § Breakdown 2! Units 10 204 1: 92 : 34 .	77,081 228 Total 8,925 35,800 12,300 12,600 37,825 53,610 340 Total 5,100 22,400 82,800 43,350 0								
Floor Plate Area: Number of Floors: Total Gross SF- Effliciency Factor Total NSF: Full Preservation Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - POR Floor Plate Area: Number of Floors Total Gross SF- Efficiency Factor. Total NSF: Full Preservation Unit # Total: Average Unit SF: BASE Proposed Project Unit Count Junior 27 1-Bed 207	31,825 SF 4 Floors 1.27,300 SF 0.75 95,475 NSF 118 809 NSF TICO RETAINED (BASE) SF Floors 362,300 SF 0.70 253,610 NSF 292 869 NSF Preservation Alternative Junior 1-Bed 20	drawings A6.00 s Unit Count 7 7	Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - PORTIS Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: VARIANT Proposed Project Unit Count Junior 27 1-Bed 392	31,825 SF 7 Floors 222,775 SF 0.75 167,081 NSF 228 733 NSF 20 RETAINED (VARIANT) SF Floors 362,300 SF 0.70 253,610 NSF 340 746 NSF	<u>ive Unit Count</u> 27 392	Total NSF: Total II Units Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Full Presenva Total NSF- Total II Units Junior 1-Beo 2-Bed 3-Bed 3-Bed	SE 525 600 900 1,450 William Unit Bi	Units 17 40 17 118 eakdown 10 145 97 40	118 Total 8,925 26,400 36,000 24,650 95,975 53,610 292 Total 5,500 94,250 97,000 56,400	Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Community V. Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed 4-Bed	\$E 525 600 900 1,300 1,800 24Hant Uni \$E 510 600	Units 17 143 1 47 6 14 : 7 : 228 1 § Breakdown 2! Units 10 204 1: 92 : 34 .	77,081 228 Total 8,925 35,800 12,300 12,600 37,825 53,610 340 Total 5,100 22,400 82,800 43,350 0								
Floor Plate Area: Number of Floors: Total Gross SF- Efflidency Factor Total NSF: Full Preservation Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING = POR Floor Plate Area: Number of Floors Total Gross SF- Efflidency Factor. Total NSF: Full Preservation Unit # Total: Average Unit SF: BASE Proposed Project Unit Count Junior 27 1-Beo 207 2-Bed 194	31,825 SF 4 Floors 1.27,300 SF 0.75 95,475 NSF 118 809 NSF TICO RETAINED (BASE) SF Floors 362,300 SF 0.70 253,610 NSF 292 869 NSF Preservation Alternative Junior 2 1-Bed 20 2-Bed 19	drawings A6.00 s Unit Count 7 7 7 4	Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - PORTIGE Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: VARIANT Proposed Project Unit Count Junior 27 1-Bed 392 2-Bed 195	31,825 SF 7 Floors 222,775 SF 0.75 167,081 NSF 228 733 NSF 20 RYAINED [VARIANT] SF Floors 362,300 SF 0.70 253,610 NSF 340 746 NSF Preservation Alternational Junior 1-8ed 2-8ed	lve Unit Count 27 392 195	Total NSF: Total II Units Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Full Presenva Total NSF- Total II Units Junior 1-Beo 2-Bed 3-Bed 3-Bed	SE 525 600 900 1,450 William Unit Bi	Units 17 40 17 118 eakdown 10 145 97 40	118 Total 8,925 26,400 36,000 24,650 95,975 53,610 292 Total 5,500 94,250 97,000 56,400	Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Community V. Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed 4-Bed	\$E 525 600 900 1,300 1,800 24Hant Uni \$E 510 600	Units 17 143 1 47 6 14 : 7 : 228 1 § Breakdown 2! Units 10 204 1: 92 : 34 .	77,081 228 Total 8,925 35,800 12,300 12,600 37,825 53,610 340 Total 5,100 22,400 82,800 43,350 0								
Floor Plate Area: Number of Floors: Total Gross SF- Efflidency Factor Total NSF: Full Preservation Unit # Total: Average Unit SF: HISTORICAMAIN BUILDING - POR: Floor Plate Area: Number of Floors Total Gross SF- Effliciency Factor: Total NSF: Full Preservation Unit # Total: Average Unit SF: BASE Proposed Project Unit Count Junior 27 1-Bed 207 2-Bed 193 3-Bed 103	31,825 SF 4 Floors 1.27,300 SF 0.75 95,475 NSF 1.18 809 NSF 11CO RETAINED (BASE) Floors 362,300 SF 0.70 253,610 NSF 292 869 NSF Preservation Alternative Junior 2 1-Bed 20 2-Bed 19 3-8ed 10	drawings A6.00	Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - PORTH Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: VARIANT Proposed Project Unit Count Junior 27 1-Bed 392 1-Bed 195 3-Bed 195 3-Bed 103	31,825 SF 7 Floors 222,775 SF 0.75 167,081 NSF 228 733 NSF 20 RETAINED IVARIANT) SF Floors 362,300 SF 0,70 253,610 NSF 340 746 NSF Preservation Alternati Junior 1-Bed 2-Bed 3-Bed	<u>ive Unit Count</u> 27 392 395 103	Total NSF: Total II Units Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Full Presenva Total NSF- Total II Units Junior 1-Beo 2-Bed 3-Bed 3-Bed	SE 525 600 900 1,450 William Unit Bi	Units 17 40 17 118 eakdown 10 145 97 40	118 Total 8,925 26,400 36,000 24,650 95,975 53,610 292 Total 5,500 94,250 97,000 56,400	Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Community V. Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed 4-Bed	\$E 525 600 900 1,300 1,800 24Hant Uni \$E 510 600	Units 17 143 1 47 6 14 : 7 : 228 1 § Breakdown 2! Units 10 204 1: 92 : 34 .	77,081 228 Total 8,925 35,800 12,300 12,600 37,825 53,610 340 Total 5,100 22,400 82,800 43,350 0								
Floor Plate Area: Number of Floors: Total Gross SF- Efficiency Factor Total NSF: Full Preservation Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - POR Floor Plate Area: Number of Floors Total Gross SF- Efficiency Factor. Total NSF: Full Preservation Unit # Total- Average Unit SF: BASE Proposed Project Unit Count Junior 27 1-Bed 207 2-Bed 194 3-Bed 103 4-Bed 27	31,825 SF 4 Floors 1.27,300 SF 0.75 95,475 NSF 118 809 NSF Floors 362,300 SF 0.70 253,610 NSF 292 869 NSF Preservation Alternative Junior 2 1-Bed 20 2-Bed 19 3-Bed 10 4-Bed 19	drawings A6.00	Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - PORTIGE Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: VARIANT Proposed Project Unit Count Junior 27 1-Bed 392 2-Bed 195 3-Bed 103 4-Bed 103 4-Bed 27	31,825 SF 7 Floors 222,775 SF 0.75 167,081 NSF 228 733 NSF 20 RETAINED (VARIANT) SF Floors 362,300 SF 0.70 253,610 NSF 340 746 NSF Preservation Alternati Junior 1-Bed 2-Bed 3-Bed 3-Bed	l <u>ve Unit Count</u> 27 392 195 103 27	Total NSF: Total II Units Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Full Presenva Total NSF- Total II Units Junior 1-Beo 2-Bed 3-Bed 3-Bed	SE 525 600 900 1,450 William Unit Bi	Units 17 40 17 118 eakdown 10 145 97 40	118 Total 8,925 26,400 36,000 24,650 95,975 53,610 292 Total 5,500 94,250 97,000 56,400	Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Community V. Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed 4-Bed	\$E 525 600 900 1,300 1,800 24Hant Uni \$E 510 600	Units 17 143 1 47 6 14 : 7 : 228 1 § Breakdown 2! Units 10 204 1: 92 : 34 .	77,081 228 Total 8,925 35,800 12,300 12,600 37,825 53,610 340 Total 5,100 22,400 82,800 43,350 0								
Floor Plate Area: Number of Floors: Total Gross SF- Efflidency Factor Total NSF: Full Preservation Unit # Total: Average Unit SF: HISTORICAMAIN BUILDING - POR: Floor Plate Area: Number of Floors Total Gross SF- Effliciency Factor: Total NSF: Full Preservation Unit # Total: Average Unit SF: BASE Proposed Project Unit Count Junior 27 1-Bed 207 2-Bed 193 3-Bed 103	31,825 SF 4 Floors 1.27,300 SF 0.75 95,475 NSF 1.18 809 NSF 11CO RETAINED (BASE) Floors 362,300 SF 0.70 253,610 NSF 292 869 NSF Preservation Alternative Junior 2 1-Bed 20 2-Bed 19 3-8ed 10	drawings A6.00	Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: HISTORIC MAIN BUILDING - PORTH Floor Plate Area: Number of Floors: Total Gross SF: Efficiency Factor: Total NSF: Community Variant Unit # Total: Average Unit SF: VARIANT Proposed Project Unit Count Junior 27 1-Bed 392 1-Bed 195 3-Bed 195 3-Bed 103	31,825 SF 7 Floors 222,775 SF 0.75 167,081 NSF 228 733 NSF 278 28 733 NSF 20 RETAINED [VARIANT] SF Floors 362,300 SF 0.70 253,610 NSF 340 746 NSF Preservation Alternati Junior 1-Bed 2-Bed 3-Bed 3-Bed 4-Bed	<u>ive Unit Count</u> 27 392 395 103	Total NSF: Total II Units Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Full Presenva Total NSF- Total II Units Junior 1-Beo 2-Bed 3-Bed 3-Bed	SE 525 600 900 1,450 William Unit Bi	Units 17 40 17 118 eakdown 10 145 97 40	118 Total 8,925 26,400 36,000 24,650 95,975 53,610 292 Total 5,500 94,250 97,000 56,400	Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed TOTAL Community V. Total NSF: Total # Units: Junior 1-Bed 2-Bed 3-Bed 4-Bed 4-Bed	\$E 525 600 900 1,300 1,800 24Hant Uni \$E 510 600	Units 17 143 1 47 6 14 : 7 : 228 1 § Breakdown 2! Units 10 204 1: 92 : 34 .	77,081 228 Total 8,925 35,800 12,300 12,600 37,825 53,610 340 Total 5,100 22,400 82,800 43,350 0								

Eme, Kind Meeting 2/4/64

Extrabitation

FIREMAN'S FUND INSURANCE COMPANY

3333 CALIFORNIA STREET
SAN FRANCISCO, CALIFORNIA

FRED H. MERRILL

February 7, 1964

Mr. D. L. Devincenzi
President
Laurel Heights Improvement Association
of San Francisco
San Francisco, California

Dear Mr. Devincenzi:

The purpose of this letter is to provide you with a convenient means of conveying to members of the Laurel Heights Improvement Association an account of the substance of my comments to you and Dr. Greenspan at our meeting held here on Tuesday, February 4, concerning the presently proposed Fireman's Fund building addition and our thinking with respect to possible future expansion of our building.

I believe the following adequately summarizes our discussion:

There was general agreement among the three of us that the presently proposed addition to our building was in compliance with all of the stipulations in effect with respect to the Fireman's Fund property.

You indicated that, despite the fact that there are no height limitations for commercial development in effect with respect to the property, the association membership was extremely interested in learning whether our future plans encompassed the addition of another floor to the present building, and would appreciate advice from us in this connection.

I assured you that we do not have plans for an additional floor on the building and that the proposed addition will have a permanent roof rather than a slab suitable as flooring for a further addition. This was for the reason that we have been advised that existing foundations would not be adequate for an additional floor and that in my view an additional floor would not only be detrimental to the appearance of the building but impracticable from a building cost standpoint. While it was not my intention or function, I pointed out, either to alter the stipulations with respect to the property,

accepted by the San Francisco Planning Commission, or to purport to bind the management of Fireman's Fund, I assured you that during my tenure as President of Fireman's Fund, for the reasons given above, I would not consider the construction of a floor on our building above the presently proposed addition.

I then went on to explain that any expansion of our building beyond that which we have reviewed with the Planning Commission and members of your association would be preceded by appropriate research and development relating to provision for adequate off-street parking facilities. It is our intention, I said, to utilize, ultimately, the present roof area for additional space, but before this done, we would plan to develop more service and parking facilities - most probably on the Presidio and California areas of our property.

I was very pleased to learn that the Association plans to record its approval of our proposed addition and to convey this fact to the Planning Commission. This action is most gratifying to me and to our management. We shall do everything in our power to minimize all inconveniences during the construction period.

Meanwhile, please be assured that we shall always attempt to maintain the Fireman's Fund building in such a manner that it - as indicated yesterday in the press - will continue to be an asset to our neighborhood.

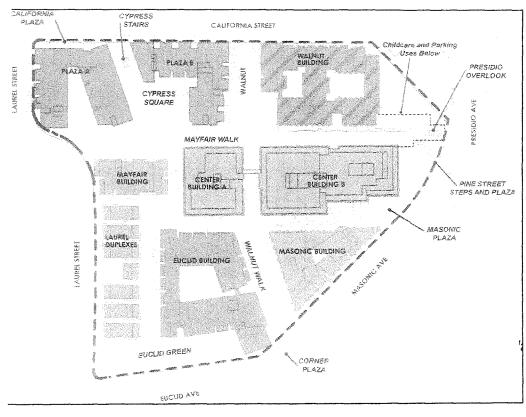
Sincerely yours,

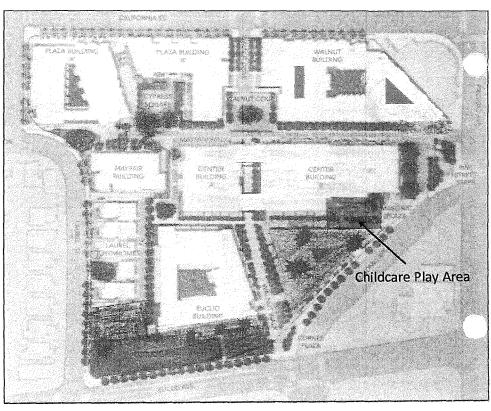
Fred H. Merrill

President

Developers Variant 7/3/2019

Community Preservation Lookalike Variant



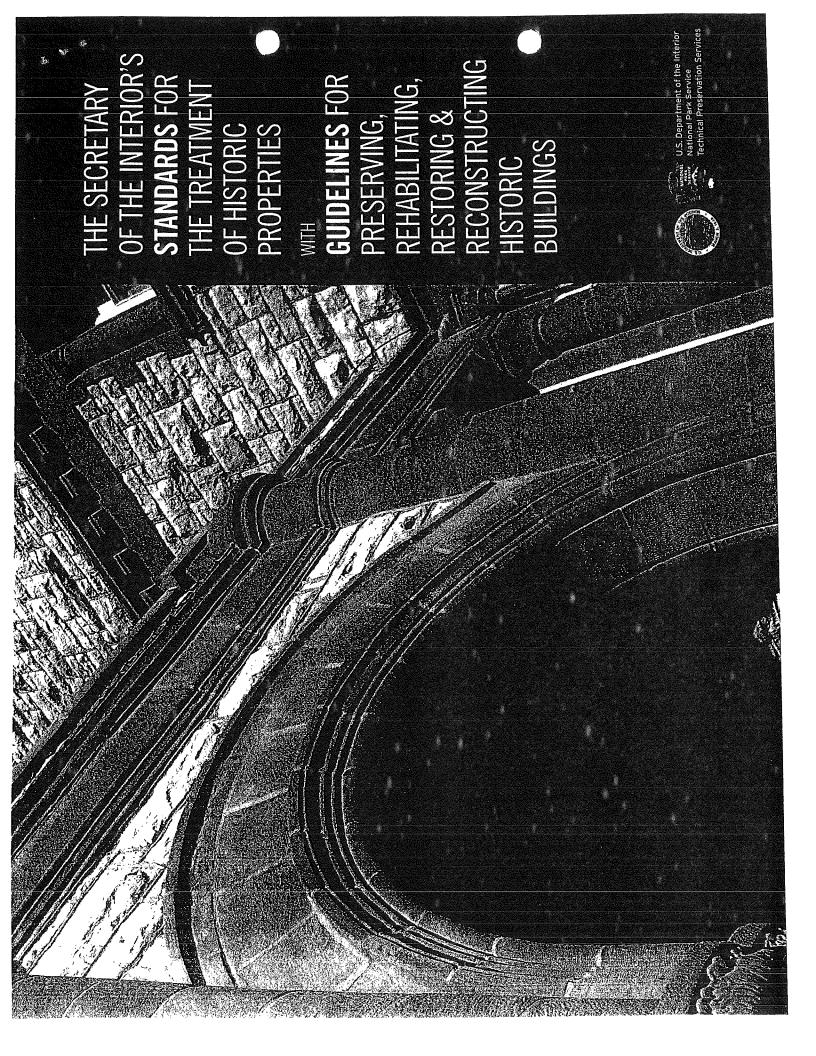


IMPACT OF PSKS 3333 DEVELOPMENT PLAN ON LAUREL VILLAGE

- 1. The surrounding neighborhoods are well served by a diversity of retail businesses in Laurel Village, Sacramento Street, Presidio Avenue, Trader Joe's, an expanding City Center with both Target a Whole Foods-all within two blocks of 3333 California St.
- 2. The proprietors of Laurel Village have ample capacity to serve the residents of 3333 California St. as well as 3700 California St. especially considering that these new residents will replace the approx.

 1,500 employees of UCSF that shopped at Laurel Village for many years.
- 3. Cal Mart & Bryan's presently operate their checkout lines at approx. 50% capacity and can double the throughput as needed.
- 4. There is already room for more retail along Sacramento St. as a number of storefronts remain empty.
- 5. The recent closures of Beautiful and Noah's Bagels, preceded by Gymboree, and the potential closure of others strongly reinforces the position that new retail is both unneeded and unwanted.
- 6. Laurel Village Merchants have requested that PSKS cease creating the erroneous impression that there would be "long lines" in the Laurel Village stores if PSKS is not allowed to change 3333's zoning and add additional retail.
- 7. The retail traffic associated with 3333 would negatively impact the parking lot for Laurel Village which is already insufficient for Laurel Village's needs. In addition, 3333 retail parking does not fully meet the retail traffic demands generated at 3333 and this overflow traffic will park in Laurel Village further harming the Customers, and Merchants of Laurel Village.
- 8. PSKS's plan to charge for parking at 3333 will only exacerbate this harmful situation. Furthermore, it is blatantly unfair to have Laurel Village Merchants provide parking for the competition at 3333.
- 9. The 7-15 year construction period will be catastrophic to Laurel Village. During last year's streetscape fiasco Cal Mart's business declined over 30%. According to Ron Giampoli of Cal Mart it is doubtful that Cal Mart would remain in business with a 7-15 year construction period. Other businesses in Laurel Village were impacted equally and would be put under immense pressure by the development plan for 3333.
- 10. Bryan's and Cal Mart are unique and iconic stores that serve Customers from all parts of the city. The loss of one or both would immeasurably impoverish the surrounding neighborhoods.

 | Company | Compa



NEW EXTERIOR ADDITIONS TO HISTORIC BUILDINGS AND RELATED NEW CONSTRUCTION

RECOMMENDED

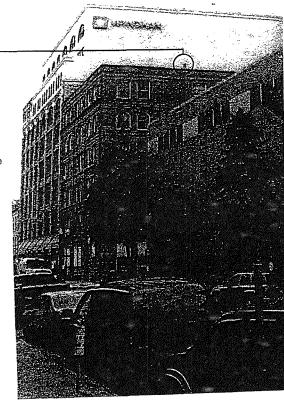
NOT RECOMMENDED

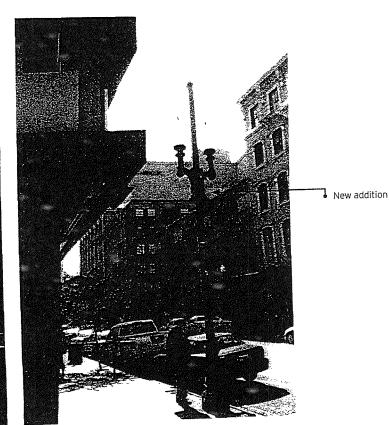
Rooftop Additions

Designing a compatible rooftop addition for a multi-story building, when required for a new use, that is set back at least one full bay from the primary and other highly-visible elevations and that is inconspicuous when viewed from surrounding streets.

Constructing a rooftop addition that is highly visible, which negatively impacts the character of the historic building, its site, setting, or district.

[63] (a) A mockup should be erected to demonstrate the visibility of a proposed rooftop addition and its potential impact on the historic building. Based on review of this mockup (orange marker), it was determined that the rooftop addition would meet the Standards (b). The addition is unobtrusive and blends in with the building behind it.





NEW EXTERIOR ADDITIONS TO HISTORIC BUILDINGS AND RELATED NEW CONSTRUCTION

RECOMMENDED

NOT RECOMMENDED

Limiting a rooftop addition to one story in height to minimize its visibility and its impact on the historic character of the building.

Constructing a highly-visible, multi-story rooftop addition that alters the building's historic character.

Constructing a rooftop addition on low-rise, one- to three-story historic buildings that is highly visible, overwhelms the building, and negatively impacts the historic district.

Constructing a rooftop addition with amenities (such as a raised pool deck with plantings, HVAC equipment, or screening) that is highly visible and negatively impacts the historic character of the building.



[64] Not Recommended:
It is generally not appropriate to
construct a rooftop addition on a
low-rise, two- to three-story building
such as this, because it negatively
affects its historic character.

NEW EXTERIOR ADDITIONS TO HISTORIC BUILDINGS AND RELATED NEW CONSTRUCTION

RECOMMENDED

NOT RECOMMENDED

Related New Construction

Adding a new building to a historic site or property only if the requirements for a new or continuing use cannot be accommodated within the existing structure or structures.

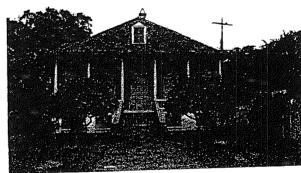
Locating new construction far enough away from the historic building, when possible, where it will be minimally visible and will not negatively affect the building's character, the site, or setting.

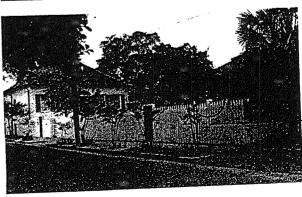
Adding a new building to a historic site or property when the project requirements could be accommodated within the existing structure or structures.

Placing new construction too close to the historic building so that it negatively impacts the building's character, the site, or setting.

[65] (a) This (far left) is a compatible new outbuilding constructed on the site of a historic plantation house (b). Although traditional in design, it is built of wood to differentiate it from the historic house (which is scored stucco) located at the back of the site so as not to impact the historic house, and minimally visible from the public right-of-way (c).







 new addition



Laurel Heights Improvement Association of San Francisco. Inc.

BY HAND and E-MAIL

October 16, 2019

San Francisco Board of Supervisors Land Use and Transportation Committee c/o Erica Major, Clerk City and County of San Francisco City Hall, Room 244 San Francisco, CA 94102

Re: 3333 California Street, San Francisco, CA

File No. 190845 - Proposed Development Agreement

Hearing Date: October 21, 2019

Record Number: 2015-014028CUA/PCA/MAP/DUA

Dear Chair Peskin, Vice Chair Safai and Member Haney:

1. The Committee Should Recommend that Against the Financially Inadequate Provisions in the Development Agreement that Allow the Developer to Fail to Construct the On-Site Affordable Housing And Transfer a Small Portion of the Land to the City Along With Rental Gap Fees or Sell the Walnut Land to the City.

The Development Agreement was negotiated behind the scenes without public participation or knowledge of its substantive provisions.

The Draft EIR stated that the manner in which the developer would comply with affordable housing requirements was still unknown. DEIR 2.10.

Partial information about the proposed Development Agreement was disclosed for the first time on approximately July 30, 2019, and further provisions of the proposed Development Agreement continued to be released until shortly before the September 5, 2019 Planning Commission hearing. Exhibits D-1 Walnut Parcel Title Condition and Exhibit D-2 Baseball Arbitration Appraisal Process were not provided on the Board of Supervisors' website as of August 26, 2019.

The Development Agreement provides that the developer is not obligated to build any housing and may cancel the agreement if he does not commence construction in 5 years. The Agreement allows the developer to have 15 years to build the project. The developer's reason for

San Francisco Board of Supervisors Land Use and Transportation Committee October 16, 2019 Page 2

the extended period is to be able to adjust to "market conditions." (Ex. A)

Exhibit D to the Development Agreement is a Affordable Housing Program that states that the developer has agreed to construct 185 studio and one-bedroom affordable residential units for senior households in addition to the 558 residential units initially proposed. (Ex. B hereto, DA p. D-1) The 185 senior affordable units will all be located in a single residential building known as the Walnut Affordable Housing Building. (Ex. B, DA p. D-4)

After providing that the Housing Entity formed by the developer will seek Low Income Housing Tax Credits and City-issued tax-exempt bond financing for construction, and may apply for the state Multifamily Housing Program and the Infill Infrastructure Grant Program, the Development Agreement provides for Transfer of Walnut Land to City in the event the developer fails to construct the affordable housing:

If the Tax Credit closing does not occur by the Outside Date, subject to extension for any applicable Excusable Delay, and construction of any Building occurs during the Term, then City shall have the right to acquire, and Developer agrees to transfer to the City, fee ownership of the Walnut Land pursuant to the form of grant deed (the "Grant Deed") attached as Attachment D-2), with the Approved Legal Description attached to it as Exhibit A. (Ex. B, p. D-7)

However, the developer paid only approximately \$192.35 per square foot for the property in non-competitively bid transactions with UC (\$88,600,000.00 for 99-year lease plus \$1,612,000 for the fee interest = \$90,212,000/469,000 square feet of 3333 California Street = \$192.35. (Ex. C, deed excerpts). The Walnut Land comprises less than a quarter of the property and the Development Agreement does not indicate that the amount of rental gap fees that would also be paid in the event of default will be equivalent to the usual in lieu fee required by Planning Code section 415.5 or sufficient to enable the City to build the affordable housing building on the Walnut Land. LHIA has sent Public Records Act requests for information on the financial projections but has not received sufficiently specific responses from the City to date.

This developer previously indicated he would build affordable housing in a project on Dolores Street but failed to do so and instead paid a fee to the City. (Ex. D and Ex. Q to August 28, 2019 LHIA submittal to Planning Commission) Also, in several meetings I attended with developer Dan Safier, he complained that residential construction costs were too high. In view of the current high construction costs in the City and the foregoing matters, there is a reasonable possibility that the developer will not build the affordable senior housing on the site and the City will take over the Walnut Land

Further, if the developer is not able to transfer the Walnut Land to the City in the

San Francisco Board of Supervisors Land Use and Transportation Committee October 16, 2019 Page 3

condition required by that section of the agreement, then the City will accept a payment "based on the actual residential project that it is entitled for at the time of Appraisal consistent with the zoning and all conditions on the Walnut Land...including the applicable conditions of approval and any notices of special restrictions." This is the value of the Walnut Land burdened with the affordable housing requirement. (Ex. E, response of OEWD Project Manager, Joint Development to LHIA's request for information and Ex. J to LHIA's August 28, 2019 submission to Planning Commission, p. D-9)

The default options of the Development Agreement would provide inadequate consideration to the City for entering into the agreement, as there is no evidence or reason to believe that the value of the Walnut Land plus the rental gap fees or the value of the Walnut Land burdened with the affordable housing requirement would be substantially equivalent to the full in lieu fee provided by Planning Code section 415.5. This inadequate consideration would constitute a prohibited gift by a public entity under California Constitution, article XVI, section 6.

Instead, to deter the developer from failing to construct the affordable housing, the Committee should recommend that the Development Agreement be modified to require the developer to pay the full affordable housing fee required by section 415.5 of the Planning Code based on the total development, rather than recommend the inadequate options set forth in the proposed Development Agreement . Such a modification would conform with the proposal being considered to change the Special Use District for the Lucky Penny project to eliminate the obligation to construct 23% on-site affordable housing and to instead pay an in lieu fee to the City. (Ex. F)

2. The Committee Should Recommend that the Term of the Development Agreement Be Changed to 7 Years Rather than 15 Years.

The Development Agreement gives the developer 15 years to build the project. The developer's reason for the extended period is to be able to adjust to "market conditions." (Ex. A)

The extended term is not consistent with the City's need to address the current housing crisis. The Committee should recommend a 7-year term for completion of construction under the development agreement, which the Draft EIR estimated was the approximate minimum construction time.

3. The Committee Should Recommend that the Development Agreement Be Modified to Require Public Notification of and Allow Requests for Discretionary Review for Major Modifications to the Project.

San Francisco Board of Supervisors Land Use and Transportation Committee October 16, 2019 Page 4

Planning Commission Resolution No. 20514 states at page 2 that the proposed SUD "specifies director determination and discretionary review controls." Subdivision (d)(7) of the proposed SUD states that:

(7) Discretionary Review. No requests for discretionary review shall be accepted or heard for projects within the SUD.

This provision is unreasonable as to a major modification of the project and would unfairly deprive residents of due process rights available to residents of other areas to object to requests for major modifications of a project.

The Committee should recommend that the Development Agreement, along with the Special Use District, be modified to provide that requests for discretionary review and Planning Commission section 311 notice will be applicable to all requests for major changes in the site plan approved by the Planning Commission on September 5, 2019.

4. If the Board Overturns the Planning Commission's Certification of the FEIR, the Board May Not Approve the Development Agreement.

Since the FEIR admits that the project would have significant unmitigated adverse impacts on a historical resource and from construction noise, the Development Agreement may not be approved if the Board of Supervisors grants LHIA's appeal of certification of the FEIR.

Conclusion

For the reasons stated above, the Committee should recommend against approval of the Development Agreement or should recommend that the proposed Development Agreement be modified.

Respectfully submitted,

Laurel Heights Improvement Association of SF, Inc.

By: Kathryn Devincenzi, President

Kathyn Derwenn

Attachments: A through F

3333 California Street, San Francisco, CA File No. 190845 - Proposed Development Agreement

Hearing Date: October 21, 2019

Record Number: 2015-014028CUA/PCA/MAP/DUA

EXHIBITS A-F

durations are consistent with and design and in the phasing schedule under review in environmental application. While the phasing could be accelerated, we have assumed a relatively conservative approach to the construction phasing.
Q: What is the period of time that you anticipate that construction will occur?
A: We anticipate that construction will occur in the spring of 2020.
Q: What is the reason for constructing the project in phases?
A: By allowing for potential phased construction, we would have the ability to complete and occupy portions of the project as each phase is completed. If conditions do not exist to build out the entire project, we can phase construction in order to align with market conditions and financing availability.
Q: How many extensions do you anticipate requesting for the entitlements?
A: None. Any extension of the DA's term would be a material amendment that would require Board of Supervisor's approval.
Q: During those extended periods, would it be possible for Prado to request changes in the project as related specifically to increased height, increased bulk, increased numbers of residential units, increased amounts of retail or office space? What about the possibility of design changes or other changes? Could Prado apply to change any part of the construction to provide the opportunity to have high rise construction?
A: Once the EIR is certified and the project is approved, any material changes to the project would be subject to new environmental review, would require Planning Commission and Board of Supervisor approvals and also an amendment to the DA. Any increase in height over what is entitled in our project would require a revision to the Planning Code and Zoning Maps that would entail Planning Commission and Board of Supervisors approval.
Q: There are genuine concerns about reducing open spaces and reduced on-site parking places.
A: Open space will be part of the entitlements and will likely be considered by the City as one of the public benefits supporting the DA — for that reason alone, reducing the amount of it would be very difficult if not impossible. The open space requirements will be carefully described in the project's approvals and will also be recorded against the property. So, as with any material changes to the approved project, any material change to the open space would be very difficult and would involve a public process and City approval. As to parking spaces, as you know, the City would like to see the number of spaces reduced. We plan to continue advocating for the proposed number of project parking spaces in our application.
Q: During the phased construction could Prado transfer shares in the project to provide for new or additional investors?
A: We have no plan to transfer any shares in the project and construction lenders generally prohibit any changes of ownership by the project developer during construction and stabilization of a project. PSKS, along with our equity partners and lenders, intend to provide all of the capital necessary to construct, own and operate the project. We plan to

retain day-to-day control of the production during development, construction, stabilized and ongoing operations. We design and build our projects to hold for the long-term owner.

We look forward to reconnecting and thank you again for making the time to meet with us.

Sincerely, Dan



Dan Safier | President & CEO

Prado Group, Inc.

150 Post Street, Suite 320

San Francisco, CA 94108

dsafier@pradogroup.com

T: 415.395.0880 | D: 415.857.9306

From: John Rothmann [mailto:johnrothmann2@yahoo.com]

Sent: Monday, September 25, 2017 8:20 PM

To: Dan Safier <dsafier@pradogroup.com>; Dan Kingsley <dkingsley@sksre.com>

Cc: Kathy Devincenzi krdevincenzi@gmail.com; Catherine Carr < catherine.a.carr@gmail.com; M.J. Thomas

<mjinsf@comcast.net>; Richard Frisbie <frfbeagle@gmail.com>

Subject: Specific qwuetions about thre proposed project

Dear Dan and Dan,

[Quoted text hidden]

John Rothmann <johnrothmann2@yahoo.com> To: Kathy Devincenzi <krdevincenzi@gmail.com> Mon, Oct 30, 2017 at 7:21 PM

---- Forwarded Message ----

From: Dan Safier <dsafier@pradogroup.com>

To: John Rothmann <juhnrothmann2@yahoc.com>; Dan Kingsley <dkingsley@sksra.com>

Go: Kathy Devincenzi <krdevincenzi@gmail.com>; Catherine Carr <catherine.a.carr@gmail.com>; M.J. Thomas

<mjinsl@compast net>; Richard Frisbie <irfoeagle@gmail.com>

[Quoted text hidden]

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

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)

DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO

AND LAUREL HEIGHTS PARTNERS, LLC

FOR PROPERTY LOCATED AT 3333 CALIFORNIA STREET

Block 1032 Lot 003

parking spaces, (iv) an approximately 14,665 square foot space for child care use, and (v) approximately 236,000 square feet of landscaped or open space, which includes approximately 127,126 square feet of privately owned, public open space, more than 73,000 square feet of which is in excess of the open space requirements under the Code, all as more particularly described on Exhibit B.

- C. The Project is anticipated to generate an annual average of approximately 675 construction jobs during construction and, upon completion, approximately 200 net new permanent on-site jobs, an approximate \$10 million annual increase in property taxes, and approximately \$15 million in development impact fees (including transportation, housing linkages, and school fees).
- D. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 *et seq.* (the "Development Agreement Statute"), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property regarding the development of such property. Pursuant to Government Code Section 65865, the City adopted Chapter 56 of the Administrative Code ("Chapter 56") establishing procedures and requirements for entering into a development agreement pursuant to the Development Agreement Statute. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56.
- E. In addition to the significant housing, jobs, and economic benefits to the City from the Project, the City has determined that as a result of the development of the Project in accordance with this Agreement and the Special Use District and the Planned Unit Development approvals attached at Exhibit M, additional clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies. Major additional public benefits to the City from the Project include: (i) an increase in affordable housing that exceeds amounts otherwise required and will equal approximately twenty-five percent (25%) of the total number of housing units for the Project, serving senior households with incomes below 80% of MOHCD AMI with an overall average of not more than 59% of MOCHD AMI; (ii) construction and maintenance of the Publicly Accessible Private Improvements (as defined in Section 1) for a total of approximately 127,126 square feet of public useable open area; (iii) transportation demand management measures that exceed the level otherwise required; (iv) the Child Care Program (as

membership interests in Developer or any Transferee, (2) grants of easement or of occupancy rights for existing or completed Buildings or other improvements (including, without limitation, space leases in Buildings), and (3) the placement of a Mortgage on the Project Site.

- 1.102 "Transportation Demand Management" benefits are described in <u>Exhibit</u> <u>J</u>.
 - 1.103 "Vested Elements" has the meaning set forth in Section 5.1.
 - 1.104 "Walnut Walk North" is described in Section 1.f of Exhibit C.
 - 1.105 "Walnut Walk South" is described in Section 1.f of Exhibit C
 - 1.106 "Workforce Agreement" means the Workforce Agreement attached as

Exhibit I.

2. EFFECTIVE DATE; TERM

- 2.1 <u>Effective Date</u>. This Agreement shall take effect upon the later of (i) the full execution and delivery of this Agreement by the Parties and (ii) the date the Enacting Ordinances are effective and operative ("Effective Date").
- Date and shall continue in full force and effect for fifteen (15) years thereafter unless extended or earlier terminated as provided herein ("Term"); provided, however, that (i) the Term shall be extended for each day of a Litigation Extension and (ii) Developer shall have the right to terminate this Agreement with respect to a Development Parcel upon completion of the Building within that Development Parcel and the Associated Community Benefits for that Building, as set forth in Section 7.1. The term of any conditional use permit or planned unit development shall be for the longer of the Term (as it relates to the applicable parcel) or the term otherwise allowed under the conditional use or planned unit development approval, as applicable. The term of the Tentative Map and any Subdivision Map shall be for the longer of the Term (as it relates to the applicable parcel) or the term otherwise allowed under the Subdivision Map Act.

3. GENERAL RIGHTS AND OBLIGATIONS

3.1 <u>Development of the Project</u>. Developer shall have the vested right to develop the Project in accordance with and subject to the provisions of this Agreement, and the City shall consider and process all Later Approvals for development of the Project in accordance with and subject to the provisions of this Agreement. The Parties acknowledge that Developer (i) has obtained all Approvals from the City required to Commence Construction of the Project, other

performed pursuant to <u>Section 8</u>. The Planning Director, acting on behalf of the City, shall execute and return such certificate within twenty (20) days following receipt of the request.

- 5.11 Existing, Continuing Uses and Interim Uses. The Parties acknowledge that the Existing Uses are lawfully authorized uses and may continue as such uses may be modified by the Project, provided that any modification thereof not a component of or contemplated by the Project is subject to Planning Code Section 178 and the applicable provisions of Section 5. Developer may install interim or temporary uses on the Project Site, which uses must be consistent with those uses allowed under the Project Site's zoning, the Approvals, the Project SUD, or any planned unit development authorization granted under the Project SUD, as applicable.
- 5.12 Taxes. Nothing in this Agreement limits the City's ability to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment, provided (i) the City shall not institute, on its own initiative, proceedings for any new or increased special tax or special assessment for a land-secured financing district (including the special taxes under the Mello-Roos Community Facilities Act of 1982 (Government Code Section 53311 et seq.) but not including business improvement districts or community benefit districts formed by a vote of the affected property owners) that includes the Project Site unless the new district is City-Wide or Developer gives its prior written consent to or requests such proceedings, and (ii) no such tax or assessment shall be targeted or directed at the Project, including, without limitation, any tax or assessment targeted solely at all or any part of the Project Site. Nothing in the foregoing prevents the City from imposing any tax or assessment against the Project Site, or any portion thereof, that is enacted in accordance with Law and applies to all similarly-situated property on a City-Wide basis.

6. NO DEVELOPMENT OBLIGATION

There is no requirement under this Agreement that Developer initiate or complete development of the Project, or any portion thereof. There is also no requirement that development be initiated or completed within any period of time or in any particular order, subject to the requirement to complete Associated Community Benefits for each Building (or for any market rate residential unit in excess of three hundred eighty-six (386), as applicable) commenced by Developer as set forth in Section 4.1. The development of the Project is subject to numerous factors that are not within the control of Developer or the City, such as availability of financing, interest rates, access to capital, and similar factors. In Pardee Construction Co. v. City of

the cured event of default shall terminate.

11. AMENDMENT; TERMINATION; EXTENSION OF TERM

- Amendment or Termination. This Agreement may only be amended with 11.1 the mutual written consent of the City and Developer; provided, however, that following a Transfer, the City and Developer or any Transferee may amend this Agreement as it affects Developer or the Transferee and the portion of the Project Site owned by Developer or the Transferee without affecting other portions of the Project Site or other Transferees. Other than upon the expiration of the Term and except as provided in Sections 2.2, 7.3, 9.4.2, and 11.2, this Agreement may only be terminated with the mutual written consent of the Parties. Any amendment to this Agreement that does not constitute a Material Change may be agreed to by the Planning Director (and, to the extent it affects any rights or obligations of a City department, with the approval of that City department). Any amendment that is a Material Change will require the approval of the Planning Director, the Planning Commission and the Board of Supervisors (and, to the extent it affects any rights or obligations of a City department, after consultation with that City Department). The determination of whether a proposed change constitutes a Material Change shall be made, on City's behalf, by the Planning Director following consultation with the City Attorney and any affected City Agency.
- 11.2 Early Termination Rights. Developer shall, upon thirty (30) days prior notice to the City, have the right, in its sole and absolute discretion, to terminate this Agreement in its entirety at any time if Developer does not Commence Construction on any part of the Project Site by the date which is five (5) years following the Effective Date as such five (5) year date may be extended by any Litigation Extension. Thereafter, the City shall, upon sixty (60) days prior notice to Developer, have the right, in its sole and absolute discretion, to terminate this Agreement if the Developer has not Commenced Construction; provided Developer can prevent any such termination by the City by providing to the City notice, within the above sixty (60) day period, of Developer's intent to start construction and the Developer thereafter Commences Construction within one hundred twenty (120) days following delivery of Developer's notice to the City, or, if unable to actually Commence Construction within said time period, demonstrates reasonable, good faith and continuing efforts to Commence Construction, such as by pursuing all necessary Later Approvals, and thereafter promptly Commences Construction upon receipt of the Later Approvals.
 - 11.3 Termination and Vesting. Any termination under this Agreement shall

Exhibit B

Project Description

The Project Site is an approximately 446,490-square-foot, or 10.25-acre, parcel bounded by California Street to the north, Presidio Avenue to the east, Masonic Avenue to southeast, Euclid Avenue to the south, and Laurel Street/Mayfair Drive to the west, at the southern edge of San Francisco's Presidio Heights neighborhood in the northwest portion of San Francisco. The project sponsor, Laurel Heights Partners, LLC, owns the site and temporarily leases it to the Regents of the University of California, which uses the Project Site for its University of California San Francisco (UCSF) Laurel Heights Campus. The Project Site does not include the San Francisco Fireman's Credit Union (now called the SF Fire Credit Union) at the southwest corner of California Street and Presidio Avenue, which is on a separate parcel.

The Project Site is currently used as office and related research, child care, and parking. It is developed with a four-story, approximately 455,000-gross-square-foot office building including a three-level, 212-space, an approximately 93,000-gross-square-foot partially below-grade parking garage at the center of the site; a one-story, approximately 14,000-gross-square-foot annex building at the corner of California and Laurel streets; three surface parking lots with a total of 331 spaces connected by internal roadways; two circular garage ramp structures leading to below-grade parking levels; and landscaping or landscaped open space for the USCF Laurel Heights Campus occupants.

The proposed project includes approximately 1,427,832 gross square feet of new and rehabilitated space, comprising approximately 977,437 gross square feet of residential floor area with approximately 744 dwelling units; approximately 34,496 gross square feet of retail floor area; and an approximately 14,665 gross-square-foot child care center use. The proposed project would provide approximately 857 off-street parking spaces (including approximately 10 car share spaces), approximately 762 Class One bicycle spaces, and 77 Class Two bicycle spaces. These proposed uses would be located in 13 new buildings (known as Plaza A, Plaza B, Walnut, Mayfair, Laurel Townhomes, Euclid and Masonic) and in the adaptively reused office building (known as Center A and Center B), which would be divided into two separate buildings and converted to residential use.

25% of the proposed project's units will be deed-restricted, on-site affordable units designated for low-income senior households. These affordable units will be located in the proposed Walnut Building on California Street and consist of 185 studios and 1-bedrooms for seniors plus one (1) on-site manager's unit. The Walnut Building would also include an approximately 175-seat child care facility, including a contiguous outdoor activity area. The project includes approximately 34,496 square feet of neighborhood-serving retail located in the buildings fronting onto California Street (Plaza A, Plaza B and the Walnut Building). This retail

Exhibit D

Affordable Housing Program

This Exhibit D describes the affordable housing program for the Project (the "Housing Plan"). All initially-capitalized, undefined terms used in this Exhibit D shall have the meanings given to them in the Development Agreement to which it is attached.

Recognizing the City's pressing need for housing – market rate and affordable - the Developer has agreed to (1) increase the total number of residential units for the Project from the 558 residential units initially proposed to 744 residential units; (2) construct 185 studio and one-bedroom affordable residential units for Senior Households at the Project Site (the "BMR Units") in order to make 25% of the Project residential units affordable, rather than the Section 415 (as defined below) requirement of providing 18% on-site affordable residential units or paying the City in-lieu affordable housing fees, together with 1 Manager Unit (as defined below); and (3) fund all predevelopment costs and gap financing required to complete the BMR Units.

The BMR Units will be deed-restricted to be affordable to qualified senior households with an average income not more than 59% of MOHCD AMI (as defined below) and will be constructed before the Developer can receive a CofO (as defined below) on more than three hundred eighty-six (386) Market Rate Units (as defined below).

1. Definitions.

"Adjustment Date" means each anniversary of the Effective Date.

"Affordable Housing Developer" means Mercy Housing California, a non-profit California corporation, or any other non-profit affordable housing developer with experience developing and operating affordable housing in San Francisco.

"Affordable Rent" means a monthly rental charge for a BMR Unit (including the Utility Allowance applicable to the Household Size of such BMR Unit but excluding parking charges if a Parking Space is allocated to such BMR Unit) that does not exceed thirty percent (30%) of the maximum MOHCD AMI permitted for such BMR Unit, based on Household Size.

"Approved Legal Description" means a legal description of the Walnut Land that substantially conforms to the depiction attached as <u>Attachment D-1</u> and is approved by the City's Director of Property and the MOHCD Director.

"CofO" means a first certificate of occupancy issued by City's Department of Building Inspection, including any temporary certificate of occupancy.

"CPI Increase" means, for the first Adjustment Date, the difference between the published CPI Index in effect at the time of the first Adjustment Date and the published CPI Index in effect at the time of the Effective Date. For each following Adjustment Date, the "CPI Increase" means the difference between the published CPI Index in effect at the time of an

"Title Policy" is defined in Section 4.F.

"Utility Allowance" means a dollar amount determined in a manner acceptable to the California Tax Credit Allocation Committee, which may include an amount published periodically by the San Francisco Housing Authority or successor based on standards established by HUD, for the cost of basic utilities for households, adjusted for Household Size. If both the San Francisco Housing Authority and HUD cease publishing a Utility Allowance, then Developer may use another publicly available and credible dollar amount approved by MOHCD.

"Walnut Affordable Housing Building" is defined in Section 2.A.

"Walnut Child Care Parcel" is defined in Section 2.A.

"Walnut Housing Parcel" is defined in Section 2.A.

"Walnut Retail Parcel" is defined in Section 2.A.

"Walnut Land" is defined in Section 2.A.

2. <u>Walnut Affordable Housing Building</u>

A. <u>Description</u>. The 185 BMR Units and the Manager Unit will all be located in a single residential building (the "Walnut Affordable Housing Building") that will be located within a condominium parcel (the "Walnut Housing Parcel") on the portion of the Project Site depicted as the "Walnut Land" on <u>Attachment D-1</u> (the "Walnut Land"). The Walnut Affordable Housing Building will be comprised only of the BMR Units, the Manager Unit (which shall only be occupied by the Walnut Affordable Housing Building manager or, to the extent permitted under law, other property management staff), and the common and parking area for the BMR Units and Manager Unit. A condominium parcel for retail uses (the "Walnut Retail Parcel") and a condominium parcel for child care uses (the "Walnut Child Care Parcel") will also be located on the Walnut Land. The Walnut Housing Parcel, the Walnut Retail Parcel, and the Walnut Child Care Parcel will be created through a final map prepared under the Tentative Map as required in the Subdivision Map.

Before obtaining a First Construction Document for any portion of the Project or transferring the Walnut Land or the Walnut Housing Parcel to the Housing Entity, the Developer shall obtain legal descriptions for the Walnut Housing Parcel and the Walnut Child Care Parcel that are reasonably acceptable to City, cause the Walnut Land to be made a separate legal parcel, and record a declaration of restrictions (in a form approved by City and using such approved legal descriptions) that limits the use of the Walnut Housing Parcel to the construction and operation of the Walnut Affordable Housing Building and the Walnut Child Care Parcel to the construction and operation of a child care facility. In connection with the development of the Project, Developer shall have the right to enter into commercially reasonable licenses, easements, covenants, conditions and restrictions, reciprocal easement agreements, and similar agreements that affect the Walnut Housing Parcel to the extent necessary for the use or operation of any portion of the Walnut Housing Parcel (each, a "Property Covenant"); provided, however, that (i) Developer shall deliver the final version of each proposed Property Covenant to the MOHCD Director at least thirty (30) days before it is fully executed or recorded in the

Official Records of San Francisco County and (ii) all maintenance, repair, replacement and installation costs to be paid under a Property Covenant for the common area benefitting the Walnut Retail Parcel, the Walnut Housing Parcel, and the Walnut Child Care Parcel shall be proportionately allocated to the owners of the Walnut Retail Parcel, the Walnut Housing Parcel, and the Walnut Child Care Parcel based on the relative size of their respective parcel or any other commercially reasonable allocation that is approved in advance by the MOHCD Director, which approval shall not be unreasonably withheld.

- B. Housing Entity. Before commencing the construction of the Project's first Market Rate Unit, the Housing Entity will be formed and the Developer will contribute the Walnut Housing Parcel (subject to the requirements of the Development Agreement) to the Housing Entity. As a non-profit affordable housing developer and operator, the Affordable Housing Developer will operate the Walnut Affordable Housing Building to only serve Senior Households with incomes below 80% of MOHCD AMI, with an overall average of not more than 59% of MOHCD AMI.
- C. Financing. The Housing Entity will structure equity and debt financing for construction, and the Developer will fund all predevelopment costs and gap financing required to complete the construction, of the Walnut Affordable Housing Building. The Housing Entity will seek LIHTC and City-issued tax-exempt bond financing for construction. The Developer or the Housing Entity may apply to the following state funding programs for constructing the Walnut Affordable Housing Building without the City's prior written consent: the Multifamily Housing Program (MHP) and the Infill Infrastructure Grant Program (IIG). At the time of such application, the Developer or the Housing Entity shall provide the MOHCD Director with written notification of such application and a commitment that the award of such funding would lower the average MOHCD AMI for the Walnut Affordable Housing Building. Neither the Developer nor the Housing Entity can seek other federal or other state resources for constructing the Walnut Affordable Housing Building without the prior written consent of the MOHCD Director, which consent may be withheld if the award of such funding would not result in a lower average MOHCD AMI for the Walnut Affordable Housing Building or applying for the proposed funding would compete with the application of a MOHCD-supported project. A failure to obtain LIHTC, MHP, IIG, or non-competitive federal or state resources for constructing the Walnut Affordable Housing Building shall not decrease the Developer's affordable housing or other obligations under the Development Agreement. City has no obligation to provide any funding for the Walnut Affordable Housing Building. Developer may collaborate with other entities to obtain additional funding sources to the extent that those sources contribute to the feasibility, production speed, or increase the affordability of the Walnut Affordable Housing Building
- D. <u>Project Phasing</u>. The Developer may not obtain CofO for more than three hundred eighty-six (386) Market Rate Units until DBI issues a CofO for the Walnut Affordable Housing Building. In addition, the Developer must obtain a CofO for the Walnut Affordable Housing Building before the expiration of the Term.
- E. <u>Equivalency</u>. The Walnut Affordable Housing Building shall be substantially equivalent to the Project's other multi-unit residential buildings in exterior appearance and overall quality of construction. All BMR Units must be wired for telephone, cable, and internet

commences to construct before the Tax Credit Closing, the Developer shall, at its sole election, either deposit an amount equal to the Rental Gap Fee or Ownership Gap Fee, as applicable, for that unit in the Escrow Account before obtaining a First Construction Document for that unit, or deposit an amount equal to the Rental Gap Fee or Ownership Gap Fee, as applicable, for that unit and the Development Fee Deferral Surcharge for such Rental Gap Fee or Ownership Gap Fee (as calculated by DBI at the time of the Developer deposits such Rental Gap Fee or Ownership Gap Fee) in the Escrow Account between obtaining the First Construction Document and the CofO for that unit.

At any time within thirty (30) days after Developer's written request (accompanied by reasonable supporting materials), City shall authorize the release of funds from the Escrow Account to reimburse Developer for reasonable and customary Walnut Affordable Housing Building pre-development costs incurred prior to the Tax Credit Closing, such as, but not limited to, design drawings, schematic drawings, and commercially reasonable costs for financing that expedites the construction of the Walnut Affordable Housing Building. If the Tax Credit Closing occurs, all remaining funds in the Escrow Account needed to finance the construction of the Walnut Affordable Housing Building shall be disbursed to pay construction and development costs that are approved by the Walnut Affordable Housing Building construction lender at the time such costs are due and payable. If the Developer provides reasonable documentation to City that there are excess Escrow Account funds that are not required to finance the construction of the Walnut Affordable Housing Building, such excess Escrow Account funds shall be disbursed to the Developer.

If the Tax Credit Closing does not occur by the Outside Date, subject to extension for any applicable Excusable Delay, then City shall have the right to receive the Escrow Account funds by delivering written notice to the Escrow Account holder any time after the Outside Date for deposit in City's Citywide Affordable Housing Fund established in San Francisco Administrative Code Section 10.100-49. Within three (3) business days of receiving such written notice, the Escrow Account holder shall deliver the funds to the address specified by the MOHCD Director.

4. Transfer of Walnut Land to City.

A. <u>Transfer Notice</u>. If the Tax Credit Closing does not occur by the Outside Date, subject to extension for any applicable Excusable Delay, and construction of any Building occurs during the Term, then City shall have the right to acquire, and Developer agrees to transfer to the City, fee ownership of the Walnut Land pursuant to the form of grant deed (the "Grant Deed") attached as <u>Attachment D-2</u>, with the Approved Legal Description attached to it as Exhibit A. City shall have the right to exercise its right to acquire the Walnut Land by giving Developer, between the Outside Date and the last day of the Term, written notice of the City's request to acquire the Walnut Land pursuant to this Section (the "Transfer Notice"). If City receives the Walnut Land pursuant to this Section, and Developer later obtains all financing needed to commence and complete construction of retail improvements on the Walnut Retail Parcel (or child care improvements on the Walnut Child Care Parcel), City shall transfer fee ownership of the Walnut Retail Parcel or the Walnut Child Care Parcel, as applicable, to Developer within ten (10) business days of Developer's receipt of a First Construction Document for such improvements.

under <u>Section 4.C</u> above (the "Title Policy"), and (ii) to execute and deliver the Grant Deed and the Transfer Documents, if any, to City. Within 7 days after the City's receipt of the Title Policy, the duly executed and acknowledged Grant Deed, and, if any, the Transfer Documents, duly executed and acknowledged as applicable, City shall execute and return one (1) fully executed original of any Transfer Document to the Developer.

- City's Remedies. If the Developer fails to transfer the Walnut Land to City in G. accordance with this Section, then City shall have the right to specific performance to compel the transfer of the Walnut Land to City in accordance with this Section or to exercise its rights under the Deed of Trust to foreclose and take title to the Walnut Land. Following any specific performance to transfer the Walnut Land to City or any foreclosure of the Walnut Land by City under the Deed of Trust, Developer's obligations under this Section shall be satisfied; provided if the Developer is not able to transfer the Walnut Land to City in the condition required by this Section (a "Condition Preventing Transfer"), then City, as its sole remedy for a Condition Preventing Transfer, shall instead accept an in lieu payment in the amount of Fair Market Value. City's exercise of its remedy for a Condition Preventing Transfer shall be by delivering written notice of such exercise to Developer, with a statement explaining the basis for the determination that the Walnut Land cannot be transferred in accordance with this Section. If City delivers such notice, the Developer shall pay City an in lieu payment in the amount of Fair Market Value made within 60 days following the determination of the Fair Market Value. Any failure by Developer to make such in lieu payment when due shall accrue interest at 10% per annum from the date it is due until paid.
- H. Fulfillment of Developer's Obligations. On City's receipt of (i) fee ownership of the Walnut Land through an action for specific performance or foreclosure under the Deed of Trust or a payment of an in lieu payment due to a Condition Preventing Transfer, and (ii) the funds deposited in the Escrow Account as required in Section 3 above, City shall have no further rights or remedies under the Development Agreement resulting from Developer's failure to timely commence or complete construction of the Walnut Affordable Housing Building. If the Developer obtains a First Construction Document for any Market Rate Unit after the Outside Date, nothing in the foregoing sentence shall limit the Developer's obligation to pay the fee calculated under Section 415.5 for such Market Rate Unit.

5. <u>Costa-Hawkins Rental Housing Act</u>

A. Non-Applicability of Costa-Hawkins Act. Chapter 4.3 of the California Government Code directs public agencies to grant concessions and incentives to private developers for the production of housing for lower income households. The Costa-Hawkins Rental Housing Act, California Civil Code Sections 1954.50 et seq. (the "Costa-Hawkins Act"), provides for no limitations on the establishment of the initial and all subsequent rental rates for a dwelling unit with a certificate of occupancy issued after February 1, 1995, with exceptions, including an exception for dwelling units constructed pursuant to a contract with a public agency in consideration for a direct financial contribution or any other form of assistance specified in Chapter 4.3 of the California Government Code (Section 1954.52(b)). The Parties agree that the Costa-Hawkins Act does not and in no way shall limit or otherwise affect the restriction of rental charges for the BMR Units. The Development Agreement falls within the express exception to the Costa-Hawkins Act, Section 1954.52(b) because the Development Agreement is a contract

Exhibit B

Project Description

The Project Site is an approximately 446,490-square-foot, or 10.25-acre, parcel bounded by California Street to the north, Presidio Avenue to the east, Masonic Avenue to southeast, Euclid Avenue to the south, and Laurel Street/Mayfair Drive to the west, at the southern edge of San Francisco's Presidio Heights neighborhood in the northwest portion of San Francisco. The project sponsor, Laurel Heights Partners, LLC, owns the site and temporarily leases it to the Regents of the University of California, which uses the Project Site for its University of California San Francisco (UCSF) Laurel Heights Campus. The Project Site does not include the San Francisco Fireman's Credit Union (now called the SF Fire Credit Union) at the southwest corner of California Street and Presidio Avenue, which is on a separate parcel.

The Project Site is currently used as office and related research, child care, and parking. It is developed with a four-story, approximately 455,000-gross-square-foot office building including a three-level, 212-space, an approximately 93,000-gross-square-foot partially below-grade parking garage at the center of the site; a one-story, approximately 14,000-gross-square-foot annex building at the corner of California and Laurel streets; three surface parking lots with a total of 331 spaces connected by internal roadways; two circular garage ramp structures leading to below-grade parking levels; and landscaping or landscaped open space for the USCF Laurel Heights Campus occupants.

The proposed project includes approximately 1,427,832 gross square feet of new and rehabilitated space, comprising approximately 977,437 gross square feet of residential floor area with approximately 744 dwelling units; approximately 34,496 gross square feet of retail floor area; and an approximately 14,665 gross-square-foot child care center use. The proposed project would provide approximately 857 off-street parking spaces (including approximately 10 car share spaces), approximately 762 Class One bicycle spaces, and 77 Class Two bicycle spaces. These proposed uses would be located in 13 new buildings (known as Plaza A, Plaza B, Walnut, Mayfair, Laurel Townhomes, Euclid and Masonic) and in the adaptively reused office building (known as Center A and Center B), which would be divided into two separate buildings and converted to residential use.

25% of the proposed project's units will be deed-restricted, on-site affordable units designated for low-income senior households. These affordable units will be located in the proposed Walnut Building on California Street and consist of 185 studios and 1-bedrooms for seniors plus one (1) on-site manager's unit. The Walnut Building would also include an approximately 175-seat child care facility, including a contiguous outdoor activity area. The project includes approximately 34,496 square feet of neighborhood-serving retail located in the buildings fronting onto California Street (Plaza A, Plaza B and the Walnut Building). This retail

Exhibit D-2

Appraisal Process

1. Arbitration for Fair Market Value.

1.1 <u>Appointment</u>. Each Party shall appoint one (1) Appraiser (as defined below) within thirty (30) days after City delivers written notice to Developer that the arbitration provisions of this Exhibit have been invoked (the "Initial Selection Period"). Upon selecting its Appraiser, a Party shall promptly notify the other Party in writing of the name of that Appraiser. Each Appraiser selected by a Party under this Section shall be an "Initial Appraiser".

An "Appraiser" shall mean a competent and licensed appraiser who is qualified by training and experience in the City and County of San Francisco and a member in good standing of the Appraisal Institute and designated as a MAI, or, if the Appraisal Institute no longer exists, shall hold the senior professional designation awarded by the most prominent organization of appraisal professionals then awarding such professional designations. An Appraiser may have a prior working relationship with either or both of the Parties, provided that such working relationship shall be disclosed to both Parties. Without limiting the foregoing, an Appraiser shall have at least ten (10) years' experience valuing multi-family residential real estate that is in the City and County of San Francisco and substantially similar product-type to the Walnut Affordable Housing Building (i.e., affordable senior housing and condominium airspace interests or similar property interests such as ground leases) required for the Walnut Affordable Housing Building. If a Party fails to appoint its Appraiser within the Initial Selection Period, the Initial Appraiser appointed by the other Party shall individually determine the Fair Market Value in accordance with the provisions hereof.

Instruction and Completion. The term "Fair Market Value" shall mean the then current fair market value of the Walnut Land, as determined pursuant to this Exhibit. Each Initial Appraiser will make an independent determination of the Fair Market Value. The following instructions shall govern the preparation and delivery of each appraisal report giving the respective Initial Appraiser's opinion of the Fair Market Value. The Parties may supplement or modify these instructions upon mutual agreement. Each final opinion of value will be stated in a self-contained appraisal report based on a comprehensive study and analysis and setting forth, in detail, all data, analysis, and conclusions necessary and typical of a complete, self-contained appraisal report in compliance with the current version of the Uniform Standards of Professional Appraisal Practice ("USPAP"). The appraisal report will include the Initial Appraiser's final opinion of the Fair Market Value stated as a specific dollar figure. The Walnut Land shall be appraised based on the actual residential project that it is entitled for at the time of Appraisal consistent with the zoning and all conditions on the Walnut Land and assuming that the following apply to the Walnut Land: (i) the Approvals (as such term is defined in the Development Agreement), including, without

As of 2014, USPAP replaced the terminology of "Restricted Use, Summary and Self Contained", and replaced the report content types with two types, "Appraisal Report" and "Restricted Appraisal Report." The reference to "Self Contained" in V, Appraisal Standards, refers to the meaning it had prior to 2014. Also, the reference to "Complete" appraisal has the meaning that it did prior this term being removed officially from USPAP, i.e. essentially that no relevant and applicable valuation approaches or methodologies may be excluded (and the rationale for any approach excluded be provided).

limitation, the applicable conditions of approval and any notices of special restrictions, (ii) the Development Agreement (subject to the eventual expiration thereof), (iii) permitted exceptions to title, (iv) the final subdivision map, (v)covenants, conditions and restrictions, reciprocal easement agreements and similar agreements regarding operation and use of condominium airspace parcels on the Walnut Land, regardless of whether such agreements are then in effect, it being agreed that the Walnut Land will be subject to such agreements in a commercially reasonable form, (v) applicable zoning, (vi) applicable development impact fees, (vii) its then-current "as-is", "whereis" condition, provided the only exceptions to title will be those described in Section 4.C of Exhibit D to the Development Agreement and (viii) such other documents and restrictions that the Parties mutually agree to present to the Initial Appraisers (or the Initial Appraiser if there is only one) during the appraisal process. The Fair Market Value will be determined as if the Walnut Land were served by streets and utilities but otherwise vacant and unimproved by any structures, buildings, improvements, fixtures, additions, alterations, and betterments of whatsoever nature or description. For clarity, it is understood that the Walnut Land valuation shall take into consideration the actual costs and expenses necessary for the improvements to specifically serve the Walnut Land. Each Initial Appraiser will use sales comparisons to estimate value, presented in individual write-up sheets. Each Initial Appraiser shall adhere to USPAP direction pertaining to comparable sales requiring extraordinary verification and weighting considerations. If there is more than one Initial Appraiser, the Initial Appraisers may share and have access to objective information in preparing their appraisals, but they will independently analyze the information in their determination of the Fair Market Value, and neither of the Initial Appraisers shall have access to the appraisal of the other (except for the sharing of objective information contained in such appraisals) until both of the appraisals are submitted in accordance with the provisions of this Section. Neither Party shall communicate with the Initial Appraiser selected by the other Party regarding the instructions contained in this Section before the Initial Appraisers complete their appraisals. If an Initial Appraiser has questions regarding the instructions in this Section, such Initial Appraiser shall use his or her own professional judgment and shall make clear all assumptions upon which his or her professional conclusions are based, including any supplemental instructions or interpretative guidance received from the Party appointing such Initial Appraiser. There shall not be any arbitration or adjudication of the instructions to the Initial Appraisers contained in this Section. Each Initial Appraiser shall complete, sign and submit its written appraisal setting forth the Fair Market Value to the Parties within sixty (60) days after the appointment of the last of the Initial Appraisers (or if only one Initial Appraiser is selected, within sixty (60) days after the expiration of the Initial Selection Period).

If only one Initial Appraiser is selected during the Initial Selection Period, then the Fair Market Value shall be the figure in such Initial Appraiser's appraisal. If two Initial Appraisers are selected during the Initial Selection Period, and the higher appraised Fair Market Value is not more than one hundred ten percent (110%) of the lower appraised Fair Market Value, then the Fair Market Value shall be the average of such two (2) Fair Market Value figures.

1.3 <u>Potential Third Appraiser</u>. If two Initial Appraisers are selected during the Initial Selection Period, and the higher appraised Fair Market Value is more than one hundred ten percent (110%) of the lower appraised Fair Market Value, then the Initial Appraisers shall agree upon and appoint an independent third Appraiser meeting the requirements for an Appraiser specified in Section 1.2 within thirty (30) days after the appraisals of both of the Initial Appraisers have been

GROUND LEASE

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA a California public corporation on behalf of the San Francisco campus

("University")

- AND -

LAUREL HEIGHTS PARTNERS LLC, a Delaware limited liability company

("Lessee")

March 13 , 2015

- Section 4.4. <u>Utilities and Other Facilities</u>. Commencing from and after the University Sublease Expiration and continuing thereafter during the Term, all costs associated with bringing required utilities (both temporary and permanent) from the boundary of the Leased Land (or, with respect to temporary utilities only, from the point of origin) to the point of connection to any Improvements and/or Alterations thereto, including, without limitation, related professional, engineering and consultant fees, service charges, meters, and the costs of connections, including, without limitation, any hook-up fees assessed by any utility company, water district and/or government agency, shall be paid by Lessee.
- Section 4.5 Nonresponsibility. Lessee will at all times permit the University to post appropriate notices to avoid any liability to contractors or material suppliers for payment for Alterations and allow such notices to remain posted until the completion of the applicable Work. University shall not be deemed to have incurred or assumed any obligation or responsibility in connection with any Alterations or Work performed on the Leased Land. Nothing in this Lease nor any act or failure to act on the part of University shall be construed as a warranty or representation as to the adequacy or fitness of the Improvements or as a waiver of a claim by University for any defect or deficiency with respect to any Alterations or Work with respect thereto.
- Section 4.6 Maintenance of Leased Land and Improvements. During the Term of this Lease, subject to the provisions of Section 4.1, ARTICLE VIII, ARTICLE IX and Section 17.21 and taking into consideration construction activities with respect to Restoration, Demolition or Alterations, Lessee shall, at Lessee's sole cost and expense, maintain the Leased Land in a good, clean, attractive and sanitary and safe order, condition, habitability and repair. Lessee's maintenance obligations shall include (i) the obligation to maintain the Improvements within the Leased Land in good condition and repair, and (ii) the obligation to maintain all unimproved areas within the Leased Land in good condition and perform erosion and dust/dirt control measures with respect to any such unimproved areas (including, without limitation, preparing and complying with any applicable storm water prevention plans).

ARTICLE V

LEASE CONSIDERATION

- Section 5.1 Ground Lease Consideration. On the Effective Date, Lessee shall pay to University, in cash or other immediately available funds, the amount of Eighty Eight Million Six Hundred Thousand Dollars (\$88,600,000.00) (the "Lease Consideration"). The Lease Consideration shall be considered fully earned by University as consideration for entering into this Lease and granting Lessee the rights with respect to the Improvements and the Leased Land set forth in this Lease and, without limiting any of Lessee's rights in the event of a default by the University under this Lease, shall be non-refundable under any circumstances.
- Section 5.2 Net Lease; No Rent Abatement or Reduction. The parties hereto have assumed that University will not have to pay any expense or incur any liabilities of any kind in any way relating to, or in connection with, the Leased Land or the Improvements during the Term. In connection with the foregoing, Lessee hereby assumes the obligation to make all payments of fees, costs and expenses in connection with the ownership, operation and

IN WITNESS WHEREOF, University and Lessee have executed this Memorandum of Ground Lease effective as of the Memorandum Date.

Lessee:		ts Partners LLC mited liability company
		ifornia LP, are limited partnership, ging member
	a Del	PSKS LH LLC, aware limited liability company, neral partner
	Ву:	Prado LH LLC, a California limited liability company, its managing member
		Ву:
		By:
STATE OF CALIFORNIA) ss COUNTY OF)	s.	
to me that he/she/they executed the same	subscribed to e in his/her/the ent the person(s	, a Notary Public, personally to me on the basis of satisfactory evidence the within instrument and acknowledged ir authorized capacity(ies), and that by s), or the entity upon behalf of which the
I certify under PENALTY OF PERJUR` foregoing paragraph is true and correct.	Y under the lav	vs of the State of California that the
WITNESS my hand and official seal.		
Signature of Notary Public		

RECORDING REQUESTED BY WHEN RECORDED MAIL TO:

First Republic Bank 111 Pine Street San Francisco, CA 94111 Attn: Loan Review

Loan Number: 27-541759-7

3333 CALIFORNIA STreet

APN: Block 1032, Lot 003 CTC ESC #15604980-780

Space Above this Line for Recorder's Use

MODIFICATION AGREEMENT

This Modification Agreement (this "Agreement"), dated as of March 27, 2018 for reference purposes only, is made between Laurel Heights Partners LLC ("Borrower") and First Republic Bank (the "Lender"), with reference to the following facts:

- A. The Lender has previously made to Borrower a term commitment loan in the original maximum principal amount of \$60,000,000 (the "Loan"). \$54,000,000 of the principal amount of the Loan has been disbursed, and the current outstanding principal balance of the Loan is \$54,000,000. Borrower has made installment payments of interest on the Loan.
- B. The Loan is evidenced by that certain Promissory Note Secured By Deed of Trust dated March 11, 2015 (as amended, the "Note").
- C. The Loan is secured, *inter alia*, by that certain Deed of Trust, Fixture Filing, Assignment of Rents, and Security Agreement dated March 11, 2015 executed by Borrower in favor of Lender and recorded on March 11, 2015 in the Official Records of San Francisco County as Instrument No. 2015-K032896 (the "Leasehold Deed of Trust", and all capitalized terms not defined herein shall have the meanings given to them in the Leasehold Deed of Trust). The collateral under the Deed of Trust is, *inter alia*, the Ground Lease (under which Borrower is the tenant) of the that certain real property located in the City and County of San Francisco, as more particularly described in Exhibit A attached hereto (the "Land").
- D. Pursuant to that certain Future Disbursements Agreement dated March 11, 2015 between Borrower and Lender (as amended, the "FDA"), Lender has agreed to advance up to \$6,000,000 to Borrower to pay or reimburse Borrower for the Entitlements (as defined in the FDA).
- E. The Regents of the University of California ("UC"), which is the lessor under the Ground Lease, has agreed to transfer the fee simple interest in the Land to 2130 Post Street, LLC ("2130PS"). Borrower has agreed to acquire ownership of the fee simple interest in the Land from 2130PS in consideration of the payment of \$1,612,000 (the "Price").

Loan No.: 27-541759-7 Obligor No.: 0210449505

31316\6495662.3

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

Morrison & Foerster, LLP 755 Page Mill Road Palo Alto, CA 94304 Atm: Philip J. Levine, Esq.

MAIL TAX STATEMENTS TO:

Laurel Heights Partners LLC c/o The Prado Group, Inc. 150 Post Street, Suite 320 San Francisco, CA 94108 Attn: Daniel J. Saffier

APN: Lot 003, Block 1032

(Space above this line for Recorder's use)

Address: 3333 California Street, San Francisco, CA

CTC ELL P15604930 - TK/JM

GRANT DEED

The Documentary Transfer Tax is: \$12,090.00 ·

☐ Computed on full value of property conveyed.
 ☐ Computed on full value less liens and encumbrances assumed.
 ☐ City of San Francisco
 ☐ Unincorporated

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, 2130 POST STREET, LLC, a California limited liability company ("Grantor") does hereby GRANT, CONVBY, TRANSFER, and ASSIGN to LAUREL HEIGHTS PARTNERS LLC, a Delaware limited liability company ("Grantee") that certain real property in the City of San Francisco, County of San Francisco, State of California, as legally described on Exhibit A attached hereto and made a part hereof (the "Property").

This grant is made subject to all matters of record existing as of the date hereof.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the Grentor has executed this Grant Deed this 26 day of March, 2018.

GRANTOR:

2130 Post Street, LLC, a California limited liability company

By: G. Bakar Properties, Inc.,

a California corporation, its Manager

Stephen J. LoPresti, Secretary

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

S.S.

On March 26,20/6 before me, Leyla Francisco , 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(les), 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 PERIURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

LEYLA MAAFELMAN
Commission 9 2117278
Notary Public - California
San Francisco County
My Comm. Expires Jun 25, 2019

3333 California Street, San Francisco, CA

File No. 190845 - Proposed Development Agreement

Hearing Date: October 21, 2019 Record Number: 2015-014028CUA/PCA/MAP/DUA

EXHIBITS D-F





Home - Volume 48 [2013-14] - Volume 48 Number 08 - Developing divisions

Developing divisions



steve@sfbg.com

With the clink of champagne glasses, kudos to the development team and its community partners, and the cutting of a red ribbon, the new housing development at 38 Dolores St. had its grand opening celebration on Nov. 14, a couple weeks after the Whole Foods on its ground floor opened its doors to Market Street.

In many ways, 38 Dolores is pretty typical of the new housing opening in this part of town these days. It took seven years to complete the project, "on time and under budget in a way this community can be proud of," developer Dan Safier of The Prado Group told the assembled crowd.

That process included countless meetings with various community groups, who successfully pushed for progressive features that include some key pedestrian safety improvements and limiting the number of parking spaces to just one spot for every two units.

"It was an amazing example of a developer working closely with the various neighborhood associations," area Sup. Scott Wiener told the well-dressed crowd at the event, a sentiment

also voiced by his pre essor, Bevan Dufty, who said, "They've by the gold star as far as listening to people."

But not everyone agrees with that praise. Peter Cohen, a housing activist who also works for the San Francisco Council of Community Housing Organizations, said Safier broke longtime assurances that he would satisfy his affordable housing obligations by building belowmarket-rate (BMR) units on site, rather than just paying an "in-lieu" fee to the city, two options under Inclusionary Housing Ordinance.

"They basically did a bait and switch. It was a real bullshit move," Cohen told the Guardian, noting how desperate the city is for more affordable housing now. "The bottom line is they promised to do affordable housing on site and they didn't do it."

"There are so many nuances to how affordable housing works," Safier told us, vaguely explaining why he couldn't do on-site BMR units, including the demands of project funders. He worked with the city on doing a land dedication for off-site affordable housing, but the Mayor's Office of Housing was resistant, and it would have required a change in city codes to do in this part of town.

"They wanted to develop faster than we had to capacity to develop," MOH Director Olson Lee told the Guardian, explaining that his office was dealing with transitioning affordable housing projects under the old Redevelopment Agency and it didn't have the capacity to help Safier build the BMR units now. Instead, it accepted a check for about \$5 million.

"We felt there should be more options for developers," Safier said. "But the reality is the city needs the fees."

Yes, over the long haul, the city does need those fees to build more BMR units, which require big public subsidies to build in San Francisco. But those will take many years and much effort to build. Lee said the \$37 million now in the city's Affordable Housing Trust Fund will eventually translate into 185 BMR units.

"That's why we want the units on site," Cohen said, "because the clearest path is to build the damn units in your building."

By time the party started at 38 Dolores, 40 of its 81 units had already been rented, and the developers expected even more to be rented out by the end of the party, after attendees had toured the open units sipping free champagne or cocktails.

"If you've brought your checkbook, you can even rent a unit," Safier told the crowd.

Prices ranged from \$2,950 per month for one of a half-dozen 505-square-foot studio apartments to \$4,395 for the two-bedroom, two-bath, 1,099-square-foot units that the event was really pushing up to \$8,100 for a few three-bedroom apartments with the balcony and killer views on the seventh floor.

Compare those rents to San Francisco's median rent of nearly \$1,500, the highest in the nation, according to a recent US Census report, which also noted that occupants in 38

percent of rental units—the city pay more than 35 percent of their—come on rent. And then you get a pretty good idea how San Francisco is changing.

FLOOD OF HOUSING

Thousands of newly constructed housing units are now coming online in San Francisco, spurred by the city's hot housing market, pent-up demand and capital following the 2008 financial crisis, and approval of city plans that regulate development by neighborhood, such as the Market and Octavia Neighborhood Plan, which has unleashed a flood of development along mid- and upper-Market Street.

The good news is apartments are finally being built in a city where nearly two-thirds of residents rent — even in projects like 38 Dolores that are permitted as condos — but the bad news is that they're really expensive and the city isn't building anywhere near enough affordable units to address demand by current residents. And most developers are opting to "fee out" rather than build BMR units, meaning it will take several years to address this growing economic imbalance.

The trend in what's being built in San Francisco and what those units are going for only increases the pressure on tenants in rent-controlled apartments, who are now being displaced at rates not seen since the last dot-com bubble, both through evictions and buyouts. Contrary to the supply-and-demand arguments made by pro-development cheerleaders, there's no evidence that the housing supply now being built is doing anything to help most San Franciscans.

"Trickle down theory is going to fuck San Francisco, it's not going to help it," Cohen said.

San Francisco's Housing Element, a study of housing needs mandated by state law to ensure that cities are addressing their affordable housing obligations, called for the city to build 31,193 housing units from 2007-2014. Partially as a result of the 2008 financial meltdown, San Francisco fell far short of that goal, with just 11,130 units getting permitted, most of those market-rate units.

But that was enough to meet 60.6 percent of the projected need for serving those earning 120 percent of area median income and above, whereas the city entitled just 360 units for moderate income San Franciscans -5.3 percent of the projected need - and 3,313 units for low-income (80 percent of AMI and below), or 27.3 percent of the need.

So it isn't that San Francisco is facing a "housing crisis," as Housing Action Coalition and others often proclaim, it's that the city is facing an *affordable* housing crisis driven by not building enough below-market-rate housing and allowing real estate speculators to cannibalize the city's rent-controlled housing.

Even though voters last year approved Prop. C, creating the Affordable Housing Trust Fund to address the real crisis, it won't generate nearly enough money to meet the long-term need. And in the short-term, it actually reduced the number of on-site BMR units that developers must build, from 15 percent to 12 percent.

"The reason for chan; the inclusionary to 12 percent was to inclusionary to 12 percent was to inclusive the on-site," MOH's Lee told us, although he admitted that it had limited success so far.

BATTLING FOR BMR

That's not to say there aren't any BMR units going up.

The Mayor's Office says there are 6,168 housing units now under construction in the city, and 1,182 of those are affordable housing. Most of those are in projects that were required to do so because they got a gift of public land, including Lennar Urban's housing development at Hunters Point Shipyard and the housing development that's part of the Transbay Terminal rebuild in SoMa, where the Block 6 project starting next year that will have 70 BMR units out of 479 total.

"The city got that state land and as a requirement of law, it has a high affordable housing requirement," MOH's Lee told us. "Transbay is a great example of how we're encouraging the affordable and market rate to go hand-in-hand, because they really do go hand-in-hand."

Other developers were encouraged by the change in Prop. C, including the massive, 754-unit NEMA apartment complex on Market Street next to the Twitter headquarters, which opted to do the 12 percent BMR on-site rather than 17 percent off-site or the pay of an in-lieu fees that roughly equivalent to 20 percent. Trinity Housing's huge project at 1167 Market will also have 232 BMR units out of 1,900 units total.

"Getting on-site inclusionary has lots of benefits," Lee said. "One, we aren't doing it. Two, it gets done faster. And three, we get a better mix around the city."

While Wiener told us "we need all sorts of different housing," he also said that "we need to do more to have on-site affordable units."

But Cohen said the city isn't doing nearly enough to encourage affordable housing construction, particularly giving how much market-rate housing is being built, which is gentrifying the city and hurting its diversity. He says MOH should increase the in-lieu fees, which are based on construction costs and not what the red-hot market is actually paying for units right now.

"The opportunity cost is far higher to do the unit on site," Cohen said. "The fee is too cheap."

So for now, Cohen works with neighborhood associations and groups such as the AIDS Housing Alliance and the Milk Club to put pressure on developers to do on-site affordable housing, as they've recently been doing to the Texas-based Greystar, which is proposing a 90-unit housing project at on Market at Sanchez.

Activists have pushed and pushed, and they finally felt like they got a commitment from Greystar at the Nov. 11 meeting of the Duboce Triangle Neighbors Association, which is spearheading the effort. But when the Guardian asked the company detailed questions about the issue and its commitment, we got back this vague statement from Randy Ackerman,

Senior Director of Deprement: "We recently met with Duboce Togle Neighbors Association and had a good discussion, where we received a lot of helpful feedback on the BMR units and the overall project. We plan to incorporate their feedback as we finalize our plans with city staff."

Cohen said that's typical of developers these days. "This is the economic reality, is it's a place to make a lot of money off of real estate," Cohen said. "They can very easily play the community like a fiddle, so I'm hoping I can help the Upper Market community beat Greystar."

Safier said he doesn't think it's fair or helpful to demonize developers. "I'm not one of those evil developers," Safier said, who criticizes the rich-vs.-poor political dynamics in the city. "I don't think that tug and pull of this city is very productive."

But Cohen said activists need to be vigilant to protect the character of the city in the face of growing profit motives. "It's 24/7 and it just wears people down, and we have to have wins along the way," Cohen said, noting the importance of defeating the 8 Washington project in the last election. "We have to be very loud about how difficult it is to maintain this city's diversity."

Part Sy	November	⁻ 19, 2013							
V, - 17-7	Steven T. Jon	ies							
£ ₂	News & Opi	inion							
	Volume 48 Nu	ımber 08							
	8 Washingto	n Affo	rdable Housin	g Budget	Cocktails	condos	Development	Election	Event
Evictions	Housing	Lennar	Mayor I	News Park	ing Progre	essive Re	eal Estate rede	evelopment	Rent
San Fran	cisco Scott	Wiener	SoMa Sup	. Scott Wiene	r Tenants	Twitter	Wiener		



Feasibility Analysis and Questions re 3333 California Street

9 messages

Kathy Devincenzi < krdevincenzi@gmail.com>

Wed, Aug 21, 2019 at 12:39 PM

To: "Lutenski, Leigh (ECN)" <leigh.lutenski@sfgov.org>

Cc: Catherine Stefani <catherinestefanie@sfgov.org>, Richard Frisbie <frfbeagle@gmail.com>

Ms. Lutenski,

We are trying to understand the proposed Development Agreement and appreciate your meeting with us for a limited period on August 19, 2019.

Please provide us with a copy of the City's economic feasibility analysis concerning the proposed 3333 California Street project, including without limitation analysis of the feasibility of constructing the proposed project and/or affordable senior housing on site; construction costs; project scale; potential rental or sales revenues; capitalization rates; interest rates; equity return rates; land value; and available local, state and federal housing finance programs including Low Income Housing Tax Credits readily available for market rate housing; tax-exempt bond financing; Federal Housing Administration and U. S. Department of Housing and Urban Development mortgage insurance; available City or local housing finance programs such as Enhanced Infrastructure District and tax increments; zoning changes that increase or decrease development potential; variable City exactions including community benefit fees, capacity charges, community facilities districts; the value of state density bonus, concessions and incentives under California Government Code Section 65915 and any other state law that confers value to development and which project sponsors may attempt to avail themselves of and public-private partnership development agreements where applicable and other factors as deemed reasonably relevant (as described in Planning Code section 415.10 as factors the City considers).

Also, please give us answers to the following questions about the proposed Development Agreement for 3333 California Street.

What is the estimated in lieu payment that would be required at time of original project approval if the developer elected not to build affordable units on site or used another exception from building affordable on-site units?

On page D-9, if the Developer fails to transfer the Walnut Land to the City and the City instead accepts an "in lieu payment in the amount of Fair Market Value," does that mean the fair market value of the Walnut Land only or of the in lieu payment that would have been required as to the total project at time of original project approval?

If page D-9 refers to the Fair Market Value of the Walnut Land only, does that mean the value of the Walnut Land as entitled with the senior affordable housing attached to it, and if so what is the estimated value of that Walnut Land as encumbered with the requirement of building affordable housing on it?

How did the City's analysis of the economic feasibility of the 3333 California Street project take into account the impact on feasibility caused by the potential increase in construction costs during the 15-year period of the Development Agreement, as extended for any litigation?

If the City takes ownership of the Walnut Land, can the City change the use of the Walnut Land, and if so, what process would be used to change the use of the Walnut Land?

Page 28 of the Development Agreement states:

There is no requirement under this Agreement that Developer initiate or complete development of the Project, or any portion thereof. There is also no requirement that development be initiated or completed within any period of time or in any particular order, subject to the requirement to complete Associated Community Benefits for each Building (or for any market rate residential unit in excess of three hundred eighty-six (386), as applicable commenced by Developer as set forth in Section 4.1. Does this mean that the Developer can construct 386 market rate residential units under the new Special Use District zoning and then terminate the Development Agreement requirement that the Developer build the senior affordable housing units on site?

Page 39 of the Development Agreement states:

Developer shall, upon thirty (30) days prior notice to the City, have the right, in its sole and absolute discretion, to terminate this Agreement in its entirety at any time if Developer does not Commence Construction on any part of the Project Site by the Date which is five (5) years following the Effective Date as such five (5) year date may be extended by any Litigation Extension. If the Developer terminates the Development Agreement under this provision, would the new Special Use District remain in effect, unless otherwise amended by the Board of Supervisors?

Thank you very much for your cooperation in this regard.

Laurel Heights Improvement Association of SF, Inc.

By: Kathryn Devincenzi, President

Mail Delivery Subsystem <mailer-daemon@googlemail.com>
To: krdevincenzi@gmail.com

Wed, Aug 21, 2019 at 12:39 PM



Message not delivered

Your message couldn't be delivered to **catherinestefanie@sfgov.org** because the remote server is misconfigured. See technical details below for more information.

The response from the remote server was:

550 5.4.1 [catherinestefanie@sfgov.org]: Recipient address rejected: Access denied [DM2GCC01FT008.eop-gcc01.prod.protection.outlook.com]

Final-Recipient: rfc822; catherinestefanie@sfgov.org

Action: failed Status: 5.4.1

Remote-MTA: dns; sfgov-org.mail.protection.outlook.com. (104.47.63.36, the

server for the domain sfgov.org.)

Diagnostic-Code: smtp; 550 5.4.1 [catherinestefanie@sfgov.org]: Recipient address rejected: Access denied

[DM2GCC01FT008.eop-gcc01.prod.protection.outlook.com] Last-Attempt-Date: Wed, 21 Aug 2019 12:39:18 -0700 (PDT)

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

[Quoted text hidden]

Lutenski, Leigh (ECN) <leigh.lutenski@sfgov.org>

Thu, Sep 12, 2019 at 2:59 PM

To: Kathy Devincenzi krdevincenzi@gmail.com

Cc: "Stefani, Catherine (BOS)" <catherine.stefani@sfgov.org>, Richard Frisbie <frfbeagle@gmail.com>, "WONG, CAROL (CAT)" <Carol.R.Wong@sfcityatty.org>, "PEARSON, AUDREY (CAT)" <Audrey.Pearson@sfcityatty.org>, "Pena, Iowayna (ECN)" <iowayna.pena@sfgov.org>

Hello Kathy,

Please see responses to your questions below in red bold text, as well as the attached financial feasibility analysis.

Thanks, Leigh

Please provide us with a copy of the City's economic feasibility analysis concerning the proposed 3333 California Street project, including without limitation analysis of the feasibility of constructing the proposed project and/or affordable senior housing on site; construction costs; project scale; potential rental or sales revenues; capitalization rates; interest rates; equity return rates; land value; and available local, state and federal housing finance programs including Low Income Housing Tax Credits readily available for market rate housing; tax-exempt bond financing; Federal Housing Administration and U. S. Department of Housing and Urban Development mortgage insurance; available City or local housing finance programs such as Enhanced Infrastructure District and tax increments; zoning changes that increase or decrease development potential; variable City exactions including community benefit fees, capacity charges, community facilities districts; the value of state density bonus, concessions and incentives under California Government Code Section 65915 and any other state law that confers value to development and which project sponsors may attempt to avail themselves of and public-private partnership development agreements where applicable and other factors as deemed reasonably relevant (as described in Planning Code section 415.10 as factors the City considers).

Please see attached financial feasibility analysis per your request.

Also, please give us answers to the following questions about the proposed Development Agreement for 3333 California Street.

What is the estimated in lieu payment that would be required at time of original project approval if the developer elected not to build affordable units on site or used another exception from building affordable on-site units?

The City's current in-lieu fee is calculated based on the project's residential gross square feet (977,437) x MOHCD affordable housing fee (\$199.50/gsf) x inclusionary percentage (30% for rental gsf or 33% for ownership gsf). However, this project does not include a fee-out option for the affordable housing requirement.

On page D-9, if the Developer fails to transfer the Walnut Land to the City and the City instead accepts an "in lieu payment in the amount of Fair Market Value," does that mean the fair market value of the Walnut Land only or of the in lieu payment that would have been required as to the total project at time of original project approval?

The City would get the fair market value of the Walnut Land, as determined by the Baseball Arbitration Appraisal Process outlined in Exhibit D-2.

If page D-9 refers to the Fair Market Value of the Walnut Land only, does that mean the value of the Walnut Land as entitled with the senior affordable housing attached to it, and if so what is the estimated value of that Walnut Land as encumbered with the requirement of building affordable housing on it?

Per my response above, the value of the Walnut Land would be determined by the Baseball Arbitration Appraisal Process assumptions outlined in Exhibit D-2.

How did the City's analysis of the economic feasibility of the 3333 California Street project take into account the impact on feasibility caused by the potential increase in construction costs during the 15-year period of the Development Agreement, as extended for any litigation?

The analysis includes reasonable assumptions as to the potential future change in construction costs.

If the City takes ownership of the Walnut Land, can the City change the use of the Walnut Land, and if so, what process would be used to change the use of the Walnut Land?

The City would employ standard processes and approvals to change the allowable use of the Walnut Land in that case.

Page 28 of the Development Agreement states: There is no requirement under this Agreement that Developer initiate or complete development of the Project, or any portion thereof. There is also no requirement that development be initiated or completed within any period of time or in any particular order, subject to the requirement to complete Associated Community Benefits for each Building (or for any market rate residential unit in excess of three hundred eighty-six (386), as applicable commenced by Developer as set forth in Section 4.1.

Does this mean that the Developer can construct 386 market rate residential units under the new Special Use District zoning and then terminate the Development Agreement requirement that the Developer build the senior affordable housing units on site?

Please refer to sections 11.1 and 11.3 starting on page 39 of the Development Agreement.

Page 39 of the Development Agreement states: Developer shall, upon thirty (30) days prior notice to the City, have the right, in its sole and absolute discretion, to terminate this Agreement in its entirety at any time if Developer does not Commence Construction on any part of the Project Site by the Date which is five (5) years following the Effective Date as such five (5) year date may be extended by any Litigation Extension.

If the Developer terminates the Developer term

Similar to above, please refer to section 11.3 Termination and Vesting starting on page 39 of the Development Agreement. If the DA terminates the developer loses all vesting and entitlement rights to build the project. The SUD zoning controls do not have an expiration date and will remain effective. However, the developer or any subsequent property owner for that parcel would need to apply to the City for permits and approvals in order to redevelop the site after the DA ends.

Note: I will be out on maternity leave starting September 20 th through the end of the year	Note: I will be out on	maternity leave	starting Sentember	20 th through	the end of the v	rear.
--	------------------------	-----------------	--------------------	--------------------------	------------------	-------

Leigh Lutenski

Project Manager, Joint Development

Office of Economic and Workforce Development

San Francisco City Hall, Room 448

Direct: 415-554-6679

Email: leigh.lutenski@sfgov.org

[Quoted text hidden]

河 3333 California Summary - 8-23-19.pdf

图 3333 79K

Kathy Devincenzi < krdevincenzi@gmail.com>

Fri, Sep 20, 2019 at 12:43 PM

To: "Lutenski, Leigh (ECN)" <leigh.lutenski@sfgov.org>

Cc: Richard Frisbie <frfbeagle@gmail.com>, "catherine.stefani" <Catherine.Stefani@sfgov.org>

Ms. Lutenski,

Who will be handling the 3333 California Street matter at OEWD in your absence? We will have a response to your September 12, 2019 email.

[Quoted text hidden] [Quoted text hidden]

RESIDENTIAL APARTMENTS / CONDOMINIUMS AND WALNUT SENIOR HOUSING

Underwriting					Prado/SKS 201	7				Prado/SKS
Phase	Phas	e 3	Pha	se 2		Phase I		Pha	se 4	All Phases
			SULL SECTION		16 Dala 1	Blace B	a Malagies.			
1.) Unlevered IRR	4.1%	2.9%	3.6%	5.8%	3.3%	3.2%	-3.6%	-0.4%	4.0%	3.2%
2.) Levered IRR	3.4%	1.4%	2.1%	6.3%	1.7%	1.5%	NA	-4.9%	3.2%	1.8%
3.) Trended Return-On-Cost	4.7%	4.3%	4.6%	5.3%	4.4%	4.4%	1.9%	3.6%	4.5%	4.2%
	L			·					LJ	L

													 					-		
Unde	nwriting	- 4	de today							Base Case [100				Base [1	ĺ.
Phase			Pha	se il			Pha	se 2				Phase 3			Pha	se 4		1	ili Phas	29
		1000				1000	1,2,4	Saul.		The state of earliest state of										
4.)	Unlevered IRR		5.0%		4.8%		6.0%		4.8%	4.2	%	4.3%	NA		46.4%	Ì	20.3%			5.7%
5.)	Levered IRR		4.9%		4.5%		5.8%		4.1%	3.4	%	3.4%	NA		56.0%		25.3%			5.9%
6.)	Trended Return-On-Cost	1	4.3%		4.2%		NA		NA	4.2	%	4.2%	NA	1	NA		NA			NA
7.)	Net Operating Income	\$	8.2M	\$	3.3M		NA		NA	\$ 4.5N	1	\$ 4.2M	NA		NA		NA	S	20	2M
8.)	Total Development Costs	\$	188.9M	\$	78.2M	\$ 9	95.2M	\$ 25	52.6M	\$ 106.3N	1	\$ 100.9M	\$ 113.2M	\$	60.1M	\$	52.1M	5	1,047.	
9.)	Market Rate/Mgr Units		139		57		51		139	6	7	61	 1		14	1	30	=		559
10.)	BMR Units - 15% AMI		0		0		0		0		0	0	23		0		0			23
11.)	BMR Units - 50% AMI		0		0		0		0		0	0	51		0		0			51
12.)	BMR Units - 60% AMI		0		0		0		0		0	0	74		0		0			74
13.)	BMR Units - 80% AMI		0		0		0		0		0	o o	37		0		0			37
14.)	Total Units		139		57	·	51		139	6	-	61	 186		14		30	-		
		L										. 01	100		14		30	1		744

				ــــــــــــــــــــــــــــــــــــــ		1					L			 	L		- 1	7-1-1
Under	writing	la cabacta						Adjusted	l Cap	italization	ı Rafe	s[1]	in the second				Av	djusted [1]
Phase		STUTCOS		1 98		the same of the same of the same of	ase 2				1	nase 3		Pha	ise 4		-	All Phases
15.)	Unlevered IRR	CHARLE.	F 500	ĺ		STORY OF			1				E Walner		10000			
16.)	Levered IRR		5.7% 6.2%		5.5% 5.8%	6.0% 5.8%	1	4.8% 4.1%	1	4.9% 4.6%		5.0% 4.7%	NA	46.4%		- 1		6.2%
17.)	Trended Return-On-Cost		4.3%		4.2%	NA NA	1	NA.	f	4.2%		4.7 %	NA NA	56.0% Na	25.	JA		6.7% NA
18.) 19.)	Net Operating Income Total Development Costs	\$	8.2M	\$	3.3M	NA	1	NA	\$	4.5M	\$	4.2M	NA	NA	N	1	\$	20.2M
20.)	Market Rate Units	3	188.9M 139	3	78.2M	\$ 95.2M		252.6M	\$	106.3M	\$	100.9M	\$ 113.2M	\$ 60.1M	\$ 52.1	M	\$	1,047.5M
21.)	BMR Units - 15% AMI		0		57 0	51 0		139 0		67		61	1 23	14		30		559
22.) 23.)	BMR Units - 50% AMI BMR Units - 60% AMI		0		0	0		0		o		0	51	0		0		23 51
24.)	BMR Units - 80% AMI		0		0	0		0		0		0	74	0		0		74
25.)	Total Units		139		57	51		139		67		61	37 186	 14		0	-	37 744
															_	~]	3	/ '''

^{***} All financial and programmatic estimates are preliminary in nature, subject to change, and for illustrative purposes only. ***

^[1] Assumes AHP, MHP, & IIG funding and corresponding AMI affordability tiers for Walnut parcel.

^[2] Includes any net subsidy required for Walnut parcel. Additionally, does not account for prior parking costs allocated to Walnut parcel.

ORDINANCE NO. XX-19

1	[Planning Code – Geary-Masonic Special Use District]
2	
3	Ordinance amending the Planning Code to modify the Geary-Masonic Special Use District in
4	the area generally bounded by Geary Boulevard to the south, Masonic Avenue to the east,
5	and Assessor's Parcel Block No. 1071, Lots 001 and 004 to the north and west, respectively;
6	affirming the Planning Department's determination under the California Environmental Quality
7	Act; making findings of consistency with the General Plan, and the eight priority policies of
8	Planning Code, Section 101.1; and adopting findings of public convenience, necessity, and
9	welfare under Planning Code, Section 302.
10	NOTE: Unchanged Code text and uncodified text are in plain Arial font.
11	Additions to Codes are in <u>single-underline italics Times New Roman font</u> . Deletions to Codes are in <u>strikethrough italics Times New Roman font</u> .
12	Board amendment additions are in <u>double-underlined Arial font</u> . Board amendment deletions are in <u>strikethrough Arial font</u> .
13	Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.
14	
15	Be it ordained by the People of the City and County of San Francisco:
16	Section 1. Environmental and Planning Code Findings.
17	(a) The Planning Department has determined that the actions contemplated in this
18	ordinance comply with the California Environmental Quality Act (California Public Resources
19	Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
20	Supervisors in File No and is incorporated herein by reference. The Board affirms
21	this determination.
22	(b) On, 2019, the Planning Commission, in Resolution No,
23	adopted findings that the actions contemplated in this ordinance are consistent, on balance,
24	
25	

1 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The 2 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of 3 the Board of Supervisors in File No._____, and is incorporated herein by reference. 4 (c) Pursuant to Planning Code Section 302, this Board finds that this ordinance will 5 serve the public necessity, convenience, and welfare for the reasons set forth in Planning 6 Commission Resolution No. ____ and the Board incorporates such reasons herein by 7 reference. A copy of Planning Commission Resolution No. is on file with the Clerk of 8 the Board of Supervisors in File No. _____. 9 Section 2. The Planning Code is hereby amended by adding Section 249.20, to read as 10 follows: 11 SEC. 249.20. GEARY-MASONIC SPECIAL USE DISTRICT. 12 (a) General. A Special Use District entitled the Geary-Masonic Special Use District 13 ("District"), the boundaries of which are shown on Sectional Map SU03 of the Zoning Maps of 14 the City and County of San Francisco, is hereby established for the purpose set out below. 15 (b) Purpose. In order to provide for a mixed use development project with ground floor 16 retail, and a combination of very low income, low—income, moderate-income, middle-income, 17 and market rate residential units, at densities higher than what otherwise would be permitted 18 in the NC-3 zoning district and 80 foot height district, in an area well-served by transit, there 19 shall be a Geary-Masonic Special Use District consisting o(Assessor 's Block 1071, Lot 003 20 as designated on Sectional Map SU03 of the Zoning Maps of the City and County o(San 21 Francisco. 22 (c) Development Controls. Applicable provisions of the Planning Code for NCT-3 23 Districts as set forth in Section 752 shall apply within this Special Use District, except for the 24 following: 25 (1) Use Size. Non-residential uses 3000 square feet and above shall

1	require a conditional use under Section 121.2. Uses more than 6000 square feet in size are
2	not permitted.
3	(2) Accessory Vehicle Parking. There are no minimum off-street parking
4	requirements for any use in this District. No parking shall be permitted above .5 cars for each
5	Dwelling Unit.
6	(3) Car-sharing. Notwithstanding the provisions of section 166, no less
7	than 25% of parking spaces provided shall be an off-street car-share parking space and shall
8	be provided on the building site. Except as expressly provided herein, all other provisions of
9	section 166 shall apply.
10	(4) Parking and Loading Access. Parking and Loading access from Masonic
11	Avenue is not permitted.
12	(5) Dwelling Unit Mix. The project shall provide a minimum dwelling unit mix of
13	(A) at least 40% two and three bedroom units, including at least 10% three bedroom units, or
14	(B) any unit mix which includes some three bedroom or larger units such that 50% of all
15	bedrooms within the project are provided in units with more than one bedroom.
16	(d) Inclusionary Housing. <u>Compliance with the Inclusionary Housing Program can</u>
17	occur in one of the two following methods: In order to allow for the increased residential densities
18	provided by this Special Use District, on site inclusionary units pursuant to Planning Code Section
19	415.6 shall be required and required in the following amounts and income levels.
20	(1) Affordable Housing Fee. Payment of the Affordable Housing Fee pursuant to
21	Section 415. 5 and the following provisions:
22	(1) For a project providing Owned Units, the applicable percentage shall be 33%
23	of the residential gross floor area.
24	(2) For a project providing Rental Units, the applicable percentage shall be 30% of
25	the residential gross floor area.

(c) Use of Fees. MOHCD shall designate and separately account for all fees that it
receives under this Section. The funds shall be used exclusively to acquire and construct a 100%
affordable housing building on a site located within Supervisorial District 2, as it exists as of the date
of the effective date of this Ordinance XXX

(2) <u>On-site Inclusionary Units.</u> On-site units pursuant to Section 415.6 in the following <u>amounts and income levels:</u>

(a) In a rental project, at least 10% of units must be affordable to very lowincome households, at least 4% must be affordable to low-income households, at least 4% must be affordable to moderate-income households and at least 5% must be affordable to middle-income households. For purposes of this section, rental units for very low-income households shall have an affordable rent set at 55% of Area Median Income or less, with households earning up to 65% of Area Median Income eligible to apply for very low-income units. For purposes of this section, rental units for low-income households shall have an affordable rent set at 80% of Area Median Income or less, with households earning up from 65% to 90% of Area Median Income eligible to apply for low-income units. For purposes of this section, rental units for moderate-income households shall have an affordable rent set at 110% of Area Median Income or less, with households earning from 90% to 120% of Area Median Income eligible to apply for moderate-income units. For purposes of this section, rental units for middle-income households shall have an affordable rent set at 120% of Area Median Income or less, with households earning from 120% to 140% of Area Median Income eligible to apply for middle-income units. For any affordable units with rental rates set at 110% of Area Median Income or above, the units shall have a minimum occupancy of two persons.

(2) (b) In an ownership project, at least 11% of units must be affordable to very low-income households, at least 5% must be affordable to low-income households, at least 5% must be affordable and at least 5% must be affordable

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

to middle-income households. For purposes of this section, ownership units for very low-income households shall have an affordable sales price set at 80% of Area Median Income or less, with households earning up to 100% of Area Median Income eligible to apply for very low-income units. For purposes of this section, ownership units for low-income households shall have an affordable sales price set at 105% of Area Median Income or less with households earning up from 95% to 120% of Area Median Income eligible to apply for low-income units. For purposes of this section, ownership units for moderate-income households shall have an affordable sales price set at 130% of Area Median Income or less, with households earning from 120% to 140% of Area Median Income eligible to apply for moderate-income units. For purposes of this section, ownership units for middle-income households shall have an affordable sales price set at 150% of Area Median Income or less, with households earning from 140% to 160% of Area Median Income eligible to apply for middle-income units. For any affordable units with sales prices set at 130% of Area Median Income or above, the units shall have a minimum occupancy of two persons.

(3) The grandfathering provisions in Section 415.3(b) shall not apply. Except as expressly provided in this subsection (d), all other provisions of Section 415 shall apply.

Section 4. **Effective Date**. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

Section 5. **Scope of Ordinance**. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under

the official title of the ordinance. APPROVED AS TO FORM: DENNIS J. HERRERA, City Attorney Ву:

From:

Ryan Buntain < Ryan.Buntain@carlyle.com>

Sent:

Monday, October 14, 2019 10:19 PM

To:

Major, Erica (BOS); Peskin, Aaron (BOS); Safai, Ahsha (BOS); Haney, Matt (BOS)

Subject:

3333 California Project

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Land Use Committee Members,

As a resident of Laurel Heights and as a tax paying citizen residing at 21 Collins Street, I urge you to seriously consider the <u>Community Alternative Plan</u> to avoid significantly altering the neighborhood.

Specifically:

- Strongly consider limiting building heights to no more than 6 stories.
- Strongly consider adding more underground parking.
- Strongly consider limiting how many mature trees are to be removed (currently slated 185 trees is truly sad).
- Strongly consider ensuring that all truck loading is done underground and not on existing streets to create traffic issues.
- Strongly consider imposing wider sidewalk setbacks on all sides of the project.
- Strongly consider limiting the construction timeline to less than 4 years to avoid the impact on surrounding neighborhoods and streets.

Thank you for your consideration and support.

Ryan C. Buntain 21 Collins Street, San Francisco, CA 94118 908-419-5645

< CONFIDENTIALITY NOTICE >

The information contained in this transmission is intended only for the person or entity to which it is addressed and may contain confidential, trade secret and/or privileged material. If you are not the intended recipient of this information, do not review, retransmit, disclose, disseminate, use, or take any action in reliance upon, this information. If you received this transmission in error, please contact the sender and destroy all printed copies and delete the material from all computers.

In connection with our business, The Carlyle Group may collect and process your personal data. For further information regarding how we use this data, please see our online privacy notice at https://www.carlyle.com/privacy-notice

From: marsha nonn <mwnonnsf@gmail.com>

Sent: Tuesday, October 15, 2019 7:16 PM

To: Peskin, Aaron (BOS); Safai, Ahsha (BOS); Haney, Matt (BOS); Major, Erica (BOS)

Stefani, Catherine (BOS); Mar, Gordon (BOS); Ronen, Hillary; Yee, Norman (BOS); Mandelman, Rafael (BOS); Fewer, Sandra (BOS); Valli.Brown@sfgov.org; Walton,

Shamann (BOS)

Subject: S.F. Board of Supervisors' Land Use Committee Hearing, October 21, 2019 - Re. 3333

California Street, Record Number: 2015-014028CUA/PCA/MAP/DVA

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

TO: Supervisor Aaron Peskin Supervisor Ahsha Safai Supervisor Matt Haney Erica Major, Clerk

Cc:

We live in Laurel Heights.

We strongly oppose the Developer's Project and support the Community Alternative Plans:

We would like to make the following points:

- The Community Plans build the same number of housing units as the developer's plans.
- The Community Plans save the beautiful historic green space and mature trees.
- The Community Plans will be built in a shorter period of time and involve less excavation and demolition. The Developer's Project provides for a 15-year construction period. The prolonged construction time would jeopardize the survival of Laurel village.
- The Developer's Project includes retail. We already have enough retail in Laurel Village, Sacramento Street, Trader Joe's and Geary Street. We do not need more retail, especially "Flexible Non-residential Uses Retail". Additional retail at this site would generate a huge amount of traffic, noise, congestion and pollution.

We urge your committee to require the project be redesigned to be more compatible with the Community Alternatives.

Marsha and Wolfgang Nonn

From:

Mary <maryjacobi@comcast.net> Tuesday, October 15, 2019 3:10 PM

Sent: To:

Major, Erica (BOS); Peskin, Aaron (BOS); Safai, Ahsha (BOS); Haney, Matt (BOS); Stefani,

Catherine (BOS); Mar, Gordon (BOS); Ronen, Hillary; Yee, Norman (BOS); Mandelman, Rafael (BOS); Fewer, Sandra (BOS); Brown, Vallie (BOS); Walton, Shamann (BOS); Board

of Supervisors, (BOS)

Subject:

3333 California development project

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

To the esteemed Land Use Committee members and the San Francisco Board of Supervisors:

My husband and I, Mary and Peter Jacobi, own the property at 41 and 43 Lupine immediately above Euclid and the 3333 project in question. My husband and I look to retire to one of the flats in the building in the future. We strongly oppose the developer's project as designed. We support either or both of the Community Alternative Plans that propose construction of the same numbers of much needed units of living space and senior affordable housing, but also protect historic green space across from our building (in our family since the early 60's). The need for housing is at its greatest right now. To approve a plan that takes 15 years to complete is absurd when there is an alternative that would take half the amount of time. Additionally absurd is to destroy beautiful green space and trees and views when there is a way to develop equal numbers of housing without ruining the charm of the neighborhood, or spending twice the amount of time doing it!!

More retail space is neither needed or wanted considering there is adequate retail in Laurel Village and Sacramento Street including Trader Joe's and Geary Street.

In supporting one of the Community Alternatives you would be thoughtfully developing much needed housing, as well as meeting the standards for historic properties...the Old Firemen's Fund Building and its surroundings.

A thoughtful evaluation would not permit flexible retail which is not allowed anywhere else in District 2 or in the Sacramento/Fillmore Street Commercial districts. Please do limit hours of retail operation to 6: am to 11. pm for what retail might still be permitted, even if not needed, and prohibit outdoor amplified sound.

Thank you for your attention,

Mary and Peter Jacobi

Major, Erica (BOS)

From: Sent: Zarin Randeria <zranderia@sbcglobal.net>

To:

Wednesday, October 16, 2019 11:23 PM

10.

Zarin Randeria

Subject:

3333 California Street, Record Number: 2015-014028CUA/PCA/MAP/DVA

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear San Francisco Supervisor.

I live in Laurel Heights, and I STRONGLY OPPOSE THE DEVELOPER'S PROJECT for 333 California Street, San Francisco, CA, AND **SUPPORT THE COMMUNITY ALTERNATIVES** that build the same number of housing units as the developer's plans - **744 units which include 185 unit of affordable senior housing** and are better because they do not build on the historic green space. They also need to be built in a shorter time frame which would involve less excavation and demolition.

I also oppose the mindless demolition of 200 trees, 185 on the site and 15 mature trees on the sidewalk along California Street. Everyone in our Community loves the green space and the new residents in these new unit will love the green space better than shadowed hardscape - cemented pathways - proposed by the developers. (That may be fine in New York but NOT in San Francisco.)

We already have shops in Laurel Village on Sacramento Street, Trader Joe's, Target etc. on Masonic and Geary Streets, so **RETAIL** is **not needed on this site**.

Additionally, 15 years of construction will demolish this neighborhood and will be as catastrophic for the merchants in Laurel Village similar to the business failures we see all along Van Ness Avenue.

So, do you want to be known for killing small and large business in neighborhoods like ours, or to be known for forward thinking and Leadership, and for trying to handle housing crises of San Francisco through building affordable housing through working closely with community members from those neighborhoods???

From the information submitted to you, it is clear the community alternative is a thoughtful and comprehensive alternative that provides the same amount of housing, preserves green space and trees, and meets the Secretary of Interior Standards for historic properties.

Thank you for giving close attention to this very important matter to your constituents.

Sincerely, Zarin E. Randeria Lupine Avenue San Francisco, CA 94118

Major, Erica (BOS)

From: Michael Coholan <michael@hilltopllc.com>
Sent: Wednesday, October 16, 2019 7:41 PM

To: Peskin, Aaron (BOS); Safai, Ahsha (BOS); Haney, Matt (BOS)

Cc: Major, Erica (BOS)

Subject: 3333 California Street, Record Number: 2015-014028CUA/PCA/MAP/DVA

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Land Use Committee Members,

I have lived in the Laurel Heights neighborhood for the past 40 years and wanted to share my thoughts regarding the 3333 California St. development as you prepare for the upcoming Oct. 21 Land Use Committee Hearing.

I STRONGLY OPPOSE THE DEVELOPER'S PROJECT AND <u>SUPPORT</u> THE COMMUNITY ALTERNATIVES

I support the Community Alternative Plans that build the same number of housing units as the developer's plans - 744 units including 185 units of affordable senior housing - and are better because they do not build on the historic green space and will be built in a shorter period of time because they involve less excavation and demolition

THE COMMUNITY PLANS SAVE THE BEAUTIFUL GREEN SPACE

I oppose the mindless destruction of 200 trees; 185 on the site and the 15 mature trees on the sidewalk along California St.

I oppose the needless destruction of the natural green space everyone loves. New residents will like the green space better than the developer's shadowed hardscape pathways

RETAIL IS NOT NEEDED ADJACENT TO LAUREL VILLAGE

I oppose adding retail uses to the site; there is adequate retail in Laurel Village, Sacramento Street, Trader Joe's and Geary Blvd.

THE 15-YEAR CONSTRUCTION PERIOD WOULD JEOPARDIZE LAUREL VILLAGE

The prolonged construction time would jeopardize the survival of Laurel Village and its cherished independent quality groceries of Cal-Mart and Bryan's

I appreciate your consideration of incorporating these community alternatives into the development plan and getting the much needed housing built as soon as possible.

Sincerely,

Michael Coholan

Major, Erica (BOS)

From: Anne Harvey <annetharvey@hotmail.com>
Sent: Wednesday, October 16, 2019 5:01 PM

To: Major, Erica (BOS); Peskin, Aaron (BOS); Safai, Ahsha (BOS); Haney, Matt (BOS)

Cc: Board of Supervisors, (BOS); Stefani, Catherine (BOS); Mar, Gordon (BOS); Ronen,

Hillary; Yee, Norman (BOS); Mandelman, Rafael (BOS); Fewer, Sandra (BOS); Brown,

Vallie (BOS); Walton, Shamann (BOS)

Subject: 3333 California Street, Record Number 2015-014028CUA/PCA/MAP/DVA, Hearing Date

October 21, 2019 by Land Use Committee of BOS

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

October 16, 2019

DearLanduse Committee of the SF Board of Supervisors:

My family and I have lived in District 2 Cow Hollow, since 1988. Today I am writing to you about the above project because I will not be able to personally come to the hearing on on October 21.

To us the above site, 3333 California Street is very important. I view it as a resource and a great opportunity fo the City to create wonderful family oriented housing. The location is fabulous in terms of beauty, walkability. and public transit to all parts of the city. There are already many retail businesses for food and retail shopping in the area.

I want to see housing there, but I strongly oppose the developer's project and SUPPORT the Community Alternatives put forth by the Laurel Heights Improvement Association.

There are many reasons for this. The community alternatives save beautiful green space, and retail adjacent to Laurel Village is a very bad idea. Also the 15 year construction period is idiotic and would jeopardize Laurel Village merchants such as Cal Mart and Bryan's. Please have the project redesigned to be like one of the community alternatives.

Anne Harve 415 9315678

Major, Erica (BOS)

From:

Janet Frisbie <jan_wenn@hotmail.com>

Sent:

Wednesday, October 16, 2019 4:58 PM

To: Cc: Peskin, Aaron (BOS); Safai, Ahsha (BOS); Haney, Matt (BOS); Major, Erica (BOS) Board of Supervisors, (BOS); Stefani, Catherine (BOS); Mar, Gordon (BOS); Ronen,

Hillary; Yee, Norman (BOS); Mandelman, Rafael (BOS); Fewer, Sandra (BOS); Brown,

Vallie (BOS); Walton, Shamann (BOS); LaurelHeights2016@gmail.com; Dick Frisbie

Subject:

3333California Street, Record Number 2015-014028CUA/PCA/MAP/DVA

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

I live in Laurel Heights and have been reviewing some of the documents and information re. 3333 California Street and would like to mention a few areas that I see as problems or potential problems.

I strongly oppose the developers plan for this project for the following reasons:

- 1.) The two Community Alternative Plans build the same number of housing units without destroying the historic building and grounds. I especially like the way the Community Alternative connects the north and south sides of the property. Their design has an entry/exit that does not destroy the exterior look of the building. Rather, this entry will open up to a beautiful Center Court/Light Court before continuing on to thee it. This is a much better solution than the 40 foot gap right through the middle of the building submitted by the developer.
- 2.) The neighborhoods surrounding the site have always wanted it to be Residential. And San Francisco is in dire need of housing, especially affordable housing. Can we really wait 15 years for the developer to finish this project? The Community Alternative will be completed in about 4 years.
- 3.) I oppose the needless destruction of the green space replacing it with concreted open space. And to move the children's outdoor play area to a "shadowed" area is not a good practice.
- 4.) I also oppose the needless destruction of 200 healthy, mature trees. As Rachel Gordon, a spokesperson for the Department of Public Works has said, "The City never wants to remove a tree unless it is absolutely necessary for **public safety."** So why take out 200 healthy trees? It's not for public safety. Are they being removed for the convenience of the developer? We need trees to absorb carbon dioxide to slow climate change.
- 5.) Additional retail is not necessary as evidenced by all the empty storefronts on Sacramento Street. And **flexible retail must not be allowed.** This was not evaluated in the EIR and could have an extremely detrimental effect on the surrounding neighborhoods. Specifically, the following non-residential uses should be prohibited:
- * entertainment, nighttime adult business
- * massage establishment
- * internet gambling
- * game arcade restaurant, fast food
- * public facilities
- * service, fringe financial
- * student housing

- * tattoo parlors
- * motel
- * short term residential occupancy of 60 days or less such as Air B&B
- * shared work space, I.e. We Work
- * homeless navigation center

In addition, retail hours of operation should be limited and outdoor amplified sound prohibited.

Kindly evaluate the Community Alternative Plans. You will find that in addition to providing the same number of housing units as the developer, this 10.25 acre site will not be deforested and left with concrete instead of green space. The Community Alternative Plans are thoughtful, relevant and balanced preserving the best attributes of the original and historically significant site.

I hope you will see that there are valid concerns that the developers plan needs to be modified for the continued legacy of the California State Historical status.

There are also areas of the plan where compromise can occur. Please show the residents of the surrounding neighborhoods that you understand and appreciate the importance and scope of this project.

We are looking to you to help us protect the historical elements of this site. At the same time these 10 plus acres must be developed properly balancing the needs of The City and the needs of the current and future residents.

I support modifications of the developers plan and compromise for the best solution.

Respectfully, Janet Frisbie

Sent from my iPad

From:

Lawrence Lai <laitroop@gmail.com>

Sent:

Wednesday, October 16, 2019 4:10 PM

To: Subject:

Major, Erica (BOS); Peskin, Aaron (BOS); Safai, Ahsha (BOS); Haney, Matt (BOS) 3333 California Street, Record Number: 2015-014028CUA/PCA/MAP/DVA

Attachments:

3333CalifLUC.docx

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

I am the owner of a duplex at the corner of Mayfair Drive and Laurel Street which is adjacent to the proposed project.

I strongly oppose the developer's project and support the community alternatives (Community Full Preservation Lookalike Variant, Community Full Preservation Alternative Variant 2) both of which allow for 744 units including 185 units of affordable senior housing - and are better because they do not build on the historic green space and will be built in a shorter period of time because they involve less excavation and demolition.

I am opposed to the destruction of the many old growth and mature trees on the site which add to the beauty and ambiance of the Laurel Village area. The natural beauty of the trees and grass add to and enhance the neighborhood.

I oppose the addition of retail shops along California Street. This would add more traffic to an area that already has sufficient retail in the area to serve the community.

The 7-15 year construction period proposed by developer would have an adverse affect on the neighborhood, specifically for shoppers that patronize Laurel Village and for people that live near the project.

I support the two community alternatives, the Lookalike Variant or Community Full Preservation Alternative Variant 2 because of the same number of residential units (744) developed in less than 4 years with more residential gross square feet than the developer's proposal, the compliance with RM-1 zoning, being historically compatible and responsive to the neighborhood.

Regards,

Lawrence Lai

From:

Brousseau, Fred (BUD)

Sent:

Wednesday, October 16, 2019 4:10 PM

To:

Calvillo, Angela (BOS); Carroll, John (BOS); BOS Legislation, (BOS); Laxamana, Junko (BOS); Lew, Lisa (BOS); Major, Erica (BOS); Mchugh, Eileen (BOS); Somera, Alisa (BOS);

Wong, Linda (BOS); Young, Victor (BOS)

Cc:

Brousseau, Fred (BUD); Tam, Karrie (BUD)

Subject:

Oct. 16, 2019: BLA Jobs-Housing Fit Report

Attachments:

BLA.Jobs Housing.101619.pdf

Attached please find a copy of the Budget and Legislative Analyst's report, *Job-Housing Fit* prepared for Supervisor Mar. For further information about this report, please contact Fred Brousseau at the Budget and Legislative Analyst's Office: 553-4627 or fred.brousseau@sfgov.org.

Fred Brousseau Director of Policy Analysis Budget and Legislative Analyst's Office 1390 Market Street, Suite 1150 San Francisco, CA 94102

Direct: (415) 553-4627 Office: (415) 552-9292 Fax: (415) 252-0461

From:

Bill Cutler <billcutler@aol.com>

Sent:

Wednesday, October 16, 2019 4:01 PM

To:

Peskin, Aaron (BOS); Safai, Ahsha (BOS); Haney, Matt (BOS); Major, Erica (BOS); Board of Supervisors, (BOS); Stefani, Catherine (BOS); Mar, Gordon (BOS); Ronen, Hillary; Yee,

Norman (BOS); Mandelman, Rafael (BOS); Fewer, Sandra (BOS); Brown, Vallie (BOS);

Walton, Shamann (BOS)

Subject:

3333 California Street, Mixed-Use Project

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Land Use Committee:

My name is Bill Cutler. My wife and I have lived in Laurel Heights on California Street, one block from the site of the proposed real estate development, for over 45 years. We've seen many big changes to our neighborhood—some positive, and some negative—but this Prado proposal, which violates the zoning laws and the character of the district, is by far, the most disturbing.

We recognize the pressing need for more affordable housing in San Francisco, and support construction of housing on this site, but the current proposal, which Prado wants 7-15 years to complete, includes unnecessary retail, threatens the quality of life, mars the beauty of Laurel Hill, and destroys the majority of 185 old growth trees that we can't afford to lose in an era of toxic air and climate change. This project should be redesigned to keep buildings off the green space and protect the mature trees, including 15 healthy New Zealand Christmas trees that line California Street from Presidio Avenue to Laurel Village.

Prado changes what should be a residential development into a full scale retail destination with 16 new businesses. Their proposal for "flexible retail" allows almost an unlimited range of commercial uses and their definition of what is permitted is left deliberately vague.

The EIR did not evaluate impacts on traffic, noise, or air quality from multiple, flexible retail uses sharing the same retail space. The EIR only evaluated single use restaurant and retail uses. The local community was never told about flexible retail being included, and flexible retail is not allowed anywhere else in District 2, and is not even allowed in the Sacramento and Fillmore Street commercial districts.

More importantly, Laurel Village, which borders the development, already has two world class supermarkets, Cal-Mart and Bryan's, Starbucks and Peet's coffee, a liquor store, Ace Hardware, Rigolo Cafe and several other restaurants, 3 banks, (Bank of America, Wells Fargo and First Republic), Walgreen's Pharmacy, multiple doctors, dentists, and psychotherapy offices, Sephora and Bluemercury beauty shores, a GAP, several boutiques and a variety of other businesses. In addition, Sacramento Street, which is one block away from the development, has numerous restaurants, including The Magic Flute, Spruce, Sociale, Cafe Luna, The Vogue movie theater, 3 dry cleaners, multiple boutiques, antique shops, nail salons, hair salons, a automotive repair shop, several liquor stores, a shoe repair shop, and many other businesses, all within a short walking distance of Laurel Hill.

We don't need more retail in Laurel Heights. We are inundated with retail right now and many are being forced out of business. Two long term establishments, Noah's Bagels and Beautifull!, have already been forced out of Laurel Village due to high rent increases and too much competition.

What we need is affordable housing—built without changing existing zoning laws, without 10 story buildings, without over 100,000 square feet of additional retail, office and commercial space. We should be using this construction primarily for affordable housing.

The high density of the proposed project will also increase traffic flow, and contribute to the loss of parking, in a neighborhood where it's already almost impossible to find adequate street parking, even for area residents with G-Stickers. For example, the project will take away 200 non-metered parking spaces which surround the 10 acre site on Euclid and Laurel Streets for the entire 7-15 years of construction. That's parking that residents, as well as businesses in Laurel Village need desperately, and that severe impact on our community is not addressed anywhere in the EIR.

But more disturbing is the effect Prado's plan will have on the local Fire Department, Station #10, located on Presidio Avenue, one block from the proposed development. I recently spoke to the fire fighters who work there, and they were taken by surprise when I asked them if they had an opinion on the new project because they had never even heard of it. This is in spite of the fact that they will be the ones responsible for protecting the 744 new housing units, the new retail, and the all new buildings which are proposed for the site.

The fire fighters also explained that the City has put in speed bumps on almost every block surrounding their firehouse, preventing them from getting around quickly enough to respond to emergencies in a timely manner right now—and this is all before the right hand turn lanes from Presidio onto Masonic and from Masonic onto Euclid are eliminated and bulb-outs replace them, forcing even more traffic jams then exist now in an already congested area. Once Prado adds a new driveway on Presidio that will further block traffic flow, the situation, already far from ideal, will be even worse. At a recent hearing, Prado claimed that the SF Fire Department has signed off on the development, but the local fire fighters of Station #10 were never consulted. We constantly hear about the importance of our first responders and then we leave them out of the conversation when it really matters. I promised to keep the fire fighters informed and to bring up their issues.

Finally, the crush of Google busses, Ubers, and Lyfts clog both Presidio Avenue and California Streets every weekday morning and evening right now. Lyon Street, which borders our building, and has always been a side street, is now being used as a major thoroughfare, since traffic is so heavy on Presidio and California, drivers have little choice. The new changes proposed by Prado, show a lack of understanding of existing traffic conditions, and are a bad idea that will make the situation worse.

Fortunately, there's a much better way to address the need for a development at Laurel Hill that meets both the housing demands and still protects the historic building and beautiful landscaping that surrounds it. It's the Community Preservation Lookalike Variant (or CPLV). It provides the same number of residential housing units as Prado, preserves both the present childcare center and the existing cafe, does not include major retail that would only negatively compete with Laurel Village, and matches the surrounding neighborhood for character, style, and scale. The CPLV can be built in 4 years, not 7-15. It's the ideal solution—providing housing without destroying what makes Laurel Heights one of the more desirable places to live in San Francisco.

Please consider supporting our plan. Thank you.

-Bill Cutler and Judy Doane

3101 California Street, Apt. 7

San Francisco, CA 94115

billcutler@aol.com judydoane@aol.com

From:

Kathy Devincenzi < krdevincenzi@gmail.com>

Sent:

Wednesday, October 16, 2019 3:27 PM

To:

Major, Erica (BOS); BOS Legislation, (BOS)

Cc:

Richard Frisbie

Subject:

October 21, 2019 BOS Land Use and Transportation Committee

Attachments:

20191016180403.pdf

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

San Francisco Board of Supervisors Land Use and Transportation Committee c/o Erica Major, Clerk City and County of San Francisco City Hall, Room 244 San Francisco, CA 94102

Re: 3333 California Street, San Francisco, CA

File No. 190845 - Proposed Development Agreement

Hearing Date: October 21, 2019

Record Number: 2015-014028CUA/PCA/MAP/DUA

Please see attached letter and attachment. I will deliver paper copies to you before close of business today.

Laurel Heights Improvement Association of SF, Inc.

By: Kathryn Devincenzi, President

415-221-4700



Laurel Heights Improvement Association of San Francisco. Inc.

BY HAND and E-MAIL

October 16, 2019

San Francisco Board of Supervisors Land Use and Transportation Committee c/o Erica Major, Clerk City and County of San Francisco City Hall, Room 244 San Francisco, CA 94102

Re: 3333 California Street, San Francisco, CA

File No. 190845 - Proposed Development Agreement

Hearing Date: October 21, 2019

Record Number: 2015-014028CUA/PCA/MAP/DUA

Dear Chair Peskin, Vice Chair Safai and Member Haney:

Based on the formula provided by OEWD, attached is our calculation of the in lieu fee that would be owed by this project if the fee was calculated pursuant to the provisions of Planning Code section 415.5.

Respectfully submitted,

Laurel Heights Improvement Association of SF, Inc.

By: Kathryn Devincenzi, President

Kathun Devisionze

Attachment



In Lieu Fee per LL

1 message

Richard Frisbie <frfbeagle@gmail.com>
To: Kathy Devincenzi <krdevincenzi@gmail.com>

Wed, Oct 16, 2019 at 1:07 PM

The City's current in-lieu fee is calculated based on the project's residential gross square feet (977,437) \times MOHCD affordable housing fee (\$199.50/gsf) \times inclusionary percentage (30% for rental gsf or 33% for ownership gsf). However, this project does not include a fee-out option for the affordable housing requirement.

(977,437) X (\$199.50) X 30% = \$58,499.,604 X 33% = \$64,349,565

From:

Kathy Devincenzi < krdevincenzi@gmail.com>

Sent:

Wednesday, October 16, 2019 3:23 PM

To:

Major, Erica (BOS); BOS Legislation, (BOS)

Cc:

Richard Frisbie

Subject:

October 21, 2019 BOS Land Use and Transportation Committee

Attachments:

20191016174657.pdf; 20191016175122.pdf

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

San Francisco Board of Supervisors Land Use and Transportation Committee c/o Erica Major, Clerk City and County of San Francisco City Hall, Room 244 San Francisco, CA 94102

Re: 3333 California Street, San Francisco, CA

File No. 190845 - Proposed Development Agreement

Hearing Date: October 21, 2019

Record Number: 2015-014028CUA/PCA/MAP/DUA

Please see attached letter and attached Exhibits A-F. I will deliver paper copies to you before close of business today.

Laurel Heights Improvement Association of SF, Inc.

By: Kathryn Devincenzi, President

415-221-4700



Laurel Heights Improvement Association of San Francisco. Inc.

BY HAND and E-MAIL

October 16, 2019

San Francisco Board of Supervisors Land Use and Transportation Committee c/o Erica Major, Clerk City and County of San Francisco City Hall, Room 244 San Francisco, CA 94102

Re: 3333 California Street, San Francisco, CA

File No. 190845 - Proposed Development Agreement

Hearing Date: October 21, 2019

Record Number: 2015-014028CUA/PCA/MAP/DUA

Dear Chair Peskin, Vice Chair Safai and Member Haney:

1. The Committee Should Recommend that Against the Financially Inadequate Provisions in the Development Agreement that Allow the Developer to Fail to Construct the On-Site Affordable Housing And Transfer a Small Portion of the Land to the City Along With Rental Gap Fees or Sell the Walnut Land to the City.

The Development Agreement was negotiated behind the scenes without public participation or knowledge of its substantive provisions.

The Draft EIR stated that the manner in which the developer would comply with affordable housing requirements was still unknown. DEIR 2.10.

Partial information about the proposed Development Agreement was disclosed for the first time on approximately July 30, 2019, and further provisions of the proposed Development Agreement continued to be released until shortly before the September 5, 2019 Planning Commission hearing. Exhibits D-1 Walnut Parcel Title Condition and Exhibit D-2 Baseball Arbitration Appraisal Process were not provided on the Board of Supervisors' website as of August 26, 2019.

The Development Agreement provides that the developer is not obligated to build any housing and may cancel the agreement if he does not commence construction in 5 years. The Agreement allows the developer to have 15 years to build the project. The developer's reason for

San Francisco Board of Supervisors Land Use and Transportation Committee October 16, 2019 Page 2

the extended period is to be able to adjust to "market conditions." (Ex. A)

Exhibit D to the Development Agreement is a Affordable Housing Program that states that the developer has agreed to construct 185 studio and one-bedroom affordable residential units for senior households in addition to the 558 residential units initially proposed. (Ex. B hereto, DA p. D-1) The 185 senior affordable units will all be located in a single residential building known as the Walnut Affordable Housing Building. (Ex. B, DA p. D-4)

After providing that the Housing Entity formed by the developer will seek Low Income Housing Tax Credits and City-issued tax-exempt bond financing for construction, and may apply for the state Multifamily Housing Program and the Infill Infrastructure Grant Program, the Development Agreement provides for Transfer of Walnut Land to City in the event the developer fails to construct the affordable housing:

If the Tax Credit closing does not occur by the Outside Date, subject to extension for any applicable Excusable Delay, and construction of any Building occurs during the Term, then City shall have the right to acquire, and Developer agrees to transfer to the City, fee ownership of the Walnut Land pursuant to the form of grant deed (the "Grant Deed") attached as Attachment D-2), with the Approved Legal Description attached to it as Exhibit A. (Ex. B, p. D-7)

However, the developer paid only approximately \$192.35 per square foot for the property in non-competitively bid transactions with UC (\$88,600,000.00 for 99-year lease plus \$1,612,000 for the fee interest = \$90,212,000/469,000 square feet of 3333 California Street = \$192.35. (Ex. C, deed excerpts). The Walnut Land comprises less than a quarter of the property and the Development Agreement does not indicate that the amount of rental gap fees that would also be paid in the event of default will be equivalent to the usual in lieu fee required by Planning Code section 415.5 or sufficient to enable the City to build the affordable housing building on the Walnut Land. LHIA has sent Public Records Act requests for information on the financial projections but has not received sufficiently specific responses from the City to date.

This developer previously indicated he would build affordable housing in a project on Dolores Street but failed to do so and instead paid a fee to the City. (Ex. D and Ex. Q to August 28, 2019 LHIA submittal to Planning Commission) Also, in several meetings I attended with developer Dan Safier, he complained that residential construction costs were too high. In view of the current high construction costs in the City and the foregoing matters, there is a reasonable possibility that the developer will not build the affordable senior housing on the site and the City will take over the Walnut Land

Further, if the developer is not able to transfer the Walnut Land to the City in the

San Francisco Board of Supervisors Land Use and Transportation Committee October 16, 2019 Page 3

condition required by that section of the agreement, then the City will accept a payment "based on the actual residential project that it is entitled for at the time of Appraisal consistent with the zoning and all conditions on the Walnut Land...including the applicable conditions of approval and any notices of special restrictions." This is the value of the Walnut Land burdened with the affordable housing requirement. (Ex. E, response of OEWD Project Manager, Joint Development to LHIA's request for information and Ex. J to LHIA's August 28, 2019 submission to Planning Commission, p. D-9)

The default options of the Development Agreement would provide inadequate consideration to the City for entering into the agreement, as there is no evidence or reason to believe that the value of the Walnut Land plus the rental gap fees or the value of the Walnut Land burdened with the affordable housing requirement would be substantially equivalent to the full in lieu fee provided by Planning Code section 415.5. This inadequate consideration would constitute a prohibited gift by a public entity under California Constitution, article XVI, section 6.

Instead, to deter the developer from failing to construct the affordable housing, the Committee should recommend that the Development Agreement be modified to require the developer to pay the full affordable housing fee required by section 415.5 of the Planning Code based on the total development, rather than recommend the inadequate options set forth in the proposed Development Agreement . Such a modification would conform with the proposal being considered to change the Special Use District for the Lucky Penny project to eliminate the obligation to construct 23% on-site affordable housing and to instead pay an in lieu fee to the City. (Ex. F)

2. The Committee Should Recommend that the Term of the Development Agreement Be Changed to 7 Years Rather than 15 Years.

The Development Agreement gives the developer 15 years to build the project. The developer's reason for the extended period is to be able to adjust to "market conditions." (Ex. A)

The extended term is not consistent with the City's need to address the current housing crisis. The Committee should recommend a 7-year term for completion of construction under the development agreement, which the Draft EIR estimated was the approximate minimum construction time.

3. The Committee Should Recommend that the Development Agreement Be Modified to Require Public Notification of and Allow Requests for Discretionary Review for Major Modifications to the Project.

San Francisco Board of Supervisors Land Use and Transportation Committee October 16, 2019 Page 4

Planning Commission Resolution No. 20514 states at page 2 that the proposed SUD "specifies director determination and discretionary review controls." Subdivision (d)(7) of the proposed SUD states that:

(7) Discretionary Review. No requests for discretionary review shall be accepted or heard for projects within the SUD.

This provision is unreasonable as to a major modification of the project and would unfairly deprive residents of due process rights available to residents of other areas to object to requests for major modifications of a project.

The Committee should recommend that the Development Agreement, along with the Special Use District, be modified to provide that requests for discretionary review and Planning Commission section 311 notice will be applicable to all requests for major changes in the site plan approved by the Planning Commission on September 5, 2019.

4. If the Board Overturns the Planning Commission's Certification of the FEIR, the Board May Not Approve the Development Agreement.

Since the FEIR admits that the project would have significant unmitigated adverse impacts on a historical resource and from construction noise, the Development Agreement may not be approved if the Board of Supervisors grants LHIA's appeal of certification of the FEIR.

Conclusion

For the reasons stated above, the Committee should recommend against approval of the Development Agreement or should recommend that the proposed Development Agreement be modified.

Respectfully submitted,

Laurel Heights Improvement Association of SF, Inc.

By: Kathryn Devincenzi, President

Kathyn Derwenn

Attachments: A through F

3333 California Street, San Francisco, CA File No. 190845 - Proposed Development Agreement

Hearing Date: October 21, 2019

Record Number: 2015-014028CUA/PCA/MAP/DUA

EXHIBITS A-F

durations are consistent with and defined in the phasing schedule under review in our environmental application. While the phasing could be accelerated, we have assumed a relatively conservative approach to the construction phasing. Q: What is the period of time that you anticipate that construction will occur? A: We anticipate that construction will occur in the spring of 2020. Q: What is the reason for constructing the project in phases? A: By allowing for potential phased construction, we would have the ability to complete and occupy portions of the project as each phase is completed. If conditions do not exist to build out the entire project, we can phase construction in order to align with market conditions and financing availability. Q: How many extensions do you anticipate requesting for the entitlements? A: None. Any extension of the DA's term would be a material amendment that would require Board of Supervisor's approval. Q: During those extended periods, would it be possible for Prado to request changes in the project as related specifically to increased height, increased bulk, increased numbers of residential units, increased amounts of retail or office space? What about the possibility of design changes or other changes? Could Prado apply to change any part of the construction to provide the opportunity to have high rise construction? A: Once the EIR is certified and the project is approved, any material changes to the project would be subject to new environmental review, would require Planning Commission and Board of Supervisor approvals and also an amendment to the DA. Any increase in height over what is entitled in our project would require a revision to the Planning Code and Zoning Maps that would entail Planning Commission and Board of Supervisors approval. Q: There are genuine concerns about reducing open spaces and reduced on-site parking places.

A: Open space will be part of the entitlements and will likely be considered by the City as one of the public benefits supporting the DA — for that reason alone, reducing the amount of it would be very difficult if not impossible. The open space requirements will be carefully described in the project's approvals and will also be recorded against the property. So, as with any material changes to the approved project, any material change to the open space would be very difficult and would involve a public process and City approval. As to parking spaces, as you know, the City would like to see the number of spaces reduced. We plan to continue advocating for the proposed number of project parking spaces in our

Q: During the phased construction could Prado transfer shares in the project to provide for new or additional investors?

application.

A: We have no plan to transfer any shares in the project and construction lenders generally prohibit any changes of ownership by the project developer during construction and stabilization of a project. PSKS, along with our equity partners and lenders, intend to provide all of the capital necessary to construct, own and operate the project. We plan to

retain day-to-day control of the project during development, construction, stabilization and ongoing operations. We design and build our projects to hold for the long-term owner.

We look forward to reconnecting and thank you again for making the time to meet with us.

Sincerely, Dan



Dan Safier | President & CEO

Prado Group, Inc.

160 Post Street, Suite 320

San Francisco, CA 94108

dsafier@pradogroup.com

T: 415.395.0880 | D: 415.857.9306

From: John Rothmann [mailto:johnrothmann2@yahoo.com]

Sent: Monday, September 25, 2017 8:20 PM

To: Dan Safier <dsafier@pradogroup.com>; Dan Kingsley <dkingsley@sksre.com>

Cc: Kathy Devincenzi krdevincenzi@gmail.com; Catherine Carr < catherine.a.carr@gmail.com; M.J. Thomas

<miinsf@comcast.net>; Richard Frisbie <frfbeagle@gmail.com>

Subject: Specific qwuetions about thre proposed project

Dear Dan and Dan,

[Quoted text hidden]

John Rothmann <johnrothmann2@yahoo.com>
To: Kathy Devincenzi <krdevincenzi@gmail.com>

Mon, Oct 30, 2017 at 7:21 PM

---- Forwarded Message -----

From: Dan Safier <dsafier@pradogroup.com>

To: John Rothmann <juharothmann2@yahoo.com>; Dan Kingsley <dkingsley@sksre.com>

Cc: Kathy Devincenzi krdevincenzi@gmail.com; Catherine Carr catherine.a.carr@gmail.com; M.J. Thomas

[Quoted text hidden]

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

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)

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND LAUREL HEIGHTS PARTNERS, LLC

FOR PROPERTY LOCATED AT 3333 CALIFORNIA STREET

Block 1032 Lot 003

parking spaces, (iv) an approximately 14,665 square foot space for child care use, and (v) approximately 236,000 square feet of landscaped or open space, which includes approximately 127,126 square feet of privately owned, public open space, more than 73,000 square feet of which is in excess of the open space requirements under the Code, all as more particularly described on Exhibit B.

- C. The Project is anticipated to generate an annual average of approximately 675 construction jobs during construction and, upon completion, approximately 200 net new permanent on-site jobs, an approximate \$10 million annual increase in property taxes, and approximately \$15 million in development impact fees (including transportation, housing linkages, and school fees).
- D. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 et seq. (the "Development Agreement Statute"), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property regarding the development of such property. Pursuant to Government Code Section 65865, the City adopted Chapter 56 of the Administrative Code ("Chapter 56") establishing procedures and requirements for entering into a development agreement pursuant to the Development Agreement Statute. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56.
- E. In addition to the significant housing, jobs, and economic benefits to the City from the Project, the City has determined that as a result of the development of the Project in accordance with this Agreement and the Special Use District and the Planned Unit Development approvals attached at Exhibit M, additional clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies. Major additional public benefits to the City from the Project include: (i) an increase in affordable housing that exceeds amounts otherwise required and will equal approximately twenty-five percent (25%) of the total number of housing units for the Project, serving senior households with incomes below 80% of MOHCD AMI with an overall average of not more than 59% of MOCHD AMI; (ii) construction and maintenance of the Publicly Accessible Private Improvements (as defined in Section 1) for a total of approximately 127,126 square feet of public useable open area; (iii) transportation demand management measures that exceed the level otherwise required; (iv) the Child Care Program (as

membership interests in Developer or any Transferee, (2) grants of easement or of occupancy rights for existing or completed Buildings or other improvements (including, without limitation, space leases in Buildings), and (3) the placement of a Mortgage on the Project Site.

- 1.102 "Transportation Demand Management" benefits are described in Exhibit J.
 - 1.103 "Vested Elements" has the meaning set forth in Section 5.1.
 - 1.104 "Walnut Walk North" is described in Section 1.f of Exhibit C.
 - 1.105 "Walnut Walk South" is described in Section 1.f of Exhibit C
- 1.106 "Workforce Agreement" means the Workforce Agreement attached as Exhibit I.

2. EFFECTIVE DATE; TERM

- 2.1 <u>Effective Date</u>. This Agreement shall take effect upon the later of (i) the full execution and delivery of this Agreement by the Parties and (ii) the date the Enacting Ordinances are effective and operative ("Effective Date").
- Date and shall continue in full force and effect for fifteen (15) years thereafter unless extended or earlier terminated as provided herein ("Term"); provided, however, that (i) the Term shall be extended for each day of a Litigation Extension and (ii) Developer shall have the right to terminate this Agreement with respect to a Development Parcel upon completion of the Building within that Development Parcel and the Associated Community Benefits for that Building, as set forth in Section 7.1. The term of any conditional use permit or planned unit development shall be for the longer of the Term (as it relates to the applicable parcel) or the term otherwise allowed under the conditional use or planned unit development approval, as applicable. The term of the Tentative Map and any Subdivision Map shall be for the longer of the Term (as it relates to the applicable parcel) or the term otherwise allowed under the Subdivision Map Act.

3. GENERAL RIGHTS AND OBLIGATIONS

3.1 <u>Development of the Project</u>. Developer shall have the vested right to develop the Project in accordance with and subject to the provisions of this Agreement, and the City shall consider and process all Later Approvals for development of the Project in accordance with and subject to the provisions of this Agreement. The Parties acknowledge that Developer (i) has obtained all Approvals from the City required to Commence Construction of the Project, other

performed pursuant to <u>Section 8</u>. The Planning Director, acting on behalf of the City, shall execute and return such certificate within twenty (20) days following receipt of the request.

- 5.11 Existing, Continuing Uses and Interim Uses. The Parties acknowledge that the Existing Uses are lawfully authorized uses and may continue as such uses may be modified by the Project, provided that any modification thereof not a component of or contemplated by the Project is subject to Planning Code Section 178 and the applicable provisions of Section 5. Developer may install interim or temporary uses on the Project Site, which uses must be consistent with those uses allowed under the Project Site's zoning, the Approvals, the Project SUD, or any planned unit development authorization granted under the Project SUD, as applicable.
- 5.12 Taxes. Nothing in this Agreement limits the City's ability to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment, provided (i) the City shall not institute, on its own initiative, proceedings for any new or increased special tax or special assessment for a land-secured financing district (including the special taxes under the Mello-Roos Community Facilities Act of 1982 (Government Code Section 53311 et seq.) but not including business improvement districts or community benefit districts formed by a vote of the affected property owners) that includes the Project Site unless the new district is City-Wide or Developer gives its prior written consent to or requests such proceedings, and (ii) no such tax or assessment shall be targeted or directed at the Project, including, without limitation, any tax or assessment targeted solely at all or any part of the Project Site. Nothing in the foregoing prevents the City from imposing any tax or assessment against the Project Site, or any portion thereof, that is enacted in accordance with Law and applies to all similarly-situated property on a City-Wide basis.

6. NO DEVELOPMENT OBLIGATION

There is no requirement under this Agreement that Developer initiate or complete development of the Project, or any portion thereof. There is also no requirement that development be initiated or completed within any period of time or in any particular order, subject to the requirement to complete Associated Community Benefits for each Building (or for any market rate residential unit in excess of three hundred eighty-six (386), as applicable) commenced by Developer as set forth in Section 4.1. The development of the Project is subject to numerous factors that are not within the control of Developer or the City, such as availability of financing, interest rates, access to capital, and similar factors. In Pardee Construction Co. v. City of

the cured event of default shall terminate.

11. AMENDMENT; TERMINATION; EXTENSION OF TERM

- Amendment or Termination. This Agreement may only be amended with 11.1 the mutual written consent of the City and Developer; provided, however, that following a Transfer, the City and Developer or any Transferee may amend this Agreement as it affects Developer or the Transferee and the portion of the Project Site owned by Developer or the Transferee without affecting other portions of the Project Site or other Transferees. Other than upon the expiration of the Term and except as provided in Sections 2.2, 7.3, 9.4.2, and 11.2, this Agreement may only be terminated with the mutual written consent of the Parties. Any amendment to this Agreement that does not constitute a Material Change may be agreed to by the Planning Director (and, to the extent it affects any rights or obligations of a City department, with the approval of that City department). Any amendment that is a Material Change will require the approval of the Planning Director, the Planning Commission and the Board of Supervisors (and, to the extent it affects any rights or obligations of a City department, after consultation with that City Department). The determination of whether a proposed change constitutes a Material Change shall be made, on City's behalf, by the Planning Director following consultation with the City Attorney and any affected City Agency.
- 11.2 Early Termination Rights. Developer shall, upon thirty (30) days prior notice to the City, have the right, in its sole and absolute discretion, to terminate this Agreement in its entirety at any time if Developer does not Commence Construction on any part of the Project Site by the date which is five (5) years following the Effective Date as such five (5) year date may be extended by any Litigation Extension. Thereafter, the City shall, upon sixty (60) days prior notice to Developer, have the right, in its sole and absolute discretion, to terminate this Agreement if the Developer has not Commenced Construction; provided Developer can prevent any such termination by the City by providing to the City notice, within the above sixty (60) day period, of Developer's intent to start construction and the Developer thereafter Commences Construction within one hundred twenty (120) days following delivery of Developer's notice to the City, or, if unable to actually Commence Construction within said time period, demonstrates reasonable, good faith and continuing efforts to Commence Construction, such as by pursuing all necessary Later Approvals, and thereafter promptly Commences Construction upon receipt of the Later Approvals.
 - 11.3 Termination and Vesting. Any termination under this Agreement shall

Exhibit B

Project Description

The Project Site is an approximately 446,490-square-foot, or 10.25-acre, parcel bounded by California Street to the north, Presidio Avenue to the east, Masonic Avenue to southeast, Euclid Avenue to the south, and Laurel Street/Mayfair Drive to the west, at the southern edge of San Francisco's Presidio Heights neighborhood in the northwest portion of San Francisco. The project sponsor, Laurel Heights Partners, LLC, owns the site and temporarily leases it to the Regents of the University of California, which uses the Project Site for its University of California San Francisco (UCSF) Laurel Heights Campus. The Project Site does not include the San Francisco Fireman's Credit Union (now called the SF Fire Credit Union) at the southwest corner of California Street and Presidio Avenue, which is on a separate parcel.

The Project Site is currently used as office and related research, child care, and parking. It is developed with a four-story, approximately 455,000-gross-square-foot office building including a three-level, 212-space, an approximately 93,000-gross-square-foot partially below-grade parking garage at the center of the site; a one-story, approximately 14,000-gross-square-foot annex building at the corner of California and Laurel streets; three surface parking lots with a total of 331 spaces connected by internal roadways; two circular garage ramp structures leading to below-grade parking levels; and landscaping or landscaped open space for the USCF Laurel Heights Campus occupants.

The proposed project includes approximately 1,427,832 gross square feet of new and rehabilitated space, comprising approximately 977,437 gross square feet of residential floor area with approximately 744 dwelling units; approximately 34,496 gross square feet of retail floor area; and an approximately 14,665 gross-square-foot child care center use. The proposed project would provide approximately 857 off-street parking spaces (including approximately 10 car share spaces), approximately 762 Class One bicycle spaces, and 77 Class Two bicycle spaces. These proposed uses would be located in 13 new buildings (known as Plaza A, Plaza B, Walnut, Mayfair, Laurel Townhomes, Euclid and Masonic) and in the adaptively reused office building (known as Center A and Center B), which would be divided into two separate buildings and converted to residential use.

25% of the proposed project's units will be deed-restricted, on-site affordable units designated for low-income senior households. These affordable units will be located in the proposed Walnut Building on California Street and consist of 185 studios and 1-bedrooms for seniors plus one (1) on-site manager's unit. The Walnut Building would also include an approximately 175-seat child care facility, including a contiguous outdoor activity area. The project includes approximately 34,496 square feet of neighborhood-serving retail located in the buildings fronting onto California Street (Plaza A, Plaza B and the Walnut Building). This retail

Exhibit D

Affordable Housing Program

This Exhibit D describes the affordable housing program for the Project (the "Housing Plan"). All initially-capitalized, undefined terms used in this Exhibit D shall have the meanings given to them in the Development Agreement to which it is attached.

Recognizing the City's pressing need for housing – market rate and affordable - the Developer has agreed to (1) increase the total number of residential units for the Project from the 558 residential units initially proposed to 744 residential units; (2) construct 185 studio and one-bedroom affordable residential units for Senior Households at the Project Site (the "BMR Units") in order to make 25% of the Project residential units affordable, rather than the Section 415 (as defined below) requirement of providing 18% on-site affordable residential units or paying the City in-lieu affordable housing fees, together with 1 Manager Unit (as defined below); and (3) fund all predevelopment costs and gap financing required to complete the BMR Units.

The BMR Units will be deed-restricted to be affordable to qualified senior households with an average income not more than 59% of MOHCD AMI (as defined below) and will be constructed before the Developer can receive a CofO (as defined below) on more than three hundred eightysix (386) Market Rate Units (as defined below).

1. <u>Definitions</u>.

- "Adjustment Date" means each anniversary of the Effective Date.
- "Affordable Housing Developer" means Mercy Housing California, a non-profit California corporation, or any other non-profit affordable housing developer with experience developing and operating affordable housing in San Francisco.
- "Affordable Rent" means a monthly rental charge for a BMR Unit (including the Utility Allowance applicable to the Household Size of such BMR Unit but excluding parking charges if a Parking Space is allocated to such BMR Unit) that does not exceed thirty percent (30%) of the maximum MOHCD AMI permitted for such BMR Unit, based on Household Size.
- "Approved Legal Description" means a legal description of the Walnut Land that substantially conforms to the depiction attached as <u>Attachment D-1</u> and is approved by the City's Director of Property and the MOHCD Director.
- "CofO" means a first certificate of occupancy issued by City's Department of Building Inspection, including any temporary certificate of occupancy.
- "CPI Increase" means, for the first Adjustment Date, the difference between the published CPI Index in effect at the time of the first Adjustment Date and the published CPI Index in effect at the time of the Effective Date. For each following Adjustment Date, the "CPI Increase" means the difference between the published CPI Index in effect at the time of an

"Title Policy" is defined in Section 4.F.

"Utility Allowance" means a dollar amount determined in a manner acceptable to the California Tax Credit Allocation Committee, which may include an amount published periodically by the San Francisco Housing Authority or successor based on standards established by HUD, for the cost of basic utilities for households, adjusted for Household Size. If both the San Francisco Housing Authority and HUD cease publishing a Utility Allowance, then Developer may use another publicly available and credible dollar amount approved by MOHCD.

"Walnut Affordable Housing Building" is defined in Section 2.A.

"Walnut Child Care Parcel" is defined in Section 2.A.

"Walnut Housing Parcel" is defined in Section 2.A.

"Walnut Retail Parcel" is defined in Section 2.A.

"Walnut Land" is defined in Section 2.A.

2. Walnut Affordable Housing Building

A. <u>Description</u>. The 185 BMR Units and the Manager Unit will all be located in a single residential building (the "Walnut Affordable Housing Building") that will be located within a condominium parcel (the "Walnut Housing Parcel") on the portion of the Project Site depicted as the "Walnut Land" on <u>Attachment D-1</u> (the "Walnut Land"). The Walnut Affordable Housing Building will be comprised only of the BMR Units, the Manager Unit (which shall only be occupied by the Walnut Affordable Housing Building manager or, to the extent permitted under law, other property management staff), and the common and parking area for the BMR Units and Manager Unit. A condominium parcel for retail uses (the "Walnut Retail Parcel") and a condominium parcel for child care uses (the "Walnut Child Care Parcel") will also be located on the Walnut Land. The Walnut Housing Parcel, the Walnut Retail Parcel, and the Walnut Child Care Parcel will be created through a final map prepared under the Tentative Map as required in the Subdivision Map.

Before obtaining a First Construction Document for any portion of the Project or transferring the Walnut Land or the Walnut Housing Parcel to the Housing Entity, the Developer shall obtain legal descriptions for the Walnut Housing Parcel and the Walnut Child Care Parcel that are reasonably acceptable to City, cause the Walnut Land to be made a separate legal parcel, and record a declaration of restrictions (in a form approved by City and using such approved legal descriptions) that limits the use of the Walnut Housing Parcel to the construction and operation of the Walnut Affordable Housing Building and the Walnut Child Care Parcel to the construction and operation of a child care facility. In connection with the development of the Project, Developer shall have the right to enter into commercially reasonable licenses, easements, covenants, conditions and restrictions, reciprocal easement agreements, and similar agreements that affect the Walnut Housing Parcel to the extent necessary for the use or operation of any portion of the Walnut Housing Parcel (each, a "Property Covenant"); provided, however, that (i) Developer shall deliver the final version of each proposed Property Covenant to the MOHCD Director at least thirty (30) days before it is fully executed or recorded in the

Official Records of San Francisco County and (ii) all maintenance, repair, replacement and installation costs to be paid under a Property Covenant for the common area benefitting the Walnut Retail Parcel, the Walnut Housing Parcel, and the Walnut Child Care Parcel shall be proportionately allocated to the owners of the Walnut Retail Parcel, the Walnut Housing Parcel, and the Walnut Child Care Parcel based on the relative size of their respective parcel or any other commercially reasonable allocation that is approved in advance by the MOHCD Director, which approval shall not be unreasonably withheld.

- B. Housing Entity. Before commencing the construction of the Project's first Market Rate Unit, the Housing Entity will be formed and the Developer will contribute the Walnut Housing Parcel (subject to the requirements of the Development Agreement) to the Housing Entity. As a non-profit affordable housing developer and operator, the Affordable Housing Developer will operate the Walnut Affordable Housing Building to only serve Senior Households with incomes below 80% of MOHCD AMI, with an overall average of not more than 59% of MOHCD AMI.
- C. Financing. The Housing Entity will structure equity and debt financing for construction, and the Developer will fund all predevelopment costs and gap financing required to complete the construction, of the Walnut Affordable Housing Building. The Housing Entity will seek LIHTC and City-issued tax-exempt bond financing for construction. The Developer or the Housing Entity may apply to the following state funding programs for constructing the Walnut Affordable Housing Building without the City's prior written consent: the Multifamily Housing Program (MHP) and the Infill Infrastructure Grant Program (IIG). At the time of such application, the Developer or the Housing Entity shall provide the MOHCD Director with written notification of such application and a commitment that the award of such funding would lower the average MOHCD AMI for the Walnut Affordable Housing Building. Neither the Developer nor the Housing Entity can seek other federal or other state resources for constructing the Walnut Affordable Housing Building without the prior written consent of the MOHCD Director, which consent may be withheld if the award of such funding would not result in a lower average MOHCD AMI for the Walnut Affordable Housing Building or applying for the proposed funding would compete with the application of a MOHCD-supported project. A failure to obtain LIHTC, MHP, IIG, or non-competitive federal or state resources for constructing the Walnut Affordable Housing Building shall not decrease the Developer's affordable housing or other obligations under the Development Agreement. City has no obligation to provide any funding for the Walnut Affordable Housing Building. Developer may collaborate with other entities to obtain additional funding sources to the extent that those sources contribute to the feasibility, production speed, or increase the affordability of the Walnut Affordable Housing Building
- D. <u>Project Phasing</u>. The Developer may not obtain CofO for more than three hundred eighty-six (386) Market Rate Units until DBI issues a CofO for the Walnut Affordable Housing Building. In addition, the Developer must obtain a CofO for the Walnut Affordable Housing Building before the expiration of the Term.
- E. <u>Equivalency</u>. The Walnut Affordable Housing Building shall be substantially equivalent to the Project's other multi-unit residential buildings in exterior appearance and overall quality of construction. All BMR Units must be wired for telephone, cable, and internet

commences to construct before the Tax Credit Closing, the Developer shall, at its sole election, either deposit an amount equal to the Rental Gap Fee or Ownership Gap Fee, as applicable, for that unit in the Escrow Account before obtaining a First Construction Document for that unit, or deposit an amount equal to the Rental Gap Fee or Ownership Gap Fee, as applicable, for that unit and the Development Fee Deferral Surcharge for such Rental Gap Fee or Ownership Gap Fee (as calculated by DBI at the time of the Developer deposits such Rental Gap Fee or Ownership Gap Fee) in the Escrow Account between obtaining the First Construction Document and the CofO for that unit.

At any time within thirty (30) days after Developer's written request (accompanied by reasonable supporting materials), City shall authorize the release of funds from the Escrow Account to reimburse Developer for reasonable and customary Walnut Affordable Housing Building pre-development costs incurred prior to the Tax Credit Closing, such as, but not limited to, design drawings, schematic drawings, and commercially reasonable costs for financing that expedites the construction of the Walnut Affordable Housing Building. If the Tax Credit Closing occurs, all remaining funds in the Escrow Account needed to finance the construction of the Walnut Affordable Housing Building shall be disbursed to pay construction and development costs that are approved by the Walnut Affordable Housing Building construction lender at the time such costs are due and payable. If the Developer provides reasonable documentation to City that there are excess Escrow Account funds that are not required to finance the construction of the Walnut Affordable Housing Building, such excess Escrow Account funds shall be disbursed to the Developer.

If the Tax Credit Closing does not occur by the Outside Date, subject to extension for any applicable Excusable Delay, then City shall have the right to receive the Escrow Account funds by delivering written notice to the Escrow Account holder any time after the Outside Date for deposit in City's Citywide Affordable Housing Fund established in San Francisco Administrative Code Section 10.100-49. Within three (3) business days of receiving such written notice, the Escrow Account holder shall deliver the funds to the address specified by the MOHCD Director.

4. <u>Transfer of Walnut Land to City.</u>

A. <u>Transfer Notice</u>. If the Tax Credit Closing does not occur by the Outside Date, subject to extension for any applicable Excusable Delay, and construction of any Building occurs during the Term, then City shall have the right to acquire, and Developer agrees to transfer to the City, fee ownership of the Walnut Land pursuant to the form of grant deed (the "Grant Deed") attached as <u>Attachment D-2</u>, with the Approved Legal Description attached to it as Exhibit A. City shall have the right to exercise its right to acquire the Walnut Land by giving Developer, between the Outside Date and the last day of the Term, written notice of the City's request to acquire the Walnut Land pursuant to this Section (the "Transfer Notice"). If City receives the Walnut Land pursuant to this Section, and Developer later obtains all financing needed to commence and complete construction of retail improvements on the Walnut Retail Parcel (or child care improvements on the Walnut Child Care Parcel), City shall transfer fee ownership of the Walnut Retail Parcel or the Walnut Child Care Parcel, as applicable, to Developer within ten (10) business days of Developer's receipt of a First Construction Document for such improvements.

under <u>Section 4.C</u> above (the "Title Policy"), and (ii) to execute and deliver the Grant Deed and the Transfer Documents, if any, to City. Within 7 days after the City's receipt of the Title Policy, the duly executed and acknowledged Grant Deed, and, if any, the Transfer Documents, duly executed and acknowledged as applicable, City shall execute and return one (1) fully executed original of any Transfer Document to the Developer.

- City's Remedies. If the Developer fails to transfer the Walnut Land to City in accordance with this Section, then City shall have the right to specific performance to compel the transfer of the Walnut Land to City in accordance with this Section or to exercise its rights under the Deed of Trust to foreclose and take title to the Walnut Land. Following any specific performance to transfer the Walnut Land to City or any foreclosure of the Walnut Land by City under the Deed of Trust, Developer's obligations under this Section shall be satisfied; provided if the Developer is not able to transfer the Walnut Land to City in the condition required by this Section (a "Condition Preventing Transfer"), then City, as its sole remedy for a Condition Preventing Transfer, shall instead accept an in lieu payment in the amount of Fair Market Value. City's exercise of its remedy for a Condition Preventing Transfer shall be by delivering written notice of such exercise to Developer, with a statement explaining the basis for the determination that the Walnut Land cannot be transferred in accordance with this Section. If City delivers such notice, the Developer shall pay City an in lieu payment in the amount of Fair Market Value made within 60 days following the determination of the Fair Market Value. Any failure by Developer to make such in lieu payment when due shall accrue interest at 10% per annum from the date it is due until paid.
- H. <u>Fulfillment of Developer's Obligations</u>. On City's receipt of (i) fee ownership of the Walnut Land through an action for specific performance or foreclosure under the Deed of Trust or a payment of an in lieu payment due to a Condition Preventing Transfer, and (ii) the funds deposited in the Escrow Account as required in <u>Section 3</u> above, City shall have no further rights or remedies under the Development Agreement resulting from Developer's failure to timely commence or complete construction of the Walnut Affordable Housing Building. If the Developer obtains a First Construction Document for any Market Rate Unit after the Outside Date, nothing in the foregoing sentence shall limit the Developer's obligation to pay the fee calculated under Section 415.5 for such Market Rate Unit.

5. <u>Costa-Hawkins Rental Housing Act</u>

A. Non-Applicability of Costa-Hawkins Act. Chapter 4.3 of the California Government Code directs public agencies to grant concessions and incentives to private developers for the production of housing for lower income households. The Costa-Hawkins Rental Housing Act, California Civil Code Sections 1954.50 et seq. (the "Costa-Hawkins Act"), provides for no limitations on the establishment of the initial and all subsequent rental rates for a dwelling unit with a certificate of occupancy issued after February 1, 1995, with exceptions, including an exception for dwelling units constructed pursuant to a contract with a public agency in consideration for a direct financial contribution or any other form of assistance specified in Chapter 4.3 of the California Government Code (Section 1954.52(b)). The Parties agree that the Costa-Hawkins Act does not and in no way shall limit or otherwise affect the restriction of rental charges for the BMR Units. The Development Agreement falls within the express exception to the Costa-Hawkins Act, Section 1954.52(b) because the Development Agreement is a contract

Exhibit B

Project Description

The Project Site is an approximately 446,490-square-foot, or 10.25-acre, parcel bounded by California Street to the north, Presidio Avenue to the east, Masonic Avenue to southeast, Euclid Avenue to the south, and Laurel Street/Mayfair Drive to the west, at the southern edge of San Francisco's Presidio Heights neighborhood in the northwest portion of San Francisco. The project sponsor, Laurel Heights Partners, LLC, owns the site and temporarily leases it to the Regents of the University of California, which uses the Project Site for its University of California San Francisco (UCSF) Laurel Heights Campus. The Project Site does not include the San Francisco Fireman's Credit Union (now called the SF Fire Credit Union) at the southwest corner of California Street and Presidio Avenue, which is on a separate parcel.

The Project Site is currently used as office and related research, child care, and parking. It is developed with a four-story, approximately 455,000-gross-square-foot office building including a three-level, 212-space, an approximately 93,000-gross-square-foot partially below-grade parking garage at the center of the site; a one-story, approximately 14,000-gross-square-foot annex building at the corner of California and Laurel streets; three surface parking lots with a total of 331 spaces connected by internal roadways; two circular garage ramp structures leading to below-grade parking levels; and landscaping or landscaped open space for the USCF Laurel Heights Campus occupants.

The proposed project includes approximately 1,427,832 gross square feet of new and rehabilitated space, comprising approximately 977,437 gross square feet of residential floor area with approximately 744 dwelling units; approximately 34,496 gross square feet of retail floor area; and an approximately 14,665 gross-square-foot child care center use. The proposed project would provide approximately 857 off-street parking spaces (including approximately 10 car share spaces), approximately 762 Class One bicycle spaces, and 77 Class Two bicycle spaces. These proposed uses would be located in 13 new buildings (known as Plaza A, Plaza B, Walnut, Mayfair, Laurel Townhomes, Euclid and Masonic) and in the adaptively reused office building (known as Center A and Center B), which would be divided into two separate buildings and converted to residential use,

25% of the proposed project's units will be deed-restricted, on-site affordable units designated for low-income senior households. These affordable units will be located in the proposed Walnut Building on California Street and consist of 185 studios and 1-bedrooms for seniors plus one (1) on-site manager's unit. The Walnut Building would also include an approximately 175-seat child care facility, including a contiguous outdoor activity area. The project includes approximately 34,496 square feet of neighborhood-serving retail located in the buildings fronting onto California Street (Plaza A, Plaza B and the Walnut Building). This retail

Exhibit D-2

Appraisal Process

1. Arbitration for Fair Market Value.

1.1 <u>Appointment</u>. Each Party shall appoint one (1) Appraiser (as defined below) within thirty (30) days after City delivers written notice to Developer that the arbitration provisions of this Exhibit have been invoked (the "Initial Selection Period"). Upon selecting its Appraiser, a Party shall promptly notify the other Party in writing of the name of that Appraiser. Each Appraiser selected by a Party under this Section shall be an "Initial Appraiser".

An "Appraiser" shall mean a competent and licensed appraiser who is qualified by training and experience in the City and County of San Francisco and a member in good standing of the Appraisal Institute and designated as a MAI, or, if the Appraisal Institute no longer exists, shall hold the senior professional designation awarded by the most prominent organization of appraisal professionals then awarding such professional designations. An Appraiser may have a prior working relationship with either or both of the Parties, provided that such working relationship shall be disclosed to both Parties. Without limiting the foregoing, an Appraiser shall have at least ten (10) years' experience valuing multi-family residential real estate that is in the City and County of San Francisco and substantially similar product-type to the Walnut Affordable Housing Building (i.e., affordable senior housing and condominium airspace interests or similar property interests such as ground leases) required for the Walnut Affordable Housing Building. If a Party fails to appoint its Appraiser within the Initial Selection Period, the Initial Appraiser appointed by the other Party shall individually determine the Fair Market Value in accordance with the provisions hereof.

Instruction and Completion. The term "Fair Market Value" shall mean the then current fair market value of the Walnut Land, as determined pursuant to this Exhibit. Each Initial Appraiser will make an independent determination of the Fair Market Value. The following instructions shall govern the preparation and delivery of each appraisal report giving the respective Initial Appraiser's opinion of the Fair Market Value. The Parties may supplement or modify these instructions upon mutual agreement. Each final opinion of value will be stated in a self-contained appraisal report based on a comprehensive study and analysis and setting forth, in detail, all data, analysis, and conclusions necessary and typical of a complete, self-contained appraisal report in compliance with the current version of the Uniform Standards of Professional Appraisal Practice ("USPAP"). The appraisal report will include the Initial Appraiser's final opinion of the Fair Market Value stated as a specific dollar figure. The Walnut Land shall be appraised based on the actual residential project that it is entitled for at the time of Appraisal consistent with the zoning and all conditions on the Walnut Land and assuming that the following apply to the Walnut Land: (i) the Approvals (as such term is defined in the Development Agreement), including, without

As of 2014, USPAP replaced the terminology of "Restricted Use, Summary and Self Contained", and replaced the report content types with two types, "Appraisal Report" and "Restricted Appraisal Report." The reference to "Self Contained" in V, Appraisal Standards, refers to the meaning it had prior to 2014. Also, the reference to "Complete" appraisal has the meaning that it did prior this term being removed officially from USPAP, i.e. essentially that no relevant and applicable valuation approaches or methodologics may be excluded (and the rationale for any approach excluded be provided).

limitation, the applicable conditions of approval and any notices of special restrictions, (ii) the Development Agreement (subject to the eventual expiration thereof), (iii) permitted exceptions to title, (iv) the final subdivision map, (v) covenants, conditions and restrictions, reciprocal easement agreements and similar agreements regarding operation and use of condominium airspace parcels on the Walnut Land, regardless of whether such agreements are then in effect, it being agreed that the Walnut Land will be subject to such agreements in a commercially reasonable form, (v) applicable zoning, (vi) applicable development impact fees, (vii) its then-current "as-is", "whereis" condition, provided the only exceptions to title will be those described in Section 4.C of Exhibit D to the Development Agreement and (viii) such other documents and restrictions that the Parties mutually agree to present to the Initial Appraisers (or the Initial Appraiser if there is only one) during the appraisal process. The Fair Market Value will be determined as if the Walnut Land were served by streets and utilities but otherwise vacant and unimproved by any structures, buildings, improvements, fixtures, additions, alterations, and betterments of whatsoever nature or description. For clarity, it is understood that the Walnut Land valuation shall take into consideration the actual costs and expenses necessary for the improvements to specifically serve the Walnut Land. Each Initial Appraiser will use sales comparisons to estimate value, presented in individual write-up sheets. Each Initial Appraiser shall adhere to USPAP direction pertaining to comparable sales requiring extraordinary verification and weighting considerations. If there is more than one Initial Appraiser, the Initial Appraisers may share and have access to objective information in preparing their appraisals, but they will independently analyze the information in their determination of the Fair Market Value, and neither of the Initial Appraisers shall have access to the appraisal of the other (except for the sharing of objective information contained in such appraisals) until both of the appraisals are submitted in accordance with the provisions of this Section. Neither Party shall communicate with the Initial Appraiser selected by the other Party regarding the instructions contained in this Section before the Initial Appraisers complete their appraisals. If an Initial Appraiser has questions regarding the instructions in this Section, such Initial Appraiser shall use his or her own professional judgment and shall make clear all assumptions upon which his or her professional conclusions are based, including any supplemental instructions or interpretative guidance received from the Party appointing such Initial Appraiser. There shall not be any arbitration or adjudication of the instructions to the Initial Appraisers contained in this Section. Each Initial Appraiser shall complete, sign and submit its written appraisal setting forth the Fair Market Value to the Parties within sixty (60) days after the appointment of the last of the Initial Appraisers (or if only one Initial Appraiser is selected, within sixty (60) days after the expiration of the Initial Selection Period).

If only one Initial Appraiser is selected during the Initial Selection Period, then the Fair Market Value shall be the figure in such Initial Appraiser's appraisal. If two Initial Appraisers are selected during the Initial Selection Period, and the higher appraised Fair Market Value is not more than one hundred ten percent (110%) of the lower appraised Fair Market Value, then the Fair Market Value shall be the average of such two (2) Fair Market Value figures.

1.3 <u>Potential Third Appraiser</u>. If two Initial Appraisers are selected during the Initial Selection Period, and the higher appraised Fair Market Value is more than one hundred ten percent (110%) of the lower appraised Fair Market Value, then the Initial Appraisers shall agree upon and appoint an independent third Appraiser meeting the requirements for an Appraiser specified in Section 1.2 within thirty (30) days after the appraisals of both of the Initial Appraisers have been

GROUND LEASE

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA a California public corporation on behalf of the San Francisco campus

("University")

- AND -

LAUREL HEIGHTS PARTNERS LLC, a Delaware limited liability company

("Lessee")

March 13 , 2015

- Section 4.4 <u>Utilities and Other Facilities</u>. Commencing from and after the University Sublease Expiration and continuing thereafter during the Term, all costs associated with bringing required utilities (both temporary and permanent) from the boundary of the Leased Land (or, with respect to temporary utilities only, from the point of origin) to the point of connection to any Improvements and/or Alterations thereto, including, without limitation, related professional, engineering and consultant fees, service charges, meters, and the costs of connections, including, without limitation, any hook-up fees assessed by any utility company, water district and/or government agency, shall be paid by Lessee.
- Section 4.5 Nonresponsibility. Lessee will at all times permit the University to post appropriate notices to avoid any liability to contractors or material suppliers for payment for Alterations and allow such notices to remain posted until the completion of the applicable Work. University shall not be deemed to have incurred or assumed any obligation or responsibility in connection with any Alterations or Work performed on the Leased Land. Nothing in this Lease nor any act or failure to act on the part of University shall be construed as a warranty or representation as to the adequacy or fitness of the Improvements or as a waiver of a claim by University for any defect or deficiency with respect to any Alterations or Work with respect thereto.
- Section 4.6 Maintenance of Leased Land and Improvements. During the Term of this Lease, subject to the provisions of Section 4.1, ARTICLE VIII, ARTICLE IX and Section 17.21 and taking into consideration construction activities with respect to Restoration, Demolition or Alterations, Lessee shall, at Lessee's sole cost and expense, maintain the Leased Land in a good, clean, attractive and sanitary and safe order, condition, habitability and repair. Lessee's maintenance obligations shall include (i) the obligation to maintain the Improvements within the Leased Land in good condition and repair, and (ii) the obligation to maintain all unimproved areas within the Leased Land in good condition and perform erosion and dust/dirt control measures with respect to any such unimproved areas (including, without limitation, preparing and complying with any applicable storm water prevention plans).

ARTICLE V

LEASE CONSIDERATION

- Section 5.1 <u>Ground Lease Consideration</u>. On the Effective Date, Lessee shall pay to University, in cash or other immediately available funds, the amount of Eighty Eight Million Six Hundred Thousand Dollars (\$88,600,000.00) (the "Lease Consideration"). The Lease Consideration shall be considered fully earned by University as consideration for entering into this Lease and granting Lessee the rights with respect to the Improvements and the Leased Land set forth in this Lease and, without limiting any of Lessee's rights in the event of a default by the University under this Lease, shall be non-refundable under any circumstances.
- Section 5.2 Net Lease; No Rent Abatement or Reduction. The parties hereto have assumed that University will not have to pay any expense or incur any liabilities of any kind in any way relating to, or in connection with, the Leased Land or the Improvements during the Term. In connection with the foregoing, Lessee hereby assumes the obligation to make all payments of fees, costs and expenses in connection with the ownership, operation and

IN WITNESS WHEREOF, University and Lessee have executed this Memorandum of Ground Lease effective as of the Memorandum Date.

Lessee:	Laurel Heights Partners LLC a Delaware limited liability company By: 3333 California LP, a Delaware limited partnership, its managing member	
	a Dela	PSKS LH LLC, ware limited liability company, eral partner
	Ву:	Prado LH LLC, a California limited liability company, its managing member
		By: Daniel J. Safier, its manager
STATE OF CALIFORNIA) ss COUNTY OF)		
On, 2014, before mappeared	in his/her/their nt the person(s)	authorized capacity(ies), and that by
I certify under PENALTY OF PERJURY foregoing paragraph is true and correct.	Y under the law	s of the State of California that the
WITNESS my hand and official seal.		
Signature of Notary Public		

RECORDING REQUESTED BY WHEN RECORDED MAIL TO:

First Republic Bank 111 Pine Street San Francisco, CA 94111 Attn: Loan Review

Loan Number: 27-541759-7

3393 California Strut
APN: Block 1032, Lot 003
LTC ESC #15604980-Th

Space Above this Line for Recorder's Use

MODIFICATION AGREEMENT

This Modification Agreement (this "Agreement"), dated as of March 27, 2018 for reference purposes only, is made between Laurel Heights Partners LLC ("Borrower") and First Republic Bank (the "Lender"), with reference to the following facts:

- A. The Lender has previously made to Borrower a term commitment loan in the original maximum principal amount of \$60,000,000 (the "Loan"). \$54,000,000 of the principal amount of the Loan has been disbursed, and the current outstanding principal balance of the Loan is \$54,000,000. Borrower has made installment payments of interest on the Loan.
- B. The Loan is evidenced by that certain Promissory Note Secured By Deed of Trust dated March 11, 2015 (as amended, the "Note").
- C. The Loan is secured, *inter alia*, by that certain Deed of Trust, Fixture Filing, Assignment of Rents, and Security Agreement dated March 11, 2015 executed by Borrower in favor of Lender and recorded on March 11, 2015 in the Official Records of San Francisco County as Instrument No. 2015-K032896 (the "Leasehold Deed of Trust", and all capitalized terms not defined herein shall have the meanings given to them in the Leasehold Deed of Trust). The collateral under the Deed of Trust is, *inter alia*, the Ground Lease (under which Borrower is the tenant) of the that certain real property located in the City and County of San Francisco, as more particularly described in <u>Exhibit A</u> attached hereto (the "Land").
- D. Pursuant to that certain Future Disbursements Agreement dated March 11, 2015 between Borrower and Lender (as amended, the "FDA"), Lender has agreed to advance up to \$6,000,000 to Borrower to pay or reimburse Borrower for the Entitlements (as defined in the FDA).
- E. The Regents of the University of California ("UC"), which is the lessor under the Ground Lease, has agreed to transfer the fee simple interest in the Land to 2130 Post Street, LLC ("2130PS"). Borrower has agreed to acquire ownership of the fee simple interest in the Land from 2130PS in consideration of the payment of \$1,612,000 (the "Price").

Loan No.: 27-541759-7 Obligor No.: 0210449505

31316\6495662.3

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

Morrison & Foerster, LLP 755 Page Mill Road Palo Alto, CA 94304 Attn: Philip J. Levine, Esq.

MAIL TAX STATEMENTS TO:

Laurel Heights Partners LLC c/o The Prado Group, Inc. 150 Post Street, Suite 320 San Francisco, CA 94108 Attn: Daniel J. Saffer

APN: Lot 003, Block 1032

(Space above this line for Recorder's use)

Address: 3333 California Street, San Francisco, CA

CTC ELC #15604930-7K/DM

GRANT DEED

The Documentary Transfer Tax is: \$12,090.00 ·

Computed on full value of property conveyed.

Computed on full value less liens and encumbrances assumed.

☐ City of San Francisco
☐ Unincorporated

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, 2130 POST STREET, LLC, a California limited liability company ("Grantor") does hereby GRANT, CONVEY, TRANSFER, and ASSIGN to LAUREL HEIGHTS PARTNERS LLC, a Delaware limited liability company ("Grantee") that certain real property in the City of San Francisco, County of San Francisco, State of California, as legally described on Exhibit A attached hereto and made a part hereof (the "Property").

This grant is made subject to all matters of record existing as of the date hereof.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the Grentor has executed this Grant Deed this 26 day of March, 2018.

GRANTOR:

2130 Post Street, LLC, a California limited liability company

By: G. Bakar Properties, Inc.,

a California corporation, its Manager

Stephen J. LoPresti, Secretary

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 } S.S.

On March 26, 20/8 before me, difference, 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(les), 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 PENALITY 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

LEYLA KNAFELMAN

Commission @ 2117276

Notary Public - Callfornia

Ban Frenelsco Gounty

My Comm. Expinas Jun 26, 2019

3333 California Street, San Francisco, CA File No. 190845 - Proposed Development Agreement Hearing Date: October 21, 2019 Record Number: 2015-014028CUA/PCA/MAP/DUA

EXHIBITS D-F



Home - Volume 48 [2013-14] - Volume 48 Number 08 - Developing divisions

Developing divisions



steve@sfbg.com

With the clink of champagne glasses, kudos to the development team and its community partners, and the cutting of a red ribbon, the new housing development at 38 Dolores St. had its grand opening celebration on Nov. 14, a couple weeks after the Whole Foods on its ground floor opened its doors to Market Street.

In many ways, 38 Dolores is pretty typical of the new housing opening in this part of town these days. It took seven years to complete the project, "on time and under budget in a way this community can be proud of," developer Dan Safier of The Prado Group told the assembled crowd.

That process included countless meetings with various community groups, who successfully pushed for progressive features that include some key pedestrian safety improvements and limiting the number of parking spaces to just one spot for every two units.

"It was an amazing example of a developer working closely with the various neighborhood associations," area Sup. Scott Wiener told the well-dressed crowd at the event, a sentiment

also voiced by his predecessor, Bevan Dufty, who said, "They've been the gold star as far as listening to people."

But not everyone agrees with that praise. Peter Cohen, a housing activist who also works for the San Francisco Council of Community Housing Organizations, said Safier broke longtime assurances that he would satisfy his affordable housing obligations by building belowmarket-rate (BMR) units on site, rather than just paying an "in-lieu" fee to the city, two options under Inclusionary Housing Ordinance.

"They basically did a bait and switch. It was a real bullshit move," Cohen told the Guardian, noting how desperate the city is for more affordable housing now. "The bottom line is they promised to do affordable housing on site and they didn't do it."

"There are so many nuances to how affordable housing works," Safier told us, vaguely explaining why he couldn't do on-site BMR units, including the demands of project funders. He worked with the city on doing a land dedication for off-site affordable housing, but the Mayor's Office of Housing was resistant, and it would have required a change in city codes to do in this part of town.

"They wanted to develop faster than we had to capacity to develop," MOH Director Olson Lee told the Guardian, explaining that his office was dealing with transitioning affordable housing projects under the old Redevelopment Agency and it didn't have the capacity to help Safier build the BMR units now. Instead, it accepted a check for about \$5 million.

"We felt there should be more options for developers," Safier said. "But the reality is the city needs the fees."

Yes, over the long haul, the city does need those fees to build more BMR units, which require big public subsidies to build in San Francisco. But those will take many years and much effort to build. Lee said the \$37 million now in the city's Affordable Housing Trust Fund will eventually translate into 185 BMR units.

"That's why we want the units on site," Cohen said, "because the clearest path is to build the damn units in your building."

By time the party started at 38 Dolores, 40 of its 81 units had already been rented, and the developers expected even more to be rented out by the end of the party, after attendees had toured the open units sipping free champagne or cocktails.

"If you've brought your checkbook, you can even rent a unit," Safier told the crowd.

Prices ranged from \$2,950 per month for one of a half-dozen 505-square-foot studio apartments to \$4,395 for the two-bedroom, two-bath, 1,099-square-foot units that the event was really pushing up to \$8,100 for a few three-bedroom apartments with the balcony and killer views on the seventh floor.

Compare those reuts to San Francisco's median rent of nearly \$1,500, the highest in the nation, according to a recent US Census report, which also noted that occupants in 38

percent of rental units in the city pay more than 35 percent of their income on rent. And then you get a pretty good idea how San Francisco is changing.

FLOOD OF HOUSING

Thousands of newly constructed housing units are now coming online in San Francisco, spurred by the city's hot housing market, pent-up demand and capital following the 2008 financial crisis, and approval of city plans that regulate development by neighborhood, such as the Market and Octavia Neighborhood Plan, which has unleashed a flood of development along mid- and upper-Market Street.

The good news is apartments are finally being built in a city where nearly two-thirds of residents rent — even in projects like 38 Dolores that are permitted as condos — but the bad news is that they're really expensive and the city isn't building anywhere near enough affordable units to address demand by current residents. And most developers are opting to "fee out" rather than build BMR units, meaning it will take several years to address this growing economic imbalance.

The trend in what's being built in San Francisco and what those units are going for only increases the pressure on tenants in rent-controlled apartments, who are now being displaced at rates not seen since the last dot-com bubble, both through evictions and buyouts. Contrary to the supply-and-demand arguments made by pro-development cheerleaders, there's no evidence that the housing supply now being built is doing anything to help most San Franciscans.

"Trickle down theory is going to fuck San Francisco, it's not going to help it," Cohen said.

San Francisco's Housing Element, a study of housing needs mandated by state law to ensure that cities are addressing their affordable housing obligations, called for the city to build 31,193 housing units from 2007-2014. Partially as a result of the 2008 financial meltdown, San Francisco fell far short of that goal, with just 11,130 units getting permitted, most of those market-rate units.

But that was enough to meet 60.6 percent of the projected need for serving those earning 120 percent of area median income and above, whereas the city entitled just 360 units for moderate income San Franciscans — 5.3 percent of the projected need — and 3,313 units for low-income (80 percent of AMI and below), or 27.3 percent of the need.

So it isn't that San Francisco is facing a "housing crisis," as Housing Action Coalition and others often proclaim, it's that the city is facing an *affordable* housing crisis driven by not building enough below-market-rate housing and allowing real estate speculators to cannibalize the city's rent-controlled housing.

Even though voters last year approved Prop. C, creating the Affordable Housing Trust Fund to address the real crisis, it won't generate nearly enough money to meet the long-term need. And in the short-term, it actually reduced the number of on-site BMR units that developers must build, from 15 percent to 12 percent.

"The reason for changing the inclusionary to 12 percent was to incentivize the on-site," MOH's Lee told us, although he admitted that it had limited success so far.

BATTLING FOR BMR

That's not to say there aren't any BMR units going up.

The Mayor's Office says there are 6,168 housing units now under construction in the city, and 1,182 of those are affordable housing. Most of those are in projects that were required to do so because they got a gift of public land, including Lennar Urban's housing development at Hunters Point Shipyard and the housing development that's part of the Transbay Terminal rebuild in SoMa, where the Block 6 project starting next year that will have 70 BMR units out of 479 total.

"The city got that state land and as a requirement of law, it has a high affordable housing requirement," MOH's Lee told us. "Transbay is a great example of how we're encouraging the affordable and market rate to go hand-in-hand, because they really do go hand-in-hand."

Other developers were encouraged by the change in Prop. C, including the massive, 754-unit NEMA apartment complex on Market Street next to the Twitter headquarters, which opted to do the 12 percent BMR on-site rather than 17 percent off-site or the pay of an in-lieu fees that roughly equivalent to 20 percent. Trinity Housing's huge project at 1167 Market will also have 232 BMR units out of 1,900 units total.

"Getting on-site inclusionary has lots of benefits," Lee said. "One, we aren't doing it. Two, it gets done faster. And three, we get a better mix around the city."

While Wiener told us "we need all sorts of different housing," he also said that "we need to do more to have on-site affordable units."

But Cohen said the city isn't doing nearly enough to encourage affordable housing construction, particularly giving how much market-rate housing is being built, which is gentrifying the city and hurting its diversity. He says MOH should increase the in-lieu fees, which are based on construction costs and not what the red-hot market is actually paying for units right now.

"The opportunity cost is far higher to do the unit on site," Cohen said. "The fee is too cheap."

So for now, Cohen works with neighborhood associations and groups such as the AIDS Housing Alliance and the Milk Club to put pressure on developers to do on-site affordable housing, as they've recently been doing to the Texas-based Greystar, which is proposing a 90-unit housing project at on Market at Sanchez.

Activists have pushed and pushed, and they finally felt like they got a commitment from Greystar at the Nov. 11 meeting of the Duboce Triangle Neighbors Association, which is spearheading the effort. But when the Guardian asked the company detailed questions about the issue and its commitment, we got back this vague statement from Randy Ackerman,

Senior Director of Development: "We recently met with Duboce Triangle Neighbors Association and had a good discussion, where we received a lot of helpful feedback on the BMR units and the overall project. We plan to incorporate their feedback as we finalize our plans with city staff."

Cohen said that's typical of developers these days. "This is the economic reality, is it's a place to make a lot of money off of real estate," Cohen said. "They can very easily play the community like a fiddle, so I'm hoping I can help the Upper Market community beat Greystar."

Safier said he doesn't think it's fair or helpful to demonize developers. "I'm not one of those evil developers," Safier said, who criticizes the rich-vs.-poor political dynamics in the city. "I don't think that tug and pull of this city is very productive."

But Cohen said activists need to be vigilant to protect the character of the city in the face of growing profit motives. "It's 24/7 and it just wears people down, and we have to have wins along the way," Cohen said, noting the importance of defeating the 8 Washington project in the last election. "We have to be very loud about how difficult it is to maintain this city's diversity."

November 19, 2013

Steven T. Jones

News & Opinion

Volume 48 Number 08

8 Washington Affordable Housing Budget Cocktails condos Development Election Event
Evictions Housing Lennar Mayor News Parking Progressive Real Estate redevelopment Rent
San Francisco Scott Wiener SoMa Sup. Scott Wiener Tenants Twitter Wiener



Feasibility Analysis and Questions re 3333 California Street

9 messages

Kathy Devincenzi < krdevincenzi@gmail.com>

Wed, Aug 21, 2019 at 12:39 PM

To: "Lutenski, Leigh (ECN)" <leigh.lutenski@sfgov.org>

Cc: Catherine Stefani <catherinestefanie@sfgov.org>, Richard Frisbie <frfbeagle@gmail.com>

Ms. Lutenski,

We are trying to understand the proposed Development Agreement and appreciate your meeting with us for a limited period on August 19, 2019.

Please provide us with a copy of the City's economic feasibility analysis concerning the proposed 3333 California Street project, including without limitation analysis of the feasibility of constructing the proposed project and/or affordable senior housing on site; construction costs; project scale; potential rental or sales revenues; capitalization rates; interest rates; equity return rates; land value; and available local, state and federal housing finance programs including Low Income Housing Tax Credits readily available for market rate housing; tax-exempt bond financing; Federal Housing Administration and U. S. Department of Housing and Urban Development mortgage insurance; available City or local housing finance programs such as Enhanced Infrastructure District and tax increments; zoning changes that increase or decrease development potential; variable City exactions including community benefit fees, capacity charges, community facilities districts; the value of state density bonus, concessions and incentives under California Government Code Section 65915 and any other state law that confers value to development and which project sponsors may attempt to avail themselves of and public-private partnership development agreements where applicable and other factors as deemed reasonably relevant (as described in Planning Code section 415.10 as factors the City considers).

Also, please give us answers to the following questions about the proposed Development Agreement for 3333 California Street.

What is the estimated in lieu payment that would be required at time of original project approval if the developer elected not to build affordable units on site or used another exception from building affordable on-site units?

On page D-9, if the Developer fails to transfer the Walnut Land to the City and the City instead accepts an "in lieu payment in the amount of Fair Market Value," does that mean the fair market value of the Walnut Land only or of the in lieu payment that would have been required as to the total project at time of original project approval?

If page D-9 refers to the Fair Market Value of the Walnut Land only, does that mean the value of the Walnut Land as entitled with the senior affordable housing attached to it, and if so what is the estimated value of that Walnut Land as encumbered with the requirement of building affordable housing on it?

How did the City's analysis of the economic feasibility of the 3333 California Street project take into account the impact on feasibility caused by the potential increase in construction costs during the 15-year period of the Development Agreement, as extended for any litigation?

If the City takes ownership of the Walnut Land, can the City change the use of the Walnut Land, and if so, what process would be used to change the use of the Walnut Land?

Page 28 of the Development Agreement states:

There is no requirement under this Agreement that Developer initiate or complete development of the Project, or any portion thereof. There is also no requirement that development be initiated or completed within any period of time or in any particular order, subject to the requirement to complete Associated Community Benefits for each Building (or for any market rate residential unit in excess of three hundred eighty-six (386), as applicable commenced by Developer as set forth in Section 4.1. Does this mean that the Developer can construct 386 market rate residential units under the new Special Use District zoning and then terminate the Development Agreement requirement that the Developer build the senior affordable housing units on site?

Page 39 of the Development Agreement states:

Developer shall, upon thirty (30) days prior notice to the City, have the right, in its sole and absolute discretion, to terminate this Agreement in its entirety at any time if Developer does not Commence Construction on any part of the Project Site by the Date which is five (5) years following the Effective Date as such five (5) year date may be extended by any Litigation Extension. If the Developer terminates the Development Agreement under this provision, would the new Special Use District remain in effect, unless otherwise amended by the Board of Supervisors?

Thank you very much for your cooperation in this regard.

Laurel Heights Improvement Association of SF, Inc.

By: Kathryn Devincenzi, President

Mail Delivery Subsystem <mailer-daemon@googlemail.com>
To: krdevincenzi@gmail.com

Wed, Aug 21, 2019 at 12:39 PM



Message not delivered

Your message couldn't be delivered to **catherinestefanie@sfgov.org** because the remote server is misconfigured. See technical details below for more information.

The response from the remote server was:

550 5.4.1 [catherinestefanie@sfgov.org]: Recipient address rejected: Access denied [DM2GCC01FT008.eop-gcc01.prod.protection.outlook.com]

Final-Recipient: rfc822; catherinestefanie@sfgov.org

Action: failed Status: 5.4.1

Remote-MTA: dns; sfgov-org.mail.protection.outlook.com. (104.47.63.36, the

server for the domain sfgov.org.)

Diagnostic-Code: smtp; 550 5.4.1 [catherinestefanie@sfgov.org]: Recipient address rejected: Access denied

[DM2GCC01FT008.eop-gcc01.prod.protection.outlook.com] Last-Attempt-Date: Wed, 21 Aug 2019 12:39:18 -0700 (PDT) **Cc:** Catherine Stefani <catherinestefanie@sfgov.org>; Richard Frisbie <frfbeagle@gmail.com> **Subject:** Feasibility Analysis and Questions re 3333 California Street

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

[Quoted text hidden]

Lutenski, Leigh (ECN) <leigh.lutenski@sfgov.org>

Thu, Sep 12, 2019 at 2:59 PM

To: Kathy Devincenzi krdevincenzi@gmail.com

Cc: "Stefani, Catherine (BOS)" <catherine.stefani@sfgov.org>, Richard Frisbie <frfbeagle@gmail.com>, "WONG, CAROL (CAT)" <Carol.R.Wong@sfcityatty.org>, "PEARSON, AUDREY (CAT)" <Audrey.Pearson@sfcityatty.org>, "Pena, Iowayna (ECN)" <iowayna.pena@sfgov.org>

Hello Kathy,

Please see responses to your questions below in red bold text, as well as the attached financial feasibility analysis.

Thanks, Leigh

Please provide us with a copy of the City's economic feasibility analysis concerning the proposed 3333 California Street project, including without limitation analysis of the feasibility of constructing the proposed project and/or affordable senior housing on site; construction costs; project scale; potential rental or sales revenues; capitalization rates; interest rates; equity return rates; land value; and available local, state and federal housing finance programs including Low Income Housing Tax Credits readily available for market rate housing; tax-exempt bond financing; Federal Housing Administration and U. S. Department of Housing and Urban Development mortgage insurance; available City or local housing finance programs such as Enhanced Infrastructure District and tax increments; zoning changes that increase or decrease development potential; variable City exactions including community benefit fees, capacity charges, community facilities districts; the value of state density bonus, concessions and incentives under California Government Code Section 65915 and any other state law that confers value to development and which project sponsors may attempt to avail themselves of and public-private partnership development agreements where applicable and other factors as deemed reasonably relevant (as described in Planning Code section 415.10 as factors the City considers).

Please see attached financial feasibility analysis per your request.

Also, please give us answers to the following questions about the proposed Development Agreement for 3333 California Street.

What is the estimated in lieu payment that would be required at time of original project approval if the developer elected not to build affordable units on site or used another exception from building affordable on-site units?

The City's current in-lieu fee is calculated based on the project's residential gross square feet (977,437) x MOHCD affordable housing fee (\$199.50/gsf) x inclusionary percentage (30% for rental gsf or 33% for ownership gsf). However, this project does not include a fee-out option for the affordable housing requirement.

On page D-9, if the Developer fails to transfer the Walnut Land to the City and the City instead accepts an "in lieu payment in the amount of Fair Market Value," does that mean the fair market value of the Walnut Land only or of the in lieu payment that would have been required as to the total project at time of original project approval?

The City would get the fair market value of the Walnut Land, as determined by the Baseball Arbitration Appraisal Process outlined in Exhibit D-2.

If page D-9 refers to the Fair Market Value of the Walnut Land only, does that mean the value of the Walnut Land as entitled with the senior affordable housing attached to it, and if so what is the estimated value of that Walnut Land as encumbered with the requirement of building affordable housing on it?

Per my response above, the value of the Walnut Land would be determined by the Baseball Arbitration Appraisal Process assumptions outlined in Exhibit D-2.

How did the City's analysis of the economic feasibility of the 3333 California Street project take into account the impact on feasibility caused by the potential increase in construction costs during the 15-year period of the Development Agreement, as extended for any litigation?

The analysis includes reasonable assumptions as to the potential future change in construction costs.

If the City takes ownership of the Walnut Land, can the City change the use of the Walnut Land, and if so, what process would be used to change the use of the Walnut Land?

The City would employ standard processes and approvals to change the allowable use of the Walnut Land in that case.

Page 28 of the Development Agreement states: There is no requirement under this Agreement that Developer initiate or complete development of the Project, or any portion thereof. There is also no requirement that development be initiated or completed within any period of time or in any particular order, subject to the requirement to complete Associated Community Benefits for each Building (or for any market rate residential unit in excess of three hundred eighty-six (386), as applicable commenced by Developer as set forth in Section 4.1.

Does this mean that the Developer can construct 386 market rate residential units under the new Special Use District zoning and then terminate the Development Agreement requirement that the Developer build the senior affordable housing units on site?

Please refer to sections 11.1 and 11.3 starting on page 39 of the Development Agreement.

Page 39 of the Development Agreement states: Developer shall, upon thirty (30) days prior notice to the City, have the right, in its sole and absolute discretion, to terminate this Agreement in its entirety at any time if Developer does not Commence Construction on any part of the Project Site by the Date which is five (5) years following the Effective Date as such five (5) year date may be extended by any Litigation Extension.

If the Developer terminates the Development Agreement under this provision, would the new Special Use District remain in effect, unless otherwise amended by the Board of Supervisors?

Similar to above, please refer to section 11.3 Termination and Vesting starting on page 39 of the Development Agreement. If the DA terminates the developer loses all vesting and entitlement rights to build the project. The SUD zoning controls do not have an expiration date and will remain effective. However, the developer or any subsequent property owner for that parcel would need to apply to the City for permits and approvals in order to redevelop the site after the DA ends.

Note: I will be out on maternity leave starting September 20th through the end of the year.

Leigh Lutenski

Project Manager, Joint Development

Office of Economic and Workforce Development

San Francisco City Hall, Room 448

Direct: 415-554-6679

Email: leigh.lutenski@sfgov.org

[Quoted text hidden]



3333 California Summary - 8-23-19.pdf

Kathy Devincenzi krdevincenzi@gmail.com

Fri. Sep 20, 2019 at 12:43 PM

To: "Lutenski, Leigh (ECN)" <leigh.lutenski@sfgov.org>

Cc: Richard Frisbie <frfbeagle@gmail.com>, "catherine.stefani" <Catherine.Stefani@sfgov.org>

Ms. Lutenski,

Who will be handling the 3333 California Street matter at OEWD in your absence? We will have a response to your September 12, 2019 email.

[Quoted text hidden] [Quoted text hidden]

RESIDENTIAL APARTMENTS/CONDOMINIUMS AND WALNUT SENIOR HOUSING

Unde	rwriting					rado/SKS 201	7				Prado/SKS
Phase		Pha	se3	Pha	se 2		Phase 1		Pha	se 4	All Phases
i de la secono							Egyptiment englishmengs visit				
1.)	Unlevered IRR	4.1%	2.9%	3.6%	5.8%	3.3%	3.2%	-3.6%	-0.4%	4.0%	3.2%
2.)	Levered IRR	3.4%	1.4%	2.1%	6.3%	1.7%	1.5%	NA	-4.9%	3.2%	1.8%
3.)	Trended Return-On-Cost	4.7%	4.3%	4.6%	5.3%	4.4%	4.4%	1.9%	3.6%	4.5%	4.2%

Phase	rwriting			ise 1		Ph				se Case [1]	THE REAL PROPERTY.				THE RESERVE OF THE PARTY OF THE	ase 4	1		Base [1] II Phases
					and the second second							earninterens III							
4.)	Unlevered IRR		5.0%		4.8%	6.0%		4.8%		4.2%		4.3%		NA	46.49	6	20.3%		5.7%
5.)	Levered IRR		4.9%		4.5%	5.8%		4.1%		3.4%		3.4%		NA	56.0%	6	25.3%	1	5.9%
6.)	Trended Return-On-Cost		4.3%		4.2%	NA		NA		4.2%		4.2%		NA	N/	A	NA		NA
7.)	Net Operating Income	\$	8.2M	\$	3.3M	NA		NA	\$	4.5M	\$	4.2M	1	VA.	NA	.]	NA	\$	20.2M
8.)	Total Development Costs	\$	188.9M	\$	78.2M	\$ 95.2M	\$	252.6M	\$	106.3M	\$	100.9M	\$ 113.	2M	\$ 60.1M	\$	52.1M	\$	1,047.5M
9.)	Market Rate/Mgr Units		139		57	51	T	139	Ī	67		61		1	14	1	30		559
10.)	BMR Units - 15% AMI		0		0	0		0	ļ	0		0		23	0		0		23
11.)	BMR Units - 50% AMI		0		0	0		0		0		0		51	0		0		51
12.)	BMR Units - 60% AMI	}	0		0	0	1	0		0		0		74	0		ol		74
13.)	BMR Units - 80% AMI		0		0	0		0		. 0		0		37	0		0		37
14.)	Total Units		139		57	51		139		67		61		186	14		30		744

	lerwriting		100			N. C.	Adjusted	l Capitalization	n Rates [1]				A	djusted [1]
Pie	2. The residence of the control of t			se 1					Phase 3		Pha	ise 4		III Phases
													M	
15.)	Unlevered IRR		5.7%	9	5.5%	6.0%			}		46.4%	1		6.2%
16.)	Levered IRR		6.2%		5.8%	5.8%	4.1%	4.6%	4.7%	1	56.0%			6.7%
17.)	Trended Return-On-Cost	1	4.3%		4.2%	NA	NA	4.2%	4.2%	NA	NA	1 1		NA
18.)	Net Operating Income	\$	8.2M	\$ 3	.3M	NA	NA.	\$ 4.5M	\$ 4.2M	. NA	NA	NA	\ s	20.2M
19.)	Total Development Costs	\$	188.9M	\$ 78	.2M	\$ 95.2M	\$ 252.6M	\$ 106.3M	\$ 100.9M	\$ 113.2M	\$ 60.1M	\$ 52.1M	\$	1,047.5M
20.)	Market Rate Units		139		57	51	139	67	61	1	14		<u> </u>	
21.)	BMR Units - 15% AMI		0		0	0	0	0	0	23	14	30		559
22.)	BMR Units - 50% AMI		0		0	0	0	0	0	51	0		-	23 51
23.)	BMR Units - 60% AMI		0		0	0	0	0	0	74	,			74
24.)	BMR Units - 80% AMI		0		0	0	0	0	0-	37	ő	ام		37
25.)	Total Units	L	139		57	51	139	67	61	186	14	30	-	744
		,						L	L		**	50		/ 11

^{***} All financial and programmatic estimates are preliminary in nature, subject to change, and for illustrative purposes only. ***

^[1] Assumes AHP, MHP, & IIG funding and corresponding AMI affordability tiers for Walnut parcel.

^[2] Includes any net subsidy required for Walnut parcel. Additionally, does not account for prior parking costs allocated to Walnut parcel.

1	[Planning Code – Geary-Masonic Special Use District]
2	
3	Ordinance amending the Planning Code to modify the Geary-Masonic Special Use District in
4	the area generally bounded by Geary Boulevard to the south, Masonic Avenue to the east,
5	and Assessor's Parcel Block No. 1071, Lots 001 and 004 to the north and west, respectively;
6	affirming the Planning Department's determination under the California Environmental Quality
7	Act; making findings of consistency with the General Plan, and the eight priority policies of
8	Planning Code, Section 101.1; and adopting findings of public convenience, necessity, and
9	welfare under Planning Code, Section 302.
10	NOTE: Unchanged Code text and uncodified text are in plain Arial font.
11	Additions to Codes are in <u>single-underline italics Times New Roman font.</u> Deletions to Codes are in <u>strikethrough italics Times New Roman font.</u>
12	Board amendment additions are in <u>double-underlined Arial font</u> . Board amendment deletions are in strikethrough Arial font.
13	Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.
14	
15	Be it ordained by the People of the City and County of San Francisco:
16	Section 1. Environmental and Planning Code Findings.
17	(a) The Planning Department has determined that the actions contemplated in this
18	ordinance comply with the California Environmental Quality Act (California Public Resources
19	Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
20	Supervisors in File No and is incorporated herein by reference. The Board affirms
21	this determination.
22	(b) On, 2019, the Planning Commission, in Resolution No,
23	adopted findings that the actions contemplated in this ordinance are consistent, on balance,
24	
25	

1 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The 2 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of 3 the Board of Supervisors in File No. , and is incorporated herein by reference. 4 (c) Pursuant to Planning Code Section 302, this Board finds that this ordinance will 5 serve the public necessity, convenience, and welfare for the reasons set forth in Planning 6 Commission Resolution No. _____ and the Board incorporates such reasons herein by 7 reference. A copy of Planning Commission Resolution No. is on file with the Clerk of 8 the Board of Supervisors in File No. 9 Section 2. The Planning Code is hereby amended by adding Section 249.20, to read as 10 follows: 11 SEC. 249.20. GEARY-MASONIC SPECIAL USE DISTRICT. 12 (a) General. A Special Use District entitled the Geary-Masonic Special Use District 13 ("District"), the boundaries of which are shown on Sectional Map SU03 of the Zoning Maps of 14 the City and County of San Francisco, is hereby established for the purpose set out below. 15 (b) **Purpose**. In order to provide for a mixed use development project with ground floor 16 retail, and a combination of very low income, low—income, moderate-income, middle-income, 17 and market rate residential units, at densities higher than what otherwise would be permitted 18 in the NC-3 zoning district and 80 foot height district, in an area well-served by transit, there 19 shall be a Geary-Masonic Special Use District consisting o(Assessor 's Block 1071, Lot 003 20 as designated on Sectional Map SU03 of the Zoning Maps of the City and County o(San 21 Francisco. 22 (c) **Development Controls**. Applicable provisions of the Planning Code for NCT-3 23 Districts as set forth in Section 752 shall apply within this Special Use District, except for the 24 following: 25 (1) Use Size. Non-residential uses 3000 square feet and above shall

1	require a conditional use under Section 121.2. Uses more than 6000 square feet in size are
2	not permitted.
3	(2) Accessory Vehicle Parking. There are no minimum off-street parking
4	requirements for any use in this District. No parking shall be permitted above .5 cars for each
5	Dwelling Unit.
6	(3) Car-sharing. Notwithstanding the provisions of section 166, no less
7	than 25% of parking spaces provided shall be an off-street car-share parking space and shall
8	be provided on the building site. Except as expressly provided herein, all other provisions of
9	section 166 shall apply.
10	(4) Parking and Loading Access. Parking and Loading access from Masonic
11	Avenue is not permitted.
12	(5) Dwelling Unit Mix. The project shall provide a minimum dwelling unit mix of
13	(A) at least 40% two and three bedroom units, including at least 10% three bedroom units, or
14	(B) any unit mix which includes some three bedroom or larger units such that 50% of all
15	bedrooms within the project are provided in units with more than one bedroom.
16	(d) Inclusionary Housing. Compliance with the Inclusionary Housing Program can
17	occur in one of the two following methods: In order to allow for the increased residential densities
18	provided by this Special Use District, on-site inclusionary units pursuant to Planning Code Section
19	415.6 shall be required and required in the following amounts and income levels.
20	(1) Affordable Housing Fee. Payment of the Affordable Housing Fee pursuant to
21	Section 415. 5 and the following provisions:
22	(1) For a project providing Owned Units, the applicable percentage shall be 33%
23	of the residential gross floor area.
24	(2) For a project providing Rental Units, the applicable percentage shall be 30% of
25	the residential gross floor area.

(c) Use of Fees. MOHCD shall designate and separately account for all fees that it
receives under this Section. The funds shall be used exclusively to acquire and construct a 100%
affordable housing building on a site located within Supervisorial District 2, as it exists as of the date
of the effective date of this Ordinance XXX

(2) <u>On-site Inclusionary Units. On-site units pursuant to Section 415.6 in the following amounts and income levels:</u>

(a) In a rental project, at least 10% of units must be affordable to very lowincome households, at least 4% must be affordable to low-income households, at least 4% must be affordable to moderate-income households and at least 5% must be affordable to middle-income households. For purposes of this section, rental units for very low-income households shall have an affordable rent set at 55% of Area Median Income or less, with households earning up to 65% of Area Median Income eligible to apply for very low-income units. For purposes of this section, rental units for low-income households shall have an affordable rent set at 80% of Area Median Income or less, with households earning up from 65% to 90% of Area Median Income eligible to apply for low-income units. For purposes of this section, rental units for moderate-income households shall have an affordable rent set at 110% of Area Median Income or less, with households earning from 90% to 120% of Area Median Income eligible to apply for moderate-income units. For purposes of this section, rental units for middle-income households shall have an affordable rent set at 120% of Area Median Income or less, with households earning from 120% to 140% of Area Median Income eligible to apply for middle-income units. For any affordable units with rental rates set at 110% of Area Median Income or above, the units shall have a minimum occupancy of two persons.

(2) (b) In an ownership project, at least 11% of units must be affordable to very low-income households, at least 5% must be affordable to low-income households, at least 5% must be affordable and at least 5% must be affordable

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

to middle-income households. For purposes of this section, ownership units for very low-income households shall have an affordable sales price set at 80% of Area Median Income or less, with households earning up to 100% of Area Median Income eligible to apply for very low-income units. For purposes of this section, ownership units for low-income households shall have an affordable sales price set at 105% of Area Median Income or less with households earning up from 95% to 120% of Area Median Income eligible to apply for low-income units. For purposes of this section, ownership units for moderate-income households shall have an affordable sales price set at 130% of Area Median Income or less, with households earning from 120% to 140% of Area Median Income eligible to apply for moderate-income units. For purposes of this section, ownership units for middle-income households shall have an affordable sales price set at 150% of Area Median Income or less, with households earning from 140% to 160% of Area Median Income eligible to apply for middle-income units. For any affordable units with sales prices set at 130% of Area Median Income or above, the units shall have a minimum occupancy of two persons.

(3) The grandfathering provisions in Section 415.3(b) shall not apply. Except as expressly provided in this subsection (d), all other provisions of Section 415 shall apply.

Section 4. **Effective Date**. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

Section 5. **Scope of Ordinance**. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under

the official title of the ordinance.
APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney
Ву:

Major, Erica (BOS)

From:

Arlene <arlenefilippi@yahoo.com>

Sent:

Wednesday, October 16, 2019 3:07 PM

To:

Major, Erica (BOS); Peskin, Aaron (BOS); Safai, Ahsha (BOS); Haney, Matt (BOS); Board of

Supervisors, (BOS); Stefani, Catherine (BOS); Mar, Gordon (BOS); Ronen, Hillary; Yee, Norman (BOS); Mandelman, Rafael (BOS); Fewer, Sandra (BOS); Brown, Vallie (BOS);

Walton, Shamann (BOS); Laurel Heights Email

Subject:

3333 California Street, Record Number: 2015-014028CUA/PCA/MAP/DVA

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

I live and work in the Laurel Heights area and I strongly oppose the Developer's Project. I see no reason to subject our neighborhood to fifteen years of excavation, demolition and construction. Nor do I understand the addition of retail space when we are surrounded by retail on California Street, Sacramento and Geary Streets.

I ask that you please order the Project redesigned similar to either of the proposed Community Alternatives. The Alternatives provide the same amount of housing and meet the Secretary of the Interior's standards for historic properties (a fact ignored by the Developer).

I would appreciate your consideration and thank you for your time.

Arlene Filippi 42 Wood Street San Francisco, CA 94118

Major, Erica (BOS)

Cc:

From: Linda Glick < lindaglick@gmail.com>

Sent: Wednesday, October 16, 2019 3:08 PM

To: Peskin, Aaron (BOS); Safai, Ahsha (BOS); Haney, Matt (BOS); Major, Erica (BOS)

Board of Supervisors, (BOS); Stefani, Catherine (BOS); Mar, Gordon (BOS); Ronen,

Hillary; Yee, Norman (BOS); Mandelman, Rafael (BOS); Fewer, Sandra (BOS); Brown,

Vallie (BOS)

Subject: : 3333 California Street, Record Number: 2015-014028CUA/PCA/MAP/DVA

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

I am a resident of Laurel Heights and endorse housing on the 3333 California site. However I do **NOT** endorse the developer's plan which will impact our neighborhood. The factors to which I am opposed are:

- The inclusion of retail space.
- The elimination of the open/green space look and feel of the existing property.

Retail space:

The neighborhood is currently supported by a combination of local and chain merchants who can absorb more traffic. Why would we build more retail space when there are existing vacancies on California and Sacramento Streets? Also big box retailers like Target, Trader Joe's, Best Buy and soon a Wholefoods are all within walking district. We could be faced with very undesirable and unneeded retail tenants as District 2 does not have a 'no chain' ordinance and 'flexible retail' would offer no neighborhood input.

The EIR failed to evaluate impacts on traffic, noise and air quality from multiple, flexible retail uses sharing the same retail space because the EIR only evaluated single use retail and restaurant uses. The community is not given notice of Flexible Retail uses rentals. Flexible Retail is not allowed anywhere else in District 2 or in the Sacramento or Fillmore Street commercial districts.

Green Space:

One of the characteristics of San Francisco is the inclusion of green space among its building and as part of the local neighborhoods. One of the architectural features of the existing 3333 California building is the landscaping and how the building was designed to integrate the building with the landscape. While the developer feels the existing design with its brick retaining walls does 'invite' in the neighborhood, he is mistaken. All one has to do is observe the neighborhood's continual use of the terraced seating on the east side of the building, the green space at Euclid and Laurel and the sidewalk traffic from Laurel to Walnut to understand that green space is an integral part of the community.

Unfortunately the debate about 3333 California has become an 'either/or' one. I propose that we seek a 'both/and' solution: one that provides much needed housing and also preserves our local retail environment and much of the green space and trees.

Thank you for your consideration. Regards, Linda S Glick

Major, Erica (BOS)

From:

Barbara Cohrssen <sfbarb@mcn.org>

Sent:

Wednesday, October 16, 2019 3:05 PM

To:

Major, Erica (BOS)

Subject:

3333 California Street

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Ms. Major

I live on Pine Street, between Baker and Lyon and will be greatly impacted by the developer's plan for the use of the property located at 3333 California Street.

I STRONGLYOPPOSE THE DEVELOPER'S PROJECT AND <u>SUPPORT</u> THE COMMUNITY ALTERNATIVES

I support the Community Alternative Plans which build the same number of housing units as the developer's plans - 744 units including 185 units of affordable senior housing - and are better because they do not impact the historic green space asmuchand will be built in a shorter period of time because they involve less excavation and demolition

THE COMMUNITY PLANS SAVE THE BEAUTIFUL GREEN SPACE

I oppose the mindless destruction of 200 trees; 185 on the site and the 15 mature trees on the sidewalk along California St. These trees are in good shape, house many local birds and provide necessary shade on the south side of the street.

I oppose the needless destruction of the natural green space everyone loves. New residents will like the green space better than the developer's shadowed hardscape pathways proposed by the developers.

RETAIL IS NOT NEEDED ADJACENT TO LAUREL VILLAGE

I oppose adding retail uses to the site; there is adequate retail in Laurel Village, Sacramento Street, Trader Joe's and Geary St. Stores are closing everywhere in the neighborhood. Let us support those businesses which have long served the neighborhood so well.

THE 15-YEAR CONSTRUCTION PERIOD WOULD JEOPARDIZE LAUREL VILLAGE

The prolonged construction time would jeopardize the survival of Laurel Village and its cherished independent quality groceries of Cal-Mart and Bryan's. The traffic in the neighborhood would be impacted for such a long time and that is unfair to the local residents and present active local community.

And of course, I do not want any non residential activities at this site.

In addition, the developer should be able to build in 7 years and not drag the project out for 15 years and make the project phasing definite and ensure that senior affordable housing is constructed by the developer per the phasing schedule.

Barbara Cohrssen 2970 Pine Street

Major, Erica (BOS)

From:

Barbara Cohrssen <sfbarb@mcn.org>

Sent:

Wednesday, October 16, 2019 3:05 PM

To:

Major, Erica (BOS) 3333 California Street

Subject:

Dear Ms. Major

I live on Pine Street, between Baker and Lyon and will be greatly impacted by the developer's plan for the use of the property located at 3333 California Street.

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

I STRONGLYOPPOSE THE DEVELOPER'S PROJECT AND <u>SUPPORT</u> THE COMMUNITY ALTERNATIVES

Isupport the Community Alternative Plans which build the same number of housing units as the developer's plans - 744 units including 185 units of affordable senior housing - and are better because they do not impact the historic green space as much and will be built in a shorter period of time because they involve less excavation and demolition

THE COMMUNITY PLANS SAVE THE BEAUTIFUL GREEN SPACE

I oppose the mindless destruction of 200 trees; 185 on the site and the 15 mature trees on the sidewalk along California St. These trees are in good shape, house many local birds and provide necessary shade on the south side of the street.

I oppose the needless destruction of the natural green space everyone loves. New residents will like the green space better than the developer's shadowed hardscape pathways proposed by the developers.

RETAIL IS NOT NEEDED ADJACENT TO LAUREL VILLAGE

I oppose adding retail uses to the site; there is adequate retail in Laurel Village, Sacramento Street, Trader Joe's and Geary St. Stores are closing everywhere in the neighborhood. Let us support those businesses which have long served the neighborhood so well.

THE 15-YEAR CONSTRUCTION PERIOD WOULD JEOPARDIZE LAUREL VILLAGE

The prolonged construction time would jeopardize the survival of Laurel Village and its cherished independent quality groceries of Cal-Mart and Bryan's. The traffic in the neighborhood would be impacted for such a long time and that is unfair to the local residents and present active local community.

And of course, I do not want any non residential activities at this site.

In addition, the developer should be able to build in 7 years and not drag the project out for 15 years and make the project phasing definite and ensure that senior affordable housing is constructed by the developer per the phasing schedule.

Barbara Cohrssen 2970 Pine Street

Major, Erica (BOS)

From:

Kathy Devincenzi < krdevincenzi@gmail.com>

Sent:

Wednesday, October 16, 2019 3:04 PM

To:

Major, Erica (BOS); BOS Legislation, (BOS)

Cc:

Richard Frisbie

Subject:

October 21, 2019 BOS Land Use and Transportation Committee

Attachments:

20191016173115.pdf; 20191016173233.pdf

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

San Francisco Board of Supervisors Land Use and Transportation Committee c/o Erica Major, Clerk City and County of San Francisco City Hall, Room 244 San Francisco, CA 94102

Re: 3333 California Street, San Francisco, CA

File No. 190844 - Proposed Special Use District

Hearing Date: October 21, 2019

Record Number: 2015-014028CUA/PCA/MAP/DUA

Please see letter and Exhibits A-E attached. I will deliver 3 paper copies to you before close of business today.

Laurel Heights Improvement Association of SF, Inc.

By: Kathryn Devincenzi, President

415-221-4700



Laurel Heights Improvement Association of San Francisco. Inc.

BY HAND and E-MAIL

October 16, 2019

San Francisco Board of Supervisors Land Use and Transportation Committee c/o Erica Major, Clerk City and County of San Francisco City Hall, Room 244 San Francisco, CA 94102

Re: 3333 California Street, San Francisco, CA

File No. 190844 - Proposed Special Use District

Hearing Date: October 21, 2019

Record Number: 2015-014028CUA/PCA/MAP/DUA

Dear Chair Peskin, Vice Chair Safai and Member Haney:

- 1. The Committee Should Recommend that the Proposed Special Use District Be Modified Because the Public Necessity, Convenience and General Welfare Do Not Require the Extinguishment of Legislated Set Back Lines and Planning Commission Resolution 4109 Restrictions on Types of Commercial Use.
 - A. The Committee Should Recommend Against Extinguishment of the Legislated Set Back Lines Set Forth in Planning Code Resolution 4109 and Recorded in Stipulations as to Character of Improvements.

The proposed Special Use District (SUD) would break the deal forged between the City and the community in Resolution 4109 which led to the development of a historically significant resource. The landscaping and building comprise an integrated resource in which the window-walled modern building was designed to create a seamless connection between the indoor and outdoor spaces. (See Ex. A, confirmation of listing on California Register and excerpts from approved nomination for listing.) The acclaimed landscape architects of Eckbo, Royston & Williams designed the site to have over 100 trees and green landscaped areas surrounding the main building, which have been used by the public for recreational purposes since the resource was constructed.

The public necessity and welfare do not require locating new buildings on the green landscaped areas that have been used by the public for recreational purposes, in part because

San Francisco Board of Supervisors Land Use and Transportation Committee October 16, 2019 Page 2

there are large areas of parking lots along California Street where substantial new construction can be located and which are proposed for increased height limits, and the main building can be converted to residential use. (Ex. B hereto and Ex. F to Laurel Heights Improvement Association (LHIA)'s August 28, 2019 submission to Planning Commission, August 20, 2019 TreanorHL Preservation Alternative Feasibility Evaluations.)

Similarly, design changes to the developer's site plan can achieve 744 residential units including 185 units of senior affordable housing. The Community Preservation Lookalike Variant (744 units) would build new buildings along California Street and set back the developer's proposed Euclid building approximately 30 feet to avoid the green space and remove 2 Laurel duplexes from the top of the hill in the developer's site plan. (Ex. C hereto, Community Preservation Lookalike Variant) This 744-unit variant would preserve the Eckbo Terrace and avoid new construction on the historically significant green spaces along Laurel Street, Euclid and Presidio Avenues and add a one-story set back addition to the main building with a portal through the building instead of a cut all the way through it; it would have approximately 20,000 gross square feet more of residential use than the developer's July 3, 2019 proposed 744-unit Variant Project, and involve much less excavation. (Ex. C hereto, Community Preservation Lookalike Variant; Ex. E to October 7, 2019 LHIA appeal of certification of FEIR, and Ex. A to LHIA's August 28, 2019 submittal to Planning Commission.)

Since it is feasible to design the project to retain the green landscaped areas surrounding the main building which the public have used for recreational uses, the public necessity does not require extinguishment of the legislated 100-foot set backs along Laurel Street and Euclid Avenue, and the Committee should recommend that these aspects of Resolution 4109, which were recorded as Stipulations as to Character of Improvements, should remain in effect and be incorporated into any Special Use District.

B. The Committee Should Recommend Against Extinguishment of the Use Restrictions Set Forth in Planning Code Resolution 4109.

The public necessity and convenience do not require extinguishing the use restrictions set forth in Resolution 4109 which currently prohibits retail uses to be conducted on the site, because there is an existing 1,183 asf café on the property and a wealth of retail uses adjacent to the site. Resolution 4109 limits commercial uses on the site to office, professional and institutional uses. Those aspects of Resolution 4109 should be retained.

The project site is directly adjacent to Laurel Village shopping center and near Sacramento Street shops, Trader Joe's, Target, and Geary Street and Presidio Avenue retail stores, so retail is not needed on the project site. The retail sector is in decline and competition from project retail uses could adversely impact the viability of existing retail uses in the adjacent

San Francisco Board of Supervisors Land Use and Transportation Committee October 16, 2019 Page 3

Laurel Village. A Laurel Village merchant told me that after Target moved into the nearby City Center, business at Laurel Village declined. Also, recently there have been approximately four vacancies within a short period of time in Laurel Village, which is an unprecented situation. Owners of Bryan's and Cal-Mart have stated that the surrounding neighborhoods are now well served by a diversity of retail businesses in Laurel Village, Sacramento Street, Presidio Avenue, Trader Joe's, and Target at an expanding City Center. (Ex. D hereto and Ex. B to October 7, 2017 LHIA appeal of conditional use authorization)

Also, under Planning Code section 304, a Planned Unit Development may include commercial uses only to the extent that such uses are necessary to serve residents of the immediate vicinity. Although the project was approved as a Planned Unit Development, the Special Use District incorporates NC-S controls, which "are intended to serve as small shopping centers or supermarket sites which provide retail goods and services for primarily car-oriented shoppers" under Planning Code section 713. Thus, the type of NC controls used in the SUD are not intended to serve residents of the immediate vicinity.

Retail uses are also not necessary or desirable because the number of project retail parking spaces has been reduced from 188 spaces to 74 spaces. (Ex. A to October 7, 2017 LHIA appeal of conditional use authorization, Responses to Comments on Draft EIR 2.33, excerpt) The reduction in retail parking spaces is not necessary or desirable for the Laurel Village merchants and community because the reduction will likely cause project retail customers to park in the adjacent Laurel Village parking lot, which is an above-ground lot. Also, Laurel Village does not charge for parking in its lot, whereas the project would charge for retail parking.

This reduction in retail parking was disclosed late in the proceeding. The Project's July 3, 2019 plan sheet VAR.01b states that the proposed project variant would have 74 retail parking spaces, 29 childcare parking spaces, 744 residential parking spaces, no office parking spaces, and no commercial parking spaces, for a total of 857 parking spaces. (Ex. C to LHIA October 7, 2019 appeal of conditional use authorization, July 3, 2019 plan sheet VAR.01b) The Draft EIR stated that the proposed 744-unit Project Variant would provide 188 retail parking spaces, 744 residential parking spaces and 29 "Other Non-residential (Daycare)" parking spaces, for a total of 961 parking spaces. DEIR4.C.77.

The volume of traffic from the retail uses at the Project would also be undesirable. The Draft EIR projected that the project retail uses would cause 8,153 daily auto trips. Ex. M to October 7, 2019 LHIA appeal of conditional use authorization, DEIR Traffic Appendix Chart. Even though the retail uses were reduced in the Special Use District from 54,117 square feet to 34,496 square feet, the proportionally reduced retail traffic would still be substantial at 5,196 auto trips per day from retail uses. (Ex. C to LHIA October 7, 2019 appeal of conditional use authorization, 8-17-2017 Plan sheet G3.02a and 8-30-2019 plan sheet)

San Francisco Board of Supervisors Land Use and Transportation Committee October 16, 2019 Page 4

For these reasons, the Committee should recommend against changing the use restrictions of Planning Commission Resolution 4109 to allow any kind of retail uses on the property.

2. In the Alternative, the Committee Should Recommend that the Proposed Special Use District Be Modified to Incorporate NC-1 Controls Rather than the More Intensive NC-S Controls.

NC-1 District controls are prescribed for retail uses authorized in Residential districts in Planned Unit Developments under Planning Code section 304:

In R Districts, include Commercial Uses only to the extent that such uses are necessary to serve residents of the immediate vicinity, **subject to the limitations for NC-1 Districts under this Code**. (Ex. D to LHIA October 7, 2019 appeal of conditional use authorization, excerpts Planning Code section 304, emphasis added)

NC-1 Districts "are intended to serve as local neighborhood shopping districts" under Planning Code section 710 and permit operations from 6 a.m. to 11 p.m, with conditional use authorization for operations from 11 p.m. to 2 a.m. (Ex. E to LHIA October 7, 2019 appeal of conditional use authorization, excerpts Planning Code section 710)

NC-S Districts are more intensive and "are intended to serve as small shopping centers or supermarket sites which provide retail goods and services for primarily car-oriented shoppers under Planning Code section 713. (Ex. F to LHIA October 7, 2019 appeal of conditional use authorization, excerpts Planning Code section 713) NC-S controls are intended to serve "the immediate and nearby neighborhoods" but Planned Unit development authorizations are allowed "only to the extent that such uses are necessary to serve residents of the immediate vicinity." Planning Code section 304.

Also, NC-S districts permit operations from 6 a.m. to 2 a.m., with conditional use authorization for 24-hour operations. (Ex. F to LHIA's October 7, 2019 appeal of conditional use authorization) These controls are not desirable for the area, which is predominantly residential.

NC-1 controls would be consistent with the SUD's description of "34,396 square feet of neighborhood-serving retail."

Thus, in the alternative, the Committee should recommend that the NC-S controls be changed to "NC-1 controls."

3. Alternatively, the Committee Should Recommend Limiting Permitted Hours of Operation to 6 a.m. to 11 pm.

The Committee should recommend that the permitted hours of operation for non-residential uses in the Special Use District be changed to 6 a.m. to 11 p.m., as allowed for NC-1 Districts authorized for a Planned Unit Development (with conditional use authorization from 11 p.m. to 2 a.m.), rather than 6 a.m. to 2 a.m., which would be allowed in an NC-S District, with conditional use authorization for 24-hour operations.

4. Alternatively, the Committee Should Recommend Elimination of Flexible Retail and Social Service and Philanthropic Facilities from the Special Use District Because They Were Not Disclosed in the EIR and Are Not Required for the Public Necessity.

The EIR did not disclose potential Flexible Retail, Social Service or Philanthropic Facility use, and such uses are not permitted in an NC-S District. (Planning Code section 713) It is not necessary or desirable to add such uses to the Special Use District, as the project would not provide parking for office uses, which Social Service or Philanthropic Facility uses are classified as under Transportation Demand Management Program. (Ex. G to LHIA October 7, 2019 appeal of conditional use authorization, TDM excerpts.) The EIR disclosed only general retail uses, full-service restaurant uses and composite restaurant uses.

Flexible retail uses are not desirable in the area because they would not require neighborhood notification for multiple uses in the same space (with 2 uses required and up to 5 permitted) unless the underlying zoning classification required notice. (Board of Supervisors File 180806)

Alternatively, the Committee should recommend elimination of Flexible Retail Uses and Social Service and Philanthropic Facilities from the proposed Special Use District.

5. The Committee Should Recommend that the SUD Be Modified to Require Public Notification and Allow Requests for Discretionary Review for Major Modifications to the Project.

Planning Commission Resolution No. 20514 states at page 2 that the proposed SUD "specifies director determination and discretionary review controls." Subdivision (d)(7) of the proposed SUD states that:

(7) Discretionary Review. No requests for discretionary review shall be accepted or heard for projects within the SUD.

This provision is unreasonable as to a major change in the plan and would deprive residents of due process rights available to residents of other areas faced with requests for major changes in a project. The Committee should recommend that the SUD be modified to specify the Planning Code section 311 notice, or its equivalent, be provided with respect to all requests for a major change of the site plan, as recommended by the Planning Commission on September 5, 2019, and that requests for discretionary review shall be accepted and heard for any such material changes.

6. Alternatively, to Conform With the Historical Resource Design Guidelines, the Committee Should Recommend That the SUD Be Modified to Limit the Proposed Rooftop Addition to the Main Building to One Story Rather than Two to Three Stories and to Limit the Height Limit Increase for the Main Building to 10 Feet Over Its Existing Height.

The historically significant site is listed on the California Register of Historical Places. (Ex. A) The Secretary of the Interior's Standards for Treatment of Historic Properties (Secretary's Standards) are the standards used by CEQA to mitigate impacts upon historic resources to below a level of significance. 14 Cal.Code Regs. Section 15126.4(b)(1) and (2). (Ex. H to LHIA's October 7, 2019 appeal as to adequacy of EIR, excerpts, Secretary's Standards) The Secretary's Standards recommend "Limiting a rooftop addition to one story in height to minimize its visibility and its impact on the historic character of the building." (Ex. E hereto and Ex. H to LHIA's October 7, 2019 appeal as to adequacy of EIR, excerpts, Secretary's Standards)

Thus, instead of a two-story and a three-story addition to a divided main building which would result in heights of 80 or 90 feet, respectively (DEIR 2.7), the Committee should modify the proposed project to utilize a one-story addition to an undivided main building with heights of no more than 10 feet above the existing roof of the main building. The Commission's attempt to characterize increased heights of 20 to 30 feet as a "minor deviation from the provisions for measurement of height" is absurd. This Committee should recommend that the Board overturn that finding in LHIA's appeal of the conditional use authorization. (Motion No. 20516, p. 21.)

7. Alternatively, the Committee Should Recommend that the Project Description Be Modified to Remove New Construction From the Green Spaces at the Top of Laurel Street and along Euclid Avenue.

The Proposed Special Use District states that the open space plan depicted in subsection (c)(2) of the SUD generally sets forth the approximate location and size of the proposed privately owned, publicly accessible open space to be developed in accordance with the Development Agreement for the project. (See SUD p. 4) In this depiction, approximately 30 feet of the southerly row of the Euclid Building and the two Laurel duplexes at the top of the hill,

would be constructed on the green space along Euclid and Laurel streets that is currently open space used by the public for recreational purposes. (7-3-2019 plan sheets G1.04, G1.05, L0.01, A8.02) The Committee should recommend that the SUD and project be modified to set the Euclid Building back approximately 30 feet from its proposed location to avoid impairment to the Euclid green space and remove 2 Laurel Duplexes from the top of the green at Laurel Street to preserve the natural green space in those areas. (Ex. I to LHIA October 7, 2019 appeal of conditional use authorization, rendering showing areas to be left open).

8. Alternatively, the Committee Should Recommend a Portal Cut Through the First Two Floors of the Main Building With a Light Well on Top, Rather than an Approximate 40-Foot Cut Through the Top of the Main Building.

The Special Use District states that the SUD will replace a large-scale office building with "a series of smaller buildings" and its site plan shows a publicly accessibly pathway cut through the main building. SUD p. 3-4. The Project proposes to significantly impair the historic main building by cutting a 40-foot pathway through it that would divide the building into two pieces. The EIR admits that the Project would cause a substantial adverse change in the significance of a historic resource. DEIR 4.B.41. One of the character-defining features of the main building is its horizontality. (Ex. D to October 7, 2019 LHIA appeal of certification of Final EIR.) As stated above, adding a set-back, one story addition would conform with the Secretary's Standards for treatment of historic properties.

As explained in LHIA's appeal of certification of the Final EIR, the Planning Department only requested a north/south portal and did not request a cut all the way through the main building. Changing the 40-foot cut to a portal would also reduce construction time and cost.

A 40-foot cut all the way through the main building is not required for the public convenience.

9. The Committee Should Recommend Against the Height Limit Increases For the Main Building Set Forth in the SUD Because Under No Circumstances May a Planned Unit Development Be Excepted From a Height Limit, and the Proposed Height Limit Increases for the Main Building Are Not Required for the Public Necessity.

The Planned Unit Development criteria of Planning Code section 304(d)(6) state that the proposed development "shall":

(6) Under no circumstances be excepted from any height limit established by Article 2.5 of this Code, unless such exception is explicitly authorized by the terms of this Code.

The Special Use Districts would allow heights or 92 feet, 80 feet, 67 feet and 45 feet, which are greater than the 40-foot height limit now applicable to the site. (Ex. J to LHIA's October 7, 2019 appeal of conditional use authorization, proposed height map) The Committee should recommend against the SUD's proposed increases in height limits because increased heights are not consistent with the criteria for authorization of a Planned Unit Development.

Increased heights on the main building are also not necessary or desirable because adding two additional stories to the top of a divided main building would impair the characteristic horizontality of the historic resource.

10. The Committee Should Recommend Against the Proposed Open Space Plan in the SUD Because the Shaded Open Spaces are Not Required for the Public Necessity.

The Board should also recommend against the open space plan in the SUD because significant portions of open space in the project would be shaded most of the time and are not desirable. The Initial Study admits that "the network of proposed new common open spaces, walkways, and plazas within the project site" "would be shaded mostly by proposed new buildings for much of the day and year." Initial Study p. 161; Ex. K to LHIA's appeal of conditional use authorization, open space plan and excerpts of project shadow study).

Further, the project would not provide open space usable by the occupants and, where appropriate, by the general public, at least equal to the open spaces required by this Code, as required for a planned unit development by Planning Code section 304(d)(3). Significant portions of the open spaces proposed by the Project would be shaded most of the day.

11. The Committee Should Recommend Against the Site Plan Set Forth in the SUD Because it Would Significantly Alter the Existing Topography of Laurel Hill, Contrary to the Residential Design Guidelines.

The Residential Design Guidelines apply to the site because the site is zoned RM-1. The project is not required for the public necessity because it conflicts with the Residential Design Guideline that "New buildings and additions to existing buildings cannot disregard or significantly alter the existing topography of the site. The surrounding context guides the manner in which new structures fit into the streetscape, particularly along slopes and hills. This can be achieved by designing the building so it follows the topography in a manner similar to surrounding buildings." (Residential Design Guidelines, p. 11) These guidelines must be followed in Residential Districts. Planning Code section 311.

The project would excavate substantial portions of Laurel Hill, in violation of this

Guideline. (Ex. L to LHIA's October 7, 2019 appeal of conditional use authorization, plan sheet G2.08) Such excavation would also increase the time spent in construction/excavation activities. Thus, site plan contained in page 4 of the SUD is not required by the public necessity or convenience.

12. If the Board Overturns the Planning Commission's Certification of the Final EIR, the Board May Not Approve the SUD and Must Also Overturn the Approval of the Conditional Use/PUD Authorization by the Planning Commission.

For the reasons stated in LHIA's October 7, 2019 appeal of the Planning Commission's certification of the Final EIR for 3333 California Street, the Final EIR is inadequate, and if overturned by the Board of Supervisors, the Board may not approve the proposed SUD and must grant LHIA's appeal of the approval of the conditional use/planned unit development authorization. The Final EIR is the CEQA document upon which the approval of the SUD and conditional use/PUD would be based, and if the Final EIR is overturned, the approval of the conditional use/PUD must necessarily also be overturned and the proposed SUD cannot be approved. The Final EIR identified significant adverse impacts which the Project would have, so CEQA review must have been completed in a lawful manner before the conditional use/PUD authorizations can be valid and the proposed SUD could be lawfully approved.

The Preliminary Project Assessment explains that only the Board of Supervisors can change the height limits requested by the Project or change the Planning Commission Resolution 4109 that prohibits development of the parcel in the manner proposed by the Project. (Ex. M to June 8, 2018 Comments of Devincenzi on 3333 California Street Initial Study, PPA excerpts) Therefore, zoning changes are required to be approved by the Board of Supervisors for the project to proceed.

Planning Commission Resolution No. 20514 adopted on September 5, 2019 states at page 1 that a proposed Ordinance introduced on July 30 and amended on September 3, 2019 "would enable the Project" and at page 10 that "the Commission recommends approval of the proposed Ordinance" with certain modifications. Thus, the Planning Commission did not approve the rezoning needed for the project to be approved, and the proposed SUD would be needed to enable the project to be approved.

Conclusion

For the reasons stated herein, the Committee should recommend against the Planning Code amendments set forth in the proposed Special Use District, including without limitation the proposed changes to the height limit map for the main building, extinguishment of the legislated

setbacks and use restrictions of Resolution 4109, site plan set forth in the proposed SUD and any other Planning Code amendments recommended by the Commission. The public necessity, convenience and general welfare do not require the proposed SUD because the project was not designed in accordance with the Secretary's Standards, which would serve as feasible mitigation for the project's impacts on the historic resource, and alternatives are feasible that would reduce or avoid the project's impacts on the historic resource. However, the Planning Commission erroneously rejected such alternatives, as more fully discussed in LHIA's appeal as to certification of the Final EIR.

Further, the project would not provide open space usable by the occupants and, where appropriate, by the general public, at least equal to the open spaces required by this Code, as required for a planned unit development by Planning Code section 304(d)(3). Significant portions of the open spaces proposed by the Project would be shaded most of the day.

The proposed project would also be inconsistent with provisions of the Urban Design Element and Housing Element of the General Plan because the bulk of the buildings does not relate to the prevailing scale of development and would have an overwhelming or dominating appearance, and the height of buildings does not relate to important attributes of the city patterns and the height and character of existing development. Urban Design Element Policies 3.5 and 3.6. Policy 3.6 explains that it was intended to avoid disruption to the city's character from buildings that reach extreme bulk, by exceeding the prevailing height and prevailing horizontal dimensions of existing buildings in the area which "can overwhelm other buildings."

Respectfully submitted,

Laurel Heights Improvement Association of SF, Inc.

By: Kathryn Devincenzi, President

Kathum Devencenzi

Attachments: A through E

3333 California Street, San Francisco, CA File No. 190844 - Proposed Special Use District

Hearing Date: October 21, 2019

Record Number: 2015-014028CUA/PCA/MAP/DUA

EXHIBITS A-E

OFFICE OF HISTORIC PRESERVATION DEPARTMENT OF PARKS AND RECREATION

P.O. BOX 942896 SACRAMENTO, CA 94296-0001 (916) 445-7000 Fax: (916) 445-7053 calshpo@parks.ca.gov



August 31, 2018

John Rothman, President Kathryn Devincenzi, Vice President Laurel Heights Improvement Association of San Francisco 22 Iris Avenue San Francisco, California 94118

RE: Fireman's Fund Insurance Company, Determination of Eligibility National Register of Historic Places

Dear Mr. Rothman and Ms. Devincenzi:

I am writing to inform you that on August 29, 2018, Fireman's Fund Insurance Company was determined eligible for the National Register of Historic Places (National Register). As a result of being determined eligible for the National Register, this property has been listed in the California Register of Historical Resources, pursuant to Section 4851(a)(2) of the California Code of Regulations.

There are no restrictions placed upon a private property owner with regard to normal use, maintenance, or sale of a property determined eligible for the National Register. However, a project that may cause substantial adverse changes in the significance of a registered property may require compliance with local ordinances or the California Environmental Quality Act. In addition, registered properties damaged due to a natural disaster may be subject to the provisions of Section 5028 of the Public Resources Code regarding demolition or significant alterations, if imminent threat to life safety does not exist.

If you have any questions or require further information, please contact Jay Correia of the Registration Unit at (916) 445-7008.

Sincerely,

Julianne Polanco

State Historic Preservation Officer

Enclosure

Fireman's Fund Insurance Company Name of Property

San Francisco, CA County and State

located in the center of the property. There is also a much smaller, one-story Service Building in the northwest corner of the property. The two buildings were designed to complement each other in character and materials. The Office Building is a glass walled structure with an open character. The Service Building is a brick building with a closed character. The Office Building is an International Style structure which despite its size is built into its sloping hillside site in such a way as to minimize its presence. Its four wings, each built for different functions, range from three floors to seven floors. It is characterized by its horizontality, its bands of windows separated by the thin edges of projecting concrete floors, and brick trim. The wings of the building frame outdoor spaces whose landscape design connects the outdoors with the indoors both functionally and conceptually. The landscape design includes outdoor spaces for use by employees, parking lots, circulation paths, and vegetation. The principal outdoor spaces are the Entrance Court, the Terrace, and small areas around the Auditorium.

Narrative Description

Section 7 - Table of Contents

SETTING	
BUILDINGS Office Building Plan Structure, Materials, and Mechanical Systems Architecture Service Building	9
LANDSCAPE Landscape Features Associated with the Mid-1950s Design Brick Wall Parking Lots and Internal Circulation Topography in Relationship to the Spatial Organization and Function of the Site Major Vegetation Features Entrance Court Terrace Landscape Features Associated with the Mid-1960s Design	11 12 12 12
NTEGRITY Buildings Landscape Combined Buildings and Landscape	14

United States Department of the Interior
National Park Service / National Register of Historic Places Registration Form
NPS Form 10-900
OMB No. 1024 0018

Fireman's Fund Insurance Company
Name of Property

San Francisco, CA County and State

The Service Building is a steel frame and reinforced concrete structure enclosed in brick. Its openings are limited to glass and aluminum doors, a few window openings, and ventilating louvers in the boiler room.

LANDSCAPE

Landscape Features Associated with the Mid-1950s Design

The landscape was an integral part of the original design for the new corporate headquarters commissioned by Fireman's Fund in the mid-1950s. The San Francisco-based firm of Eckbo, Royston, and Williams (ERW) was the landscape architect for the original landscape design, completed in 1957, and its successor firm Eckbo, Dean, Austin, and Williams (EDAW) designed the landscape associated with the mid-1960s additions. The landscape setting around the modernist Office Building integrates functional needs (such as parking lots and internal circulation) with large areas of lawns and structured outdoor spaces (the Terrace, Entrance Court, and the Auditorium's outdoor spaces). The landscape is designed to promote the integration between architecture and landscape and uses forms and materials that are characteristic of modernist designs from the mid-twentieth century. (See Map 2 and Map 3)

Brick Wall

A brick wall, which takes different forms, provides a continuous and unifying element around the edges of the site. It exists as a retaining wall along the perimeter of the property's northeast, north, and west sides. Three gated entrances—one for the employees on California Street and the service and executive/visitor entrances on Laurel Street—are integrated into these sections of the wall. Each of these three entrances has a separate vehicular and pedestrian opening framed by brick pillars and secured by a double-leaf, metal rail gate when the property is closed. On the south side of the Executive/Visitor Gate, the perimeter wall is transformed into low retaining walls that define a series of planting beds along the west end and south side of the Executive Wing. The wall continues along the outer edge of the Terrace garden, along the bank that parallels Masonic Avenue, and then reconnects to the southeast corner of the Office Wing (east). Here rectangular brick planting beds have been incorporated into the wall, creating a zig-zag alignment similar to that found in other locations (i.e., on the bank along Laurel Street in the vicinity of the Entrance Court, on the southwest side of the Terrace, and in the bench wall that frames the eastern side of the Terrace).

Parking Lots and Internal Circulation

Two parking lots occupy the land in front (north) of the Office Building. The East Parking Lot and the West Parking Lot sit on either side of the entry drive, which aligns with the Employee Gate and an employee entrance (E2) into the Office Building

United States Department of the Interior
National Park Service / National Register of Historic Places Registration Form
NPS Form 10-900
OMB No. 1024,0018

Fireman's Fund Insurance Company Name of Property San Francisco, CA
County and State

Executive/Visitor Entrance and was one of the two structured outdoor spaces in ERW's mid-1950s design. A narrow, rectangular planting bed (10° x 55°) at the center of the asphalt paving creates a U-shaped drive, which connects to the Executive/Visitor Gate on Laurel Street. Sidewalks (exposed aggregate concrete) and narrow planting beds (with Japanese maple trees, azaleas, rhododendron, New Zealand flax, and decorative rocks) line the sides of the Entrance Court's parking lot.

Terrace

In ERW's mid-1950s design, the principal structured outdoor space was the Terrace, which was intended as a place for employees to sit outside during lunch and at breaks. The Terrace is framed by the south side of the Office Wing and the east side of the Cafeteria Wing, where it is protected from the prevailing west wind and provides views to the east and south of San Francisco. This garden area has two levels. The lower level contains a biomorphic-shaped lawn and a paved patio, which wraps around the lawn's north and east sides. Steps along the east side of the upper-level terrace connect down to the lower level of the garden. Both the terrace and patio are paved with exposed aggregate concrete which is divided into rectangular panels by inlaid rows of red brick aligned with the window frames of the building. A brick retaining wall runs along the east and north sides of the lower-level patio. A raised planting bed, to the east of this wall, provides a visual boundary along the Terrace garden's east side. Three raised, circular beds (one on the upper-level terrace, one at the western edge of the lawn, and one at the north end of the lawn) each contain a tree; the sides of these circular beds are constructed of modular sections of pre-cast concrete. (See Map 3)

The plan for the Terrace provides a classic modernist composition. The biomorphic-shaped lawn contrasts with the rectilinear pattern of the pavement and the geometric form of the three, three circular tree beds, the zig-zag alignment of the wall along its eastern edge, and the curved arch of hedge in the raised planting bed along its eastern edge. The triangular relationship between the three circular tree beds adds yet another level to the geometry of the composition.

Benches, which appear to have been custom-built for the mid-1950s design, are attached to the interior face of the wall along the Terrace's east side. The wooden boards for the seat and back are attached by metal bolts to a metal frame, which is attached to the wall; both the wood and metal are painted black. Benches of a similar design (three wood boards mounted on a bent metal frame) are mounted onto the patio at various places along its inner edge.

Landscape Features Associated with the Mid-1960s Design

EDAW, the successor firm to the ERW partnership which was dissolved in 1958, prepared the landscape design that accompanied the mid-1960s additions to the Office Building. Just as the mid-1960s architectural additions were intended to be compatible with the original Office

Fireman's Fund Insurance Company Name of Property

San Francisco, CA County and State

for sidewalks, the exposed aggregate concrete divided into panels by rows of brick in the pavement at the Terrace and in the Auditorium's west-side sitting area, the metal for the entrance gates; the custom-designed wood benches found in the Terrace and at the Entrance Court's outdoor sitting area; and the circular tree beds constructed of modular sections of concrete found in the Terrace the Auditorium's west-side sitting area.

Combined Buildings and Landscape

Together the buildings and landscape of the Fireman's Fund Home Office constitute a single resource that possesses integrity as measured by the seven aspects of integrity, as follows:

- 1) Location: The property is in its original location. It has not been moved.
- 2) Design: The property retains the essential elements of its design and the relationship between the parts of the design. Alterations to the design since the period of significance are relatively minor. It retains integrity of design.
- 3) Setting: The setting of the property is the same in all major respects as at the time it was first built. It retains integrity of setting.
- 4) Materials: The materials used in the buildings and landscape during the period of significance are all present. The property retains integrity of materials.
- 5) Workmanship: Evidence of workmanship, both from craftsmanship (brick and landscape features) and industrial processes (glass manufacture, concrete finishing, extrusion of aluminum) are all present. The property retains integrity of workmanship.
- 6) Feeling: Because the property as a whole its buildings and landscape are little altered and have been well-maintained, it retains integrity of feeling from the period of significance.
- 7) Association: Apart from the lettering on the outside wall near two entrance gates with the name of the current owner and occupant of the property, the property is almost indistinguishable from the time of its ownership by Fireman's Fund Insurance Company. Thus it retains integrity of association.

CHARACTER DEFINING FEATURES

Office Building

Plan of the building with wings open along the sides to the immediate landscape and to views of the distant city.

Horizontality of massing

Horizontal lines of projecting edges of concrete floors

United States Department of the Interior
National Park Service / National Register of Historic Places Registration Form
NPS Form 10-900

OMB No. 1024-0018

Fireman's Fund Insurance Company
Name of Property

San Francisco, CA County and State

Horizontal bands of nearly identical window units

Uninterrupted glass walls

Window units of aluminum and glass

Circular garage ramps

Exposed concrete piers over the Garage

Wrought iron deck railings that match gates in the landscape

Brick accents and trim

Service Building

Massing of rectangular volumes

Brick walls with a minimum of openings

Landscape

Terrace, as the "centerpiece" of the landscape, designed to integrate the architecture of the building with the site and with the broader setting (through views of San Francisco); key character-defining features include its biomorphic-shaped lawn surrounded by a paved terrace and patio (paved with exposed aggregate concrete divided into panels by rows of brick); brick retaining wall and large planting bed around the east and north sides of the paved patio, custom-designed wood benches, and three circular tree beds constructed of modular sections of concrete.

Entrance Court, providing a connection between the Executive/Visitors Gate on Laurel Street and an entrance to the building on the west side of the Cafeteria Wing; key character-defining features include a central paved parking lot surrounded on its north, east, and west sides by narrow planting beds; exposed aggregate sidewalks along the north, east, and west sides of the parking lot; and a low free-standing brick wall along its north side.

Two outdoor sitting areas—one on the east side of the Auditorium and one on its west side—that connect to entrances into the Auditorium; key character-defining features for the area on the west side of the Auditorium include the pavement (exposed aggregate divided into panels by rows of bricks), circular tree bed constructed of modular sections of concrete; and metal benches; key character-defining features for the area on the east side of the Auditorium include the pavement (concrete divided into panels by wood inserted into expansion joints).

Fireman's Fund Insurance Company Name of Property San Francisco, CA . County and State

opportunities to adapt the modernist vocabulary for gardens to the new parks, educational and commercial campuses, and civic spaces being developed in the post war economic boom. This expansion in the profession of landscape architecture was led by a new generation of landscape architects, which included at its forefront Garrett Eckbo, Robert Royston, and Ed Williams—the three partners in the firm responsible for the landscape design of the Fireman's Fund site.

Landscape of the Corporate Headquarters

A new type of cultural landscape, created by a synthesis of modernist buildings and landscape design, developed during the post-World War II era as corporate headquarters moved out of the central city. Louise A. Mozingo, professor of landscape architecture at the University of California, Berkeley and the author of several articles and a book on this development, has noted that corporations moved out of the urban core for a number of reasons. First and foremost, the larger sites available in the suburbs allowed corporations to construct new buildings that fit their current management structure and operational needs. "Efficient office organization now required flexible, expandable offices with movable partitions rather than fixed walls. The dense, constricted downtown became untenable." 102

By the early 1950s, insurance companies had spearheaded this exodus from the central business district to the peripheral residential areas of the city or to suburban sites. An article in Business Week in 1951, quoted by Mozingo in her article "The Corporate Estate in the USA, 1954-1964," noted that there were not enough downtown spaces "in the right places" to meet companies' needs for expansion. The management of these insurance companies believed that it was hard to "hire first class personnel" to work in downtowns that were viewed as undesirable environments ("Management thinks workers will be happier looking at trees instead of grimy buildings and listening to birds instead of honking taxis." 103) The integration of the architecture and landscape typically featured a low-rise, centrally-sited, modernist building(s), an entry drive and large parking lots which were a reflection of the domination of the automobile as the preferred means of transportation for employees and visitors, and an enveloping landscape setting or "green surround" which was often designed to resemble an idealized suburban space. 104 The buildings and parking lots occupied only a fraction of a site's acreage and the landscaped lawns and outdoor spaces contributed to the "seamlessness between the interior and exterior space, which was a common goal of the modernist architectural aesthetic," 105 Mozingo noted that corporations "considered the designed landscape essential to the functioning of their management

¹⁰² Mozingo, Campus, Estate, and Park, 258

¹⁰³ Mozingo, The Corporate Estate, 28

¹⁰d Ibid , 34.

¹⁰⁵ Ibid., 44.

Fireman's Fund Insurance Company Name of Property

San Francisco, ĆA County and State

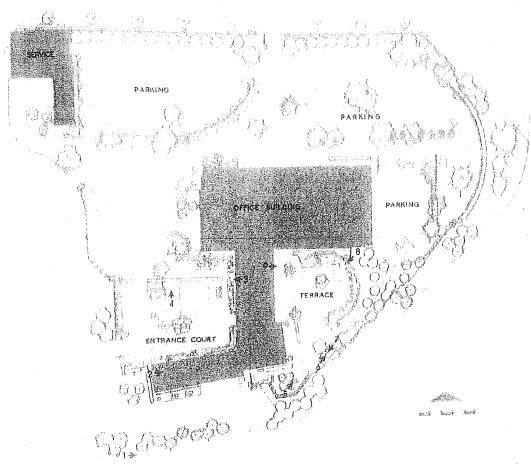


Figure 2. Site Plan showing features ca. 1957–1963. Source: Garrett Eckbo, *Urban Landscape Design*, 1964

TREANORHL

August 20, 2019

3333 California Street San Francisco, California

Preservation Alternative - Feasibility Evaluations

The Laurel Heights Improvement Association asked TreanorHL to assist in further developing their Preservation Alternative and Community Variant for 3333 California Street in San Francisco. Additionally, the organization wished us to verify that the Preservation Alternative and Community Variant are feasible by confirming the possible number of units per building and the approximate size of the various units.

EXISTING PLAN REVIEW

- 1. TreanorHL reviewed the existing building drawings on file for 3333 California Street at the Records Department of the San Francisco Building Department.
 - The review of the plans indicated the light courts in the Preservation Alternative and Community Variant should be relocated to facilitate the retention of the existing stairwells and elevator banks.

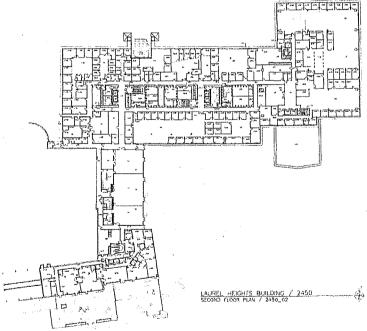


Figure 1. The red dashed boxes identify proposed location of light courts in the Preservation Alternative and Community Variant.

- Reviewing the existing drawings confirmed that the structural columns are fairly regular throughout the main building and wing. Adapting the spaces for residential use can easily be done without impacting the existing column grid.
- The existing column grid in the main part of the building has a 30-foot spacing. The proposed project calls for creating a 40-foot passthrough all the way up the existing building in the north south direction. This proposed 40-foot wide passthrough in the existing building would be expensive as it does not align with the existing grid. Maintaining the 30-foot grid in the proposed passthrough would require less structural modification to the existing building.
- The building was likely designed to accommodate the current structure, not additional stories. So, increasing the height of the building by adding additional floors will require significant effort to upgrade the existing structure.¹
- 2. The Preservation Alternative and Community Variant retain the southern wing of the existing structure. The existing wing has a more irregular structural column grid than the main part of the building. However, adapting the wing space for residential use will not be any more challenging than in any other part of the structure.
 - Exiting was not reviewed, but if additional exiting is needed there are ample opportunities for an additional stair in the wing.
 - Accessibility would be provided, as in the rest of the building, by means of elevators and other features that meet the California Accessibility code.
 - If water damage is present in the wing it can be remediated and corrected.

FEASIBILITY EVALUATIONS

- 1. The attached analysis shows that the Preservation Alternative scheme and the Community Variant are feasible in terms of providing equivalent residential units to that of the proposed project. To do this, TreanorHL compared the gross square footage with a reasonable net square footage for the proposed building type, and then calculated how many units of various sizes (studio, one and two bedrooms, etc.) could reasonably fit into the net square footage.
 - The California Street buildings (both front and back) were calculated using the high end and low end of the efficiency factor for residential construction. This did not change the number of units per building, but it did affect the size of the units within the structures.
 - Both the Preservation Alternative scheme and the Community Variant provide units that are comparable in size and type to those identified in the proposed project.

¹ Merrill, Fred H. "Fireman's Fund Insurance Company - 3333 California Street." Received by Mr. D. L. Devincenzi, 7 Feb. 1964.

CAUFORNIA - FRONT (BASE)		SCARNING CONTROL IN	CALIFORNIA - FRONT (VARIANT)	Silangan and Makambanan	dožnikos vioje i kerte	Foli Preser	vation Unit B	restriave	1751	Champal	o Voltage tal	t Breakdown (701	erar nobusia	nanifacti name	Breakdown (,	nevoles.	Community	Serve Course Co	. came to be made that the	more and the con-
Floor Plate Area:	30,000 SF		Floor Plate Area:	30,000 SF	Nevertier of the control of the cont	Total NSF:			90,000	Total NSF:			0.000	Total NSF:	VALUON UNIT E		102,000	Total NSE	variant uni	t urnaktiov	102,000
Number of Floors:	4 Floors		Number of Floors:	4 Floors		Total # Uni			56	Total # Uni		,	64	Total # Uni	he:		56	Total # Units			102,000
Total Gross SF:	120,000 SF		Total Gross SF:	120,000 SF			,		20	· OLSI W DII			04	rotar w On	LS.		50	rotal # Onits			64
			7-13-1-1-1-1	11,5,000			SF	Units	Total		SE	Units	Total		S.E.	Units	Total		SE	Harte	Tetal
Efficiency Factor.	0.75	0.85	Efficiency Factor;	0.75	0.85	Junior	31.	OTRES	10147	roinut	50	Gints	10(0)	Junior	5E	Onts	10191	lunior	<u>2F</u>	Units	Total 0
Total NSF	90,000 SF	102,000 SF	Total NSF:	90,000 SF	102,000 SF	1-Bed				1-Bed				1-Bed				1-Bed			U
7.000.7.00	35,000 5,	102,000 31	(Geal reg)	30,000 31	102,000 31	2-Bed	896	7	6,272	2-Bed	896	14 1	2,544	2-Bed	1,100	7	7,700	2-8ed	1,150	14	16,100
Full Preservation Unit II Total	56	56	Community Variant Unit # Total:	64	64	3-Bed	1,410	22	31,020	3-Bed	1,410		2,170	3-Bed	1,550		34,100	3-Bed	1,550	37	57,350
Average Unit SF:	1,607 SF	1.821 SF	Average Unit SF:	1,406 SF	1,594 SF	4-Bed	1,955	27	52,785	4-Bed	2,000		6,000	4-Bed	2,200		59,400	4-8ed	2,200	13	28,500
According to the Sec.	1,007 5	I,OEL III	Average officials.	1,400 35	7,334 31	TOTAL	1,555_	56		TOTAL	2,000		0,714	TOTAL	2,200_		101,200	TOTAL	2,200		102,050
						TOTAL	3.	50	2 90,077	TUTAL		11 Per 1 Per 1	0,714	TOTAL			101,200	TOTAL	- 23		102,050
CALIFORNIA - BACK (BASE)			CALIFORNIA - BACK (VARIANT)			F. (1 D	vation Unit 8		(75)	C		t Breakdown (C.II Davas		reakdown (.	art	Community	** * * * * * * * * * * * * * * * *		(85)
Floor Plate Area:	19,293 SF		Floor Plate Area:	19,293 SF		Total NSF:	vation unit a	исакцомп	57,879	Total NSF:	y vanam Onn		7,879	Total NSF:	vation Unit 5		55,596	Total NSF:	variant on	Dreakdoy	65,596
Number of Floors	19,293 31		Number of Floors:	19,293 SF		Total # Uni			52	Total # Uni	ine.	9	60	Total # Uni			52	Total # Units			60
Total Gross SF	77,172 SF		Total Gross SF	77,172 SF		total a Oni	15:		32	10tal / On	RS.		OU.	TOTAL SE OTS	131		32	ious # Onic	•		60
torat Gross 24.	77,172 SF		rotal Gross SF	/1,1/2 SF				12-5-	Year		SE	Units	Taxal		5E	Units	Total		SF	Units	<u>Total</u>
Efficiency Factor	0.75	0.85	Efficiency Factor:	0.75	0.85	Junior	<u>sr</u> .	Units	Total	Junior	. 25	nuits	Total	Junior	25	Onics	TOGE	lunios	31	Ornes	- Cocan
	57,879 SF	65,596 SF				1-Bed	600	8	4,800	1-Bed	600	22 1	3,200	1-Bed	700	R	5.600	1-Bed	525	22	13,750
Total NSF	57,879 SF	92,390 21	Total NSF	\$7,879 SF	65,596 SF		896	-	17,920		896		3,440	2-Bed	1,000		20,000	2-Bed	925	15	13,875
					60	2-Bed	1.450	20 24	34,800	2-Bed 3-Bed	1,410		2,560	3-Bed	1,650		39,600	3-8ed	1,500	16	24,000
Full Preservation Unit # Total:	52	52	Community Variant Unit # Total:	60		3-Bed	1,450	24	34,800				4,000	4-Bed	1,030	24	39,000	4-Bed	2,000	7	14,000
Average Unit SF:	1,113 SF	1,261 SF	Average Unit SF:	965 SF	1,093 SF	4-Bed				4-Bed	2,000				***	52	65,200	TOTAL	2,000	60	65,625
						TOTAL		52	57,520	TOTAL		60 6	3,200	TOTAL		-52	65,200	TOTAL		60	65,625
			MAYFAIR BUILDING (VARIANT)				vation Unit R	reakdown			v Variant Unit		12.00								
Floor Plate Area:	13,500 SF		Floor Plate Area.	13,500 SF		Total NSF.			40,500	Total NSF:		4	0,500								
Number of Floors	4 Floors		Number of Floors:	4 Floors		Total # Uni	rs:		40	Total # Uni	its:		52								
Total Gross SF:	\$4,000 SF		Total Gross SF:	54,000 SF																	
							SF	Units	<u>Total</u>		<u>SF</u>	Units	Total								
Efficiency Factor	0.75		Efficiency Factor:	0.75		Junior				Junior											
Total NSF:	40,500 NSF		Total NSF:	40,500 NSF		1-Bed	800	10	000,8	1-Bed	600		3,800								
						2-Bed	1,100	30	33,000	2-Bed	900		4,300								
Full Preservation Unit # Total-	40		Community Variant Unit # Total:	52		3-8ed				3-Bed	1,400	2	2,800								
Average Unit SF:	1,013 NSF		Average Unit SF:	779 NSF		4-Bed				4-Bed											
Transpe et Me	-,					TOTAL		40	41,000	TOTAL		52 4	0,900								
WALKET BUILDING - PORTICO RE	TAINED (BASE)	ereferense	WALNUT BUILDING - PORTICO RET	NINED (VARIANT)		Full Preser	vation Unit B	treakdown				g Breakdown									
Floor Plate Area;	31,825 SF	y - 1,11, 41 (MI), 111 - 110 - 1	Floor Plate Area:	31,825 SF		Total NSF:			95,475	Total NSF:		16	7,081								
Number of Floors:	4 Floors		Number of Floors:	7 Floors		Total # Uni	its:		118	Total # Un	its:		228								
Total Gross SF:	127,300 SF		Total Gross SF	222,775 SF																	
10101 01033 37							SF	Units	Total		SE		Total								
Efficiency Factor:	0.75		Efficiency Factor:	0.75		Junior	525	17	8,925	Junior	525	17	8,925								
Total NSF	95,475 NSF		Total NSF:	167,081 NSF		1-Bed	600	44	26,400	1-Red	600		5,800								
10101 1131						2-Bed	900	40	36,000	2-Bed	900		12,300								
Full Preservation Unit # Total;	118		Community Variant Unit # Total:	228		3-Bed	1,450	17	24,650	3-Bed	1,300	. 14 1	8,200								
Average Unit SF:	809 NSF		Average Unit SF:	733 NSF		4-Bed				4-Bed	1,800		2,600								
Average unit se:	203 1431		Average onic at	754		TOTAL	7	118	95,975	TOTAL	32	226 36	7,825								
HISTORIC MAIN BUILDING -POR	TICA DETAINED (BASE)		HISTORIC MAIN BUILDING - PORTIO	O RETAINED (VARIANT)		Full Preser	vation Unit B	reakdown	70/03/4/2017	Communit	ry Variant Uni	t Breakdown									
Floor Plate Area:	SF		Floor Plate Area:	SF		Total NSF			253,610	Total NSF:		. 29	3,610								
	Floors		Number of Floors:	Floors		Total II Uni			292	Total # Un	its:		340								
Number of Floors		rawings A6.00	Total Gross SF:	362,300 SF																	
Total Gross SF	362,300 SF G	LEGALURS MOTOR	ro(a) Gross ar.	302,300 31			SE	Units	Total		SF	Units	Total								
			Efficiency Factor:	0.70		Junior	550	10	5,500	Junior	510	`10	5,100								
Efficiency Factor.	0.70			253,610 NSF		1-Bea	650	145	94,250	1-Bed	600	204 12	22,400								
Total NSF:	253,610 NSF		Total NSF:	255,610 Nor		2-Bed	1,000	97		2-Bed	900	92 8	32,800								
				340		3-Bed	1,410	40		3-Bed	1,275	34 4	13,350								
Full Preservation Unit # Total:	292		Community Variant Unit # Total.			4-Bed	1,410		30,400	4-Bed			0								
Average Unit SF:	859 NSF		Average Unit SF:	746 NSF		TOTAL	-	207	253,150	TOTAL		340 25	53,650								
-				*		IDIAL		101	203,430	.01,10											
BASE			VARIANT																		
Proposed Project Unit Count	Preservation Alternative Ur	nit Count	Proposed Project Unit Count	Preservation Alternat																	
Junior 27	Junior 27		Junior 27	Junior	27																
1-Bed 207	1-Bed 207		1-Bed 392		392																
2-Bed 194	Z-Bed 194		2-Bed 195		195																
2-8ed 194 3-8ed 103	3-Bed 103		3-Bed 103		103																
	4-Bed 27		4-Bed 27	4-Bed	27																
	Total 558		Total 744	Total	744																
Total 558	520																				

ine, Birl Meeting 2/4/64

Exposition

FIREMAN'S FUND INSURANCE COMPANY

3333 CALIFORNIA STREET
SAN FRANCISCO, CALIFORNIA

FRED H. MERRILL

February 7, 1964

Mr. D. L. Devincenzi
President
Laurel Heights Improvement Association
of San Francisco
San Francisco, California

Dear Mr. Devincenzi:

The purpose of this letter is to provide you with a convenient means of conveying to members of the Laurel Heights Improvement Association an account of the substance of my comments to you and Dr. Greenspan at our meeting held here on Tuesday, February 4, concerning the presently proposed Fireman's Fund building addition and our thinking with respect to possible future expansion of our building.

I believe the following adequately summarizes our discussion:

There was general agreement among the three of us that the presently proposed addition to our building was in compliance with all of the stipulations in effect with respect to the Fireman's Fund property.

You indicated that, despite the fact that there are no height limitations for commercial development in effect with respect to the property, the association membership was extremely interested in learning whether our future plans encompassed the addition of another floor to the present building, and would appreciate advice from us in this connection.

I assured you that we do not have plans for an additional floor on the building and that the proposed addition will have a permanent roof rather than a slab suitable as flooring for a further addition. This was for the reason that we have been advised that existing foundations would not be adequate for an additional floor and that in my view an additional floor would not only be detrimental to the appearance of the building but impracticable from a building cost standpoint. While it was not my intention or function, I pointed out, either to alter the stipulations with respect to the property,

accepted by the San Francisco Planning Commission, or to purport to bind the management of Fireman's Fund, I assured you that during my tenure as President of Fireman's Fund, for the reasons given above, I would not consider the construction of a floor on our building above the presently proposed addition.

I then went on to explain that any expansion of our building beyond that which we have reviewed with the Planning Commission and members of your association would be preceded by appropriate research and development relating to provision for adequate off-street parking facilities. It is our intention, I said, to utilize, ultimately, the present roof area for additional space, but before this done, we would plan to develop more service and parking facilities - most probably on the Presidio and California areas of our property.

I was very pleased to learn that the Association plans to record its approval of our proposed addition and to convey this fact to the Planning Commission. This action is most gratifying to me and to our management. We shall do everything in our power to minimize all inconveniences during the construction period.

Meanwhile, please be assured that we shall always attempt to maintain the Fireman's Fund building in such a manner that it - as indicated yesterday in the press - will continue to be an asset to our neighborhood.

Sincerely yours,

Fred H. Merrill

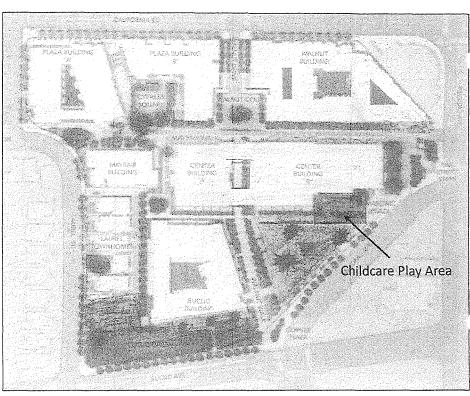
President

Developers Variant 7/3/2019

CALIFORNIA PLAZA CYPRESS STAIRS CAUFORNIA STREET Uses Below PRESIDIO OVERLOOK CYPRESS SQUARE MAYFAIR WALK MAYFAIR BUILDING CEMPER! PINE STREET STEPS AND PLAZA LAUREL DUPLEXES PLAZA MASONIC BUILDING EUCLIO SULDING

EUCLID AVE

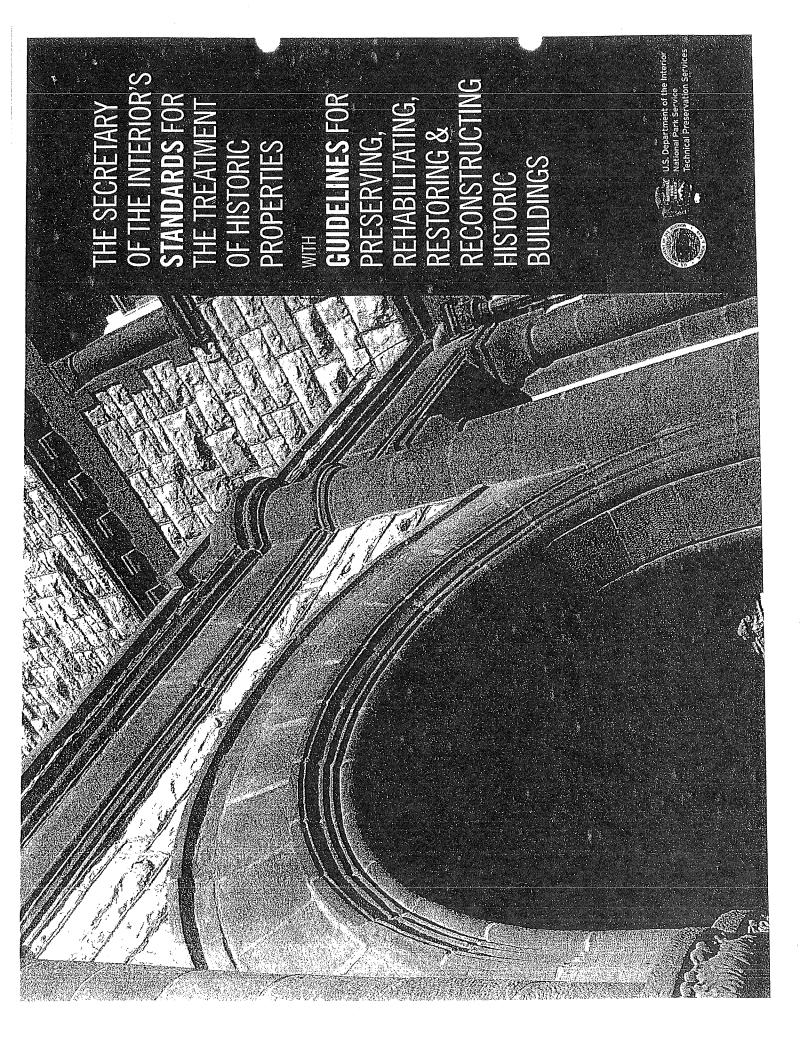
Community Preservation Lookalike Variant



IMPACT OF PSKS 3333 DEVELOPMENT PLAN ON LAUREL VILLAGE

- 1. The surrounding neighborhoods are well served by a diversity of retail businesses in Laurel Village, Sacramento Street, Presidio Avenue, Trader Joe's, an expanding City Center with both Target a Whole Foods-all within two blocks of 3333 California St.
- The proprietors of Laurel Village have ample capacity to serve the residents of 3333 California St. as well as 3700 California St. especially considering that these new residents will replace the approx.
 1,500 employees of UCSF that shopped at Laurel Village for many years.
- 3. Cal Mart & Bryan's presently operate their checkout lines at approx. 50% capacity and can double the throughput as needed.
- 4. There is already room for more retail along Sacramento St. as a number of storefronts remain empty.
- 5. The recent closures of Beautiful and Noah's Bagels, preceded by Gymboree, and the potential closure of others strongly reinforces the position that new retail is both unneeded and unwanted.
- 6. Laurel Village Merchants have requested that PSKS cease creating the erroneous impression that there would be "long lines" in the Laurel Village stores if PSKS is not allowed to change 3333's zoning and add additional retail.
- 7. The retail traffic associated with 3333 would negatively impact the parking lot for Laurel Village which is already insufficient for Laurel Village's needs. In addition, 3333 retail parking does not fully meet the retail traffic demands generated at 3333 and this overflow traffic will park in Laurel Village further harming the Customers, and Merchants of Laurel Village.
- 8. PSKS's plan to charge for parking at 3333 will only exacerbate this harmful situation. Furthermore, it is blatantly unfair to have Laurel Village Merchants provide parking for the competition at 3333.
- 9. The 7-15 year construction period will be catastrophic to Laurel Village. During last year's streetscape fiasco Cal Mart's business declined over 30%. According to Ron Giampoli of Cal Mart it is doubtful that Cal Mart would remain in business with a 7-15 year construction period. Other businesses in Laurel Village were impacted equally and would be put under immense pressure by the development plan for 3333.

10.	. Bryan's and Cal Mart are unique and iconic stores that serve Customers from all parts of the city. The
	loss of one or both would immeasurably impoverish the surrounding neighborhoods.
	Ronald Hismpasli
	1 De Comment de la commentant de la comment



NEW EXTERIOR ADDITIONS TO HISTORIC BUILDINGS AND RELATED NEW CONSTRUCTION

RECOMMENDED

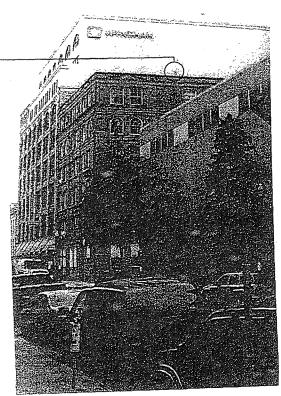
NOT RECOMMENDED

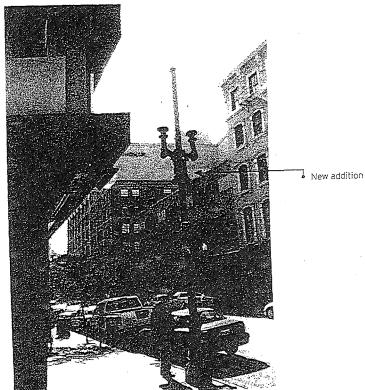
Rooftop Additions

Designing a compatible rooftop addition for a multi-story building, when required for a new use, that is set back at least one full bay from the primary and other highly-visible elevations and that is inconspicuous when viewed from surrounding streets.

Constructing a rooftop addition that is highly visible, which negatively impacts the character of the historic building, its site, setting, or district.

[63] (a) A mockup should be erected to demonstrate the visibility of a proposed rooftop addition and its potential impact on the historic building, Based on review of this mockup (orange marker), it was determined that the rooftop addition would meet the Standards (b). The addition is unobtrusive and blends in with the building behind it.





NEW EXTERIOR ADDITIONS TO HISTORIC BUILDINGS AND RELATED NEW CONSTRUCTION

RECOMMENDED

NOT RECOMMENDED

Limiting a rooftop addition to one story in height to minimize its visibility and its impact on the historic character of the building.

Constructing a highly-visible, multi-story rooftop addition that alters the building's historic character.

Constructing a rooftop addition on low-rise, one- to three-story historic buildings that is highly visible, overwhelms the building, and negatively impacts the historic district.

Constructing a rooftop addition with amenities (such as a raised pool deck with plantings, HVAC equipment, or screening) that is highly visible and negatively impacts the historic character of the building.



[64] Not Recommended: It is generally not appropriate to construct a rooftop addition on a low-rise, two- to three-story building such as this, because it negatively affects its historic character.

NEW EXTERIOR ADDITIONS TO HISTORIC BUILDINGS AND RELATED NEW CONSTRUCTION

RECOMMENDED

NOT RECOMMENDED

Related New Construction

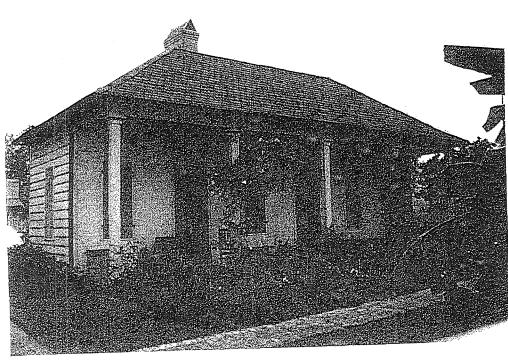
Adding a new building to a historic site or property only if the requirements for a new or continuing use cannot be accommodated within the existing structure or structures.

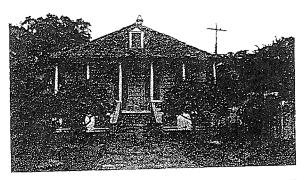
Locating new construction far enough away from the historic building, when possible, where it will be minimally visible and will not negatively affect the building's character, the site, or setting.

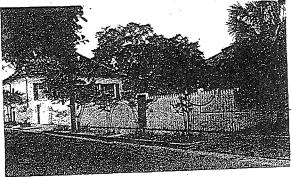
Adding a new building to a historic site or property when the project requirements could be accommodated within the existing structure or structures.

Placing new construction too close to the historic building so that it negatively impacts the building's character, the site, or setting.

[65] (a) This (far left) is a compatible new outbuilding constructed on the site of a historic plantation house (b). Although traditional in design, it is built of wood to differentiate it from the historic house (which is scored stucco) located at the back of the site so as not to impact the historic house, and minimally visible from the public right-of-way (c).







new addition

Major, Erica (BOS)

From:

Kathy Devincenzi < krdevincenzi@gmail.com>

Sent:

Wednesday, October 16, 2019 3:04 PM

To:

Major, Erica (BOS); BOS Legislation, (BOS)

Cc:

Richard Frisbie

Subject:

October 21, 2019 BOS Land Use and Transportation Committee

Attachments:

20191016173115.pdf; 20191016173233.pdf

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

San Francisco Board of Supervisors Land Use and Transportation Committee c/o Erica Major, Clerk City and County of San Francisco City Hall, Room 244 San Francisco, CA 94102

Re: 3333 California Street, San Francisco, CA

File No. 190844 - Proposed Special Use District

Hearing Date: October 21, 2019

Record Number: 2015-014028CUA/PCA/MAP/DUA

Please see letter and Exhibits A-E attached. I will deliver 3 paper copies to you before close of business today.

Laurel Heights Improvement Association of SF, Inc.

By: Kathryn Devincenzi, President

415-221-4700

Major, Erica (BOS)

From: Richard Frisbie <frfbeagle@gmail.com>

Sent: Wednesday, October 16, 2019 1:43 PM

To: Peskin, Aaron (BOS); Haney, Matt (BOS); Safai, Ahsha (BOS); Major, Erica (BOS)

Cc: Board of Supervisors, (BOS); Stefani, Catherine (BOS); Mar, Gordon (BOS); Ronen, Hillary; Yee, Norman (BOS); Mandelman, Rafael (BOS); Fewer, Sandra (BOS); Brown,

Vallie (BOS); Walton, Shamann (BOS); Laurel Heights Email; Janet Wennergren Frisbie

Subject: Comments and Concerns About 3333 California St. Development Agreement and

Special Use District for October 21, Land Use Committee Hearings

Attachments: MY KEY CONCERNS for Oct. 21 LUC.docx; Further THOUGHTS on 3333.docx; BULLET

POINTS OF COMMUNITY SUPPORTED DEVELOPMENT PLAN.docx; FLEXIBLE RETAIL LEGISLATION 20190830221740.pdf; Questions about Escrow Account in 3333 DEV. AGMT.docx; COMMUNITY PRESERVATION LOOKALIKE VARIANT NARRATIVE w Drawing

Table Bldg Summary.docx; CFPA VARIANT 2 NARRATIVE w Building Layout and

Table.docx

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

I would ask that: The Land Use Committee take a serious look at both new Variants presented by the Community-see attached.

Both the Community Preservation Lookalike Variant (CPLV) and the Community Full Preservation Alternative Variant 2 (CFPAV2) are deserving of a detailed review. These documents are attached.

We believe the two latest Variants are the basis for a credible and effective compromise between the

Community and the developer but there needs to be sufficient time for this to take place.

These two Community plans offer an opportunity to bring all the Stakeholders together.

I would ask that: the 7-15 year entitlement period be scaled back to something a little more human.

The basis for this extended period appears to be preparing, phasing, financing and market conditions, the latter two are essentially about profit.

Nowhere are the human aspects discussed. What about the neighbors who live around the site? How is their peace of mind, quality of life and essential well-being factored into the decision? What is San Francisco's commitment to balancing efficiency against humanity? Or is this simply someone else's problem.

I believe it is grossly unfair asking the Community to support an uncertain, open-ended long-term development period. We deserve certainty.

I would ask that: no retail be approved for 3333 California Street. It is unwanted and unneeded and threatens the very livelihood of our existing small and family owned businesses.

One only need walk along Sacrament Street, Presidio Avenue and even Laurel Village to see the empty

storefronts and to appreciate the increasing stress that the "Amazon" effect is creating.

The Board of Supervisors got it wrong on the Uber/Lyft impact and the damage is obvious to everyone in San Francisco, so much so that it is on the November 5 election.

Let's not fail again and replicate this shortsightedness by failing to recognize the Amazon effect.

And Flexible Retail is the worst of all. The types of businesses it permits is hardly appropriate for a development that extols its neighborhood friendliness, family orientation, senior friendly intent.

The developer has even wrapped himself in the name of Laurel Hill Partners to feed off the quality of the area.

The Law of Unintended Consequences states that "if it can happen, it will happen."

And then it became a Public Safety problem involving SFPD.

Are these appropriate businesses to be sitting side-by-side with a senior housing project AND a childcare center? Potentially sharing the very same building.

Can anyone guarantee this won't happen?

Is this the future of San Francisco?

I stand by our Community credo "Build Housing and Build It Now!"

Respectfully,

Richard Frisbie

Attacments:

- 1. Key Concerns for Oct. 21 LUC Hearing
- 2. Further Thoughts on 3333 California St.
- 3.3. Key Points of Community Supported Development Plans
- 4. Flexible Retail
- 5. Questions About Escrow Account for Affordable Senior Housing-remain unanswered by the City.
- 6. Community Preservation Lookalike Variant Plan
- 7. Community Full Preservation Alternative Variant 2 Plan

KEY CONCERNS FOR OCTOBER 21 LAND USE COMMITTEE HEARING

City Hall, Room 263

3333 California Street, Record Number: 2015-014028CUA/PCA/MAP/DVA

I live in Laurel Heights.

I STRONGLYOPPOSE THE DEVELOPER'S PROJECT AND <u>SUPPORT</u> THE COMMUNITY ALTERNATIVES

Isupport the Community Alternative Plans that build the same number of housing units as the developer's plans -744 units including 185 units of affordable senior housing - and are better because they do not build on the historic green space and will be built in a shorter period of time because they involve less excavation and demolition

THE COMMUNITY PLANS SAVE THE BEAUTIFUL GREEN SPACE

I oppose the mindless destruction of 200 trees; 185 on the site and the 15 mature trees on the sidewalk along California St.

I oppose the needless destruction of the natural green space everyone loves. New residents will like the green space better than the developer's shadowed hardscape pathways

RETAIL IS NOT NEEDED ADJACENT TO LAUREL VILLAGE

I oppose adding retail uses to the site; there is adequate retail in Laurel Village, Sacramento Street, Trader Joe's and Geary St.

THE 15-YEAR CONSTRUCTION PERIOD WOULD JEOPARDIZE LAUREL VILLAGE

The prolonged construction time would jeopardize the survival of Laurel Village and its cherished independent quality groceries of Cal-Mart and Bryan's

Make the applicant build in 7 years and not drag the project out for 15 years and make the project phasing definite and ensure that senior affordable housing is constructed by the developer per the phasing schedule.

PLEASE ORDER THE PROJECT REDESIGNED LIKE ONE OF THE COMMUNITY ALTERNATIVES

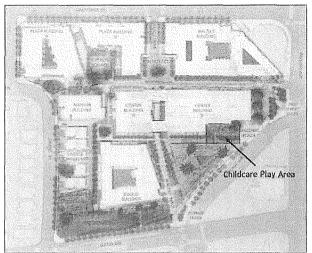
Community Preservation Lookalike Variant or Community Full Preservation Alternative Variant 2.

The Community Preservation Lookalike shown below utilizes the developer's site plan, including exact topography and elevations, with modest changes that retain the key historic characteristics by moving the buildings off the green space and not cutting a 40-foot gap all the way through the main building.

Developers Variant 7/3/2019

Community Preservation Lookalike Variant



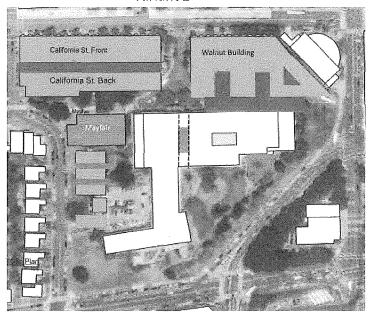


One can easily see that the Community Lookalike Variant follows the Developer's Variant closely while still retaining key characteristics sought be the Community.

A thoughtful and comprehensive compromise alternative that provides the same amount of housing, preserves green space and trees, meets the Secretary of the Interior Standards for historic properties.

The Community Full Preservation Alternative Variant 2 shown below also has 744 units including 185 units of affordable housing but does not demolish major portions of the main building.

Community Full Preservation Alternative Variant 2



Both of these alternatives do not remove the significant street trees along California Street and retain more onsite Redwoods and trees on the historically significant Eckbo Terrace.

So, forge a reasonable compromise. [NOTE -THE CITY DELIBERATELY MISINTERPRETED THE COMMUNITY ALTERNATIVES IN THE EIR, MADE UNREASONABLE ASSUMPTIONS ABOUT THEM AND PRESENTED A DISTORTED AND INACCURATE EVALUATION OF THEM-WATCH FOR FURTHER TALKING POINTS ON THIS]

LOOPHOLES IN THE DEVELOPMENT AGREEMENT DO NOT REQUIRE THE APPLICANT TO BUILD THE SENIOR AFFORDABLE HOUSING

Remove the loopholes in the Development Agreement that would allow the developer to build 386 market rate units and then renege on his responsibility to build the affordable senior housing by transferring the Walnut Land to the City.

REMOVE FLEXIBLE RETAIL, WHICH THE EIR DID NOT EVALUATE

The EIR failed to evaluate impacts on traffic, noise and air quality from multiple, flexible retail uses sharing the same retail space because the EIR only evaluated single use retail and restaurant uses. The community is not given notice of Flexible Retail uses going in. Flexible Retail is not allowed anywhere else in District 2 or in the Sacramento or Fillmore Street commercial districts. The EIR also did not evaluate Social Service or Philanthropic Facilities which include public uses.

LIMIT HOURS OF RETAIL OPERATION TO 6 AM TO 11 PM, DO NOT ALLOW RETAIL TO OPERATE UNTIL 2 AM

PROHIBIT OUTDOOR AMPLIFIED SOUND

PROHIBIT THE FOLLOWING NON-RESIDENTIAL USES:

Entertainment, Nighttime Adult Business
Massage Establishment Massage,
Foot, Chair
Internet gambling or othergambling Amusement
Game Arcade Restaurant, Fast Foods
Public Facilities
Service, Fringe Financial
Student Housing
Tattoo Parlors
Motel
Short term residential occupancy of 60 days or less
such as Air B&B
Shared Work Space, ie. WeWork
Homeless Navigation Center

Further THOUGHTS on 3333 California St.

The Community rejects the conclusions of the Planning Commission Hearing on September 5. The Planning Commission has a majority of members appointed by the Mayor and the Mayor is beholden to the developers. Essentially it is a rubber stamp.

Statistics show that the Planning Commission approves approx. 90% of the developers' submissions! A truly independent body!

However, we expect to have much more support at the Board of Supervisors and its important that everyone keeps reminding our Supervisor, Catherine Stefani, about her promise to introduce amendments to both the Special Use District and to the Development Agreement going forward.

AND, only the Board of Supervisors can actually approve the project.

KEY POINTS:

We need changes to this project-it is far too disruptive and destructive.

Recommend that the Planning Department analyze the two Community

Alternatives in detail in order to make major improvements to the developer's proposed plan.

Change the project to keep buildings off the green space. Protect the green space and mature trees

Reduce the construction to 7 years fixed, not the 7-15 years requested. Also, the Development Agreement is so poorly written that 15 years is not a fixed limit! The Community Alternatives call for Housing NOW, not in 7-15 years.

Eliminate the unwanted and unneeded retail proposed. All it will do is further degrade Sacramento St. and Laurel Village. Our neighborhoods are already well served.

The retail proposed, Flexible Retail, mandates at least two (and up to five) different types of businesses sharing a common premise. The businesses can change with no requirement that the public be notifies.

Flexible Retail allows almost an unlimited range of businesses as the definitions are deliberately vague.

Prohibit outdoor amplified sound or nighttime entertainment-which is allowed by Flexible Retail.

BENEFITS OF THE COMMUNITY'S PLANS

The Community's plans preserve an important California Listed Historic Resource.

The Community's plans protect needed and neighborhood utilized green space, as well as old growth trees.

The Community's plans support neighborhood character consistent with a residential neighborhood.

The Community Alternatives protect small & family owned businesses at Laurel Village and protects the future of Cal Mart and Bryan's.

The Community's plans minimize traffic and encourages the use of public transit.

The Community's plans provide affordable senior housing.

The Community's plans protect the environment and minimizes Greenhouse Gases, generating far less Greenhouse Gases.

The Community's plans eliminate retail and the 8,500 retail related auto trips which results in a savings of 4,000 tons per year of Greenhouse Gases.

The Community's plans are supported by members of the neighboring communities.

KEY POINTS OF COMMUNITY SUPPORTED DEVELOPMENT PLAN

- Housing numbers equal to the Developer's proposed plan(744)
- Housing NOW, not in 7-15 years.
- Protects small & family owned businesses at Laurel Village.
- Ensures the future of Cal Mart and Bryan's.
- Protects the NCD along Sacramento St. and Presidio Ave.
- Fulfills the project's Program Objectives within existing zoning and Resolution 4109 criteria.
- Protects needed and neighborhood utilized green space.
- Supports neighborhood character consistent with a residential neighborhood.
- Preserves a California Listed Historic Resource.
- Minimizes traffic and encourages the use of public transit.
- Provides affordable senior housing.
- Protects the environment and minimizes Greenhouse Gases by 70%.
- Eliminates over 4,000 tons per year of Greenhouse Gases.



FLEXIBLE RETAIL

FREQUENTLY ASKED QUESTIONS, SCREENING FORM, AND AFFIDAVIT PACKET

Flexible Retail is a new land use category defined in Section 102 of the Planning Code.

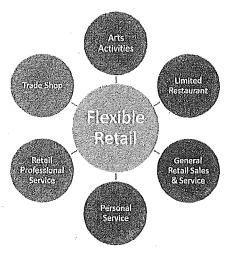
Español: Si desea ayuda sobre cómo llenar esta solicitud en español, por favor llame al 415.575.9010. Tenga en cuenta que el Departamento de Planificación requerirá al menos un día hábil para responder

中文:如果您希望獲得使用中文填寫這份申請表的幫助,請致電415.575.9010。請注意,規劃部門需要至少一個工作日來回應。

Tagalog: Kung gusto mo ng tulong sa pagkumpleto ng application na ito sa Filipino, paki tawagan ang 415.575.9010. Paki tandaan na mangangailangan ang Planning Department ng hindi kukulangin sa isang araw na pantrabaho para makasagot.

WHAT IS "FLEXIBLE RETAIL"?

Flexible Retail is a new land use category defined in Section 102 of the Planning Code. A parcel whose legal use is "Flexible Retail" may be able to operate all of the following uses on-site: Arts Activities, Limited Restaurant, General Retail Sales and Service, Personal Service, Retail Professional Service, and Trade Shop.



FLEXIBLE RETAIL USES MUST FOLLOW CERTAIN CONDITIONS. NAMELY:

- A parcel must be located in Supervisorial Districts 1, 4, 5, 10 or 11 and zoned NCD, NCT or NCS. If you are unsure of whether your parcel falls into one of these zoning districts please check your property's information here: http://propertymap.sfplanning.org or stop by the Planning Information Center on the 1st floor of 1660 Mission Street where our staff may assist you in identifying your zoning.
- Any business operating as a Flexible Retail Use must operate at least two separate and distinct uses on-site at all times. This means the site must contain at least two of the types of uses contained within the "Flexible Retail" category (e.g. an apparel shop and a café, which would be General Retail and Limited Restaurant uses).
- Any parcel operating as "Flexible Retail" must adhere to all underlying zoning controls. This means that if any of the uses contained within the "Flexible Retail" category are not permitted, require special approval, or require Neighborhood Notification in the underlying zoning district, those limitations continue to apply. For example, many areas of the city require Neighborhood Notification to establish a Limited Restaurant. If a Flexible Retail business would like to establish a Limited Restaurant and the zoning district requires Neighborhood Notification for such use, the business must undergo Neighborhood Notification in order to establish the Limited Restaurant under their Flexible Retail use.

Member, Board of Supervisors District 4



City and County of San Francisco

KATY TANG

Flexible Retail Legislation

File 180806

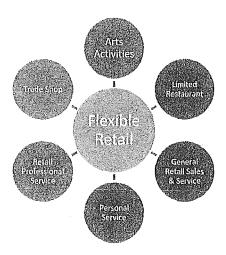
Legislative Goal: Provide business owners the opportunity to share space with other types of businesses and switch between an identified set of uses without requiring additional Planning Department permits. As it gets more challenging for businesses to open or remain in San Francisco due to high rents and online commerce, this legislation serves as one tool to address the issue of storefront vacancies in our commercial corridors.

Legislation Details:

- Creates new "Flexible Retail" use under Planning Code
- Flexible Retail would be principally permitted in District 4 (legislation will be expanded to include other districts per amendments at Land Use Committee on Oct. 29th and underlying zoning would apply in each district)
- Under the new Flexible Retail use, there can be any combination of the following use categories within a ground-floor space and these can be operated by one or more business operators:
 - o Arts Activities
 - o Limited Restaurant
 - o General Retail Sales and Services
 - o Personal Service
 - o Retail Professional Service
 - Trade Shop
- Notes:

0

- o Flexible Retail would not require neighborhood notification under Planning Code Section 311. However, a Conditional Use Authorization (CUA) is still required in neighborhoods where the zoning requires a CUA.
- Permits and inspections from other city departments (such as Department of Public Health, Department of Building Inspection, or liquor license from the state) would still be required for Limited Restaurant use.



SIGN 713. NC-S - NEIGHBORHOOD COMMERCIAL SHOPPING CENTER DISTRICT.

Table 713. NEIGHBORHOOD COMMERCIAL SHOPPING CENTER DISTRICT NC-S

ZONING CONTROL TABLE

zonne Gelejov 署入间以同时至3月0日公里公里公里公公日区村的定居 Enternation services de la constitue de la con Entertainment, Arts and § 102 NP NP NP Recreation Uses* NP С Amusement Game Arcade § 102 NP § 102 NP(6) NP(7)NP(7) Arts Activities C С NP Cannabis Retail §§ 102, 202.2(a) NP (6) NP<u>NP</u> Flexible Retail \$ 102

(6) P in the geographic area described as Flexible Retail Zones in Section 202.9.

(7) C in the geographic area described as Flexible Retail Zones in Section 202.9.

24 25

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

Supervisors Tang, Safai, Fewer, Brown, and Cohen BOARD OF SUPERVISORS

§ 102

* * * *

Flexible Retail

SEC. 725. UNION STREET NEIGHBORHOOD COMMERCIAL DISTRICT.

* * *

Table 725. UNION STREET NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE

 NP_{-}

NP

Controls

NP

23 | ***

Zoning Galegory Sardenences Noveresidential standards and uses

24 25

15

16

17

18

19

20

21

22

* * * *				
Sales and Service Use Categor	y := :		19 (19) 19 (19)	
* * * *				
Cannabis Retail	§§ 102, 202.2(a)	С	С	NP
<u>Flexible Retail</u>	<u>§ 102</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>
* * * *				

7 ****

SEC. 760. FILLMORE STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT.

Table 760. FILLMORE STREET NEIGHBORHOOD COMMERCIAL TRANSIT

DISTRICT ZONING CONTROL TABLE

Zoning Category	§ References		Control	6
NON-RESIDENTIAL STANDAR	RDS AND USES			
* * * *				
Sales and Service Use Catego	ny i jak			
* * * *				
Cannabis Retail	§§ 102, 202.2(a)	С	С	NP
<u>Flexible Retail</u>	§ 102	<u>NP</u>	<u>NP</u>	<u>NP</u>
* * * *				

QUESTIONS ABOUT ESCROW ACCOUNT FOR AFFORDABLE SENIOR HOUSING

"I have some questions about the escrow account which the City believes protects the senior affordable housing. At this point I do not share that same level of confidence. Here's one of the first axioms taught at the elite business schools "You can't contract away bad faith."

My questions are:

- 1. Is the escrow fee based on NPV, Net Present Value? If so, what inflation rate has been incorporated in the calculation? And, over what period of time?
- Twelve years was mentioned as well as 5% per annum increase in construction cost which means in 12 years construction costs would have risen by approx 80 percent.
- 2. The escrow is \$199 per square foot. What is the square feet that this applies to? If it's the total residential gsf of the project, approx. 9777,000 gsf, the escrow account would eventually grow, with inflation, to approx. \$97,000,000 by the time the Walnut Building isoccupid. Although per your previous email the in lieu fee would range from \$58.5-64.4mm so apparently no inflation is considered.
- 3. The developer shows the Walnut development cost at \$113.2mm which is double the "in lieu fee" you provided previously and well above the maximum potential value of the escrow account. Please explain why the city will be subsidizing the developer's failure to build the affordable housing.
- 4. How is the annual escrow amount calculated and when does it begin to be paid? I would hope it begin at date of permit approval but I doubt it does. The point being that the longer it takes to initiate the escrow the less funds in the accounts at any point in time that the developer opts out of the affordable senior housing.
- I know you believe this unlikely but history repeats itself and we are seeing it live and in color as we speak! Think Lucky Penny.
- 5. So, my fundamental question is what is the estimated amount in the escrow account at the end of each year of the project beginning in 2021?
- It is inconceivable that the City has not prepared such a chart so we look forward to receiving a copy.

From this Table or Chart it will be easy to determine whether the escrow account has any chance of fulfilling the potential shortfall to construct the Walnut Building should the developers default on the senior affordable housing. (\$113.2mm plus whatever the cost to the city from the Baseball Arbitration.)

If the escrow does not generate enough monies to do this then the Development Agreement is toothless and one more gift to the developers.

According to Turner & Townsend it costs \$ 330 per square foot to construct multi unit housing (sounds low) in San Francisco. I assume the Walnut Building being for seniors will probably have an added cost component.

By year 12 the \$330 per square foot will have increased to at least \$860 per square foot (with no component added for the complexity of senior housing) or \$126,927,400 to construct the presently configured Walnut Building which represents a \$30,000,000

shortfall IF the escrow is based on the entire residential gsf of the project and is being paid in from Day One. And without any amount applied from the Baseball Arbitration determination.

So the developers can default on the affordable senior housing and the escrow appears to represent a completely inadequate compensation for either (a) not paying the full "fee out" at the outset OR (b) walking away and leaving behind an escrow account which woefully under-funds the City's obligations.

And the earlier they walk away the lower the escrow account unless fully paid up from Day One.

It is not at all obvious how this is a good deal for the City. It looks to be a windfall for the developers. One might think Trump was part of the developers' negotiating team.

COMMUNITY PRESERVATION LOOKALIKE VARIANT

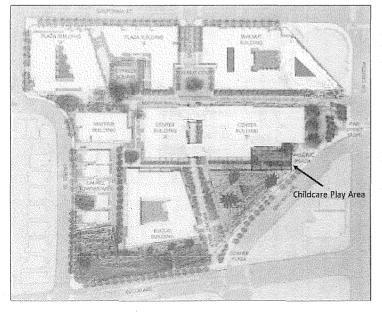
OVERVIEW

The Community Preservation Lookalike Variant, CPLV, would construct the same number of new housing units as the developer's proposed variant (744 units) and would be completed in approx. five years rather than the 7-15 years requested by the developer to complete his proposals. In addition, the Community Preservation Lookalike Variant would increase the residential gross square feet by approx. 20,000gsf more than the developer's proposal.

The Community Preservation Lookalike Variant would preserve the key character-defining features of the main building and its integrated landscaping, which are listed in the California Register of Historical Resources pursuant to Section 4851(a)(2) of the California Code of Regulations.

The Community Preservation Lookalike Variant utilizes approximately 90 percent of the developers' proposed buildings, designs and locations as can be seen below.

Figure 4: Community Preservation Lookalike Variant



		COMMUNITY		
	DEVELOPER	PRESERVATION		
	VARIANT 7/3/2019	VARIANT		
		"Developer Lookalike"		
	Residential GSF	Residential GSF		
BUILDING				
Masonic	83,505	N/A		
Euclid	184,170	144,870		
Laurel Townhomes	\$5,300	34,935		
Mayfair	46,680	46,680		
Plaza A	66,755	81,571		
Plaza B	72,035	83,215		
Walnut	147,590	336,350		
Main Building-Note 1	N/A	268,365		
Center A	89,735	N/A		
Center B	231,567	N/A		
TOTAL Residential GSF	977,437	995,986		

The major differences are that the Community Preservation Lookalike Variant:

- 1. Would preserve the key Historic defining characteristics of the site as noted above.
- Would create an All-Residential development with the retention of the existing café,
 childcare facility and office space in the Main Building noted below.
- 3. Would excavate only for a single, approximately two underground parking garage, whereas the developer proposes to excavate for four new under-ground parking garages spread across the site, some consisting of three levels.
- 4. Would eliminate the Masonic Building to preserve the Historic Eckbo Terrace and also provide a location for the childcare play area in sunlight as opposed to being placed in the heavily shadowed area alongside the Credit Union, as proposed in the developer's plan.
- 5. Would make modifications to the Euclid Building by removing approximately 30 ft. from the southside of the proposed building to move it off the historically significant green space.
- 6. Would eliminate two Laurel St. Townhomes from Euclid Green in order to fully preserve the historically significant green space at the top of Laurel Hill.
 - For a summary of changes that the Community Preservation Lookalike Variant would implement see "Summary of Building Changes" at the end of the document.

Furthermore, the Community Preservation Lookalike Variant would:

- (1) convert the interior of the main building to residential use while retaining the existing 1,500 gs cafe, 11,500 gsf childcare center, and 5,000 gsf of the existing office space (at the developer's option, this existing office space could be converted to residential use),
 - (2) construct three new residential buildings (the Plaza A, Plaza B and Walnut) along

California Street where parking lots are now located; the new Mayfair Building near the intersection of Mayfair Drive and Laurel; five new townhomes along Laurel St north of Euclid Green; and the new Euclid Building with modifications along Euclid Avenue;

- (3) provide affordable senior housing on-site with additional affordable housing on-site as determined by the Board of Supervisors,
- (4) propose that all freight-loading and unloading be conducted in the underground freight loading areas accessed from Presidio Ave. and Mayfair Ave.
- (5) propose that all passenger-loading and unloading be conducted inside the site in turnarounds or in the underground parking garage,
- (6) retain the historically significant landscaping designed by the renowned landscape architects of Eckbo, Royston & Williams which is integrated with the window-walled main building, including the Eckbo Terrace, the existing landscaped green spaces along Euclid and Presidio Avenues and some of Laurel Street, all of which would be designated as community benefits in the development agreement,
- (7) maintain public vistas of the downtown and Golden Gate Bridge from the landscaping and main building as well as maintain the historically significant main building and integrated landscaping.
 - (9) provide units in the Walnut Building for affordable senior housing.
- (9) the Community Preservation Lookalike Variant would use all the new space for residential use and would not rezone the site for approximately 34,496 gsf of retail uses, as the developer proposes.

THE COMMUNITY PRESERVATION LOOKALIKE VARIANT WOULD PROVIDE THE SAME AMOUNT OF NEW HOUSING UNITS(744) IN APPROX. FIVE YEARS WITHOUT DESTROYING A HISTORICALLY SIGNIFICANT RESOURCE.

The Community Preservation Lookalike Variant would preserve all the key character-defining features of the main building and integrated landscaping, which are listed in the California Register of Historical Resources pursuant to Section 4851(a)(2) of the California Code of Regulations. (Ex. A, confirmation of listing). The window-walled main building would be converted to primarily residential use.

The Community Preservation Lookalike Variant would have the same number of residential units as the developer's proposed variant (744 units) and would be constructed in less than four years because the existing main building would be converted to residential use at the same time as the new residential buildings are constructed, to the greatest extent feasible pursuant to staging.

The Community Preservation Lookalike Variant would entail far less excavation, as it would have approximately two levels of parking in a single new underground garage. In contrast, the developer's variant proposes to construct four new underground parking garages, to provide a total of 873 parking spaces. The CPLV would excavate only under the existing parking lots along California St. for garages - the easiest, least disruptive, quickest most efficient excavation- whereas the developer would carry out major excavation in all quadrants of the site including major excavations on Masonic, on Euclid including the excavation of major portions of Laurel Hill as well as under the parking lots along California St.

The Community Preservation Lookalike Variant would preserve the existing Eckbo Terrace and the green landscaped areas along Euclid and Presidio Avenues as well as partly along Laurel Street. The existing Eckbo Terrace would be designated as Privately-Owned, Publicly-Accessible Open Space in recorded deed restrictions and would be open to the public. The new ground level Walnut Passage will run through the first floor of the main building, opening up into a larger landscaped Center Court midbuilding, and lead onto the Walnut Walk alongside EckboTerrace and thence onto Masonic Avenue and

would be open to the public and marked with signage identifying it as a public throughway.

The character-defining features of the existing main building that the Community Preservation Lookalike Variant would retain include all of the following:

Plan of the building open along Eckbo Terrace and to views of the distant city.

Horizontality of massing.

Horizontal lines of projecting edges of concrete floors.

Horizontal bands of nearly identical compatible window units.

Uninterrupted glass walls.

Brick accents and trim

Wrought iron deck railings that match gates in landscaping.

The character-defining features of the existing landscape that the Community Preservation Lookalike

Variant would preserve include all of the following:

In the Eckbo Terrace, which was designed to integrate the architecture of the building with the site and with the broader setting (through views of San Francisco), key character-defining features include its biomorphic-shaped lawn surrounded by a paved terrace and patio (paved with exposed aggregate concrete divided into panels by rows of brick), brick retaining wall and large planting bed around the east and north sides of the paved patio, custom-designed wood benches, and the three circular tree beds constructed of modular sections of concrete.

All passenger loading, pick-ups and drop-offs are proposed to be internal to the site, and turnarounds will be provided in front of the main building. All freight loading and unloading is proposed to be conducted in the underground freight loading areas accessed from Presidio Avenue and Mayfair.

In the Community Preservation Lookalike Variant, the Masonic Building and two Laurel Townhomes are eliminated and the Walnut building re-designed. The Euclid building, reduced in size to preserve the Euclid Green area, the remaining five Laurel Townhomes, the Mayfair building, Plaza A and Plaza B utilize the developer's footprint and architectural design throughout. The Main Building utilizes Levels 1-4 of the developer's architectural design and adds one setback story at Level 5 consistent with the Secretary of the Interior Standards for the treatment of historic properties, thereby retaining the historic characteristics of the main building and integrated landscaping. Contrary to the developer, the Community Preservation Lookalike Variant does not sever the Main Building with a full height 40 ft gap, thereby creating two separate structures.

As noted previously, the Community Preservation Lookalike Variant creates a ground-level Walnut Passage while fully retaining the historic characteristics of the building.

The Main building, Walnut, Plaza A and Plaza B will have direct access to the underground parking garage. The Laurel Townhomes have their own organic parking. For the Mayfair and Euclid Buildings, parking will be provided in the new underground parking garage constructed under the California Street Front and Back Buildings.

Truck loading and unloading for the buildings along California St. as well as the Main and Mayfair buildings would occur in the underground garage accessed from Presidio Avenue and Mayfair Avenue.

SUMMARY OF BUILDING CHANGES

The Community Preservation Lookalike Variant generally utilizes the developer's footprint and

architectural design, unit configuration layouts, sizes, elevations, topography etc. except for the Masonic Building (which is not constructed) and the expanded Walnut Building.

The Community Preservation Lookalike Variant preserves both the historic Eckbo Terrace and the existing green spaces along Euclid and Masonic Avenues (by eliminating the Masonic Building) and partly along Laurel Street.

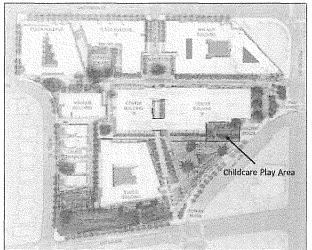
To this day, these green spaces are used by families, friends, children, moon-watchers, etc. The historically green space is preserved by modifying the south side of the Euclid Building (removing 30 ft.) and eliminating two Laurel St. townhomes at the top of Laurel St. as noted above.

Analysis of Buildings:

Developers Variant 7/3/2019

Community Preservation Lookalike Variant





As can be seen from the layout above the Community Preservation Lookalike Variant generally mirrors the developers proposed building plans. The primary differences are the elimination of the Masonic Building, modifications to the Euclid Building and redesign of the Walnut Building.

All retail has been converted into residential gsf and affected building heights reduced appropriately.

As shown above, the Community Preservation Lookalike Variant produces an additional 20,000 residential gsf over and above that produced by the developers.

Masonic Building: Eliminated.

Euclid Building: Identical to developers' submission of 07.03.2019 with the following modification to preserve Laurel Hill greenspace. The south side of the building is cut back approximately 30 ft. (loss of approximately 35,000gsf). Additionally, the remaining top floor units on the south side are set back 15

ft. to moderate the bulk and intensity of the Euclid Avenue appearance (loss of approximately 4,000gsf). It should be noted that the Euclid Building can be expanded on the east side by approximately 25 ft. along the entire 256 ft (ref. Dwg.A8.01 from submission) by aligning Walnut Walk with Eckbo Terrace which would more than offset the space eliminated by the modification to the south side noted above.

This potential expansion has not been accounted for in the Community's plan.

No underground parking garage.

References: A8.01(modified as noted above), .02(same comment), A8.03(same comment), A8.04(same comment), A8.05(same comment), A8.06(same comment), A8.11(same comment), A8.12, A8.21(same comment), A8.22, A8.23(same comment), A8.24(same comment), A8.25(same comment), A8.30, A8.41.

Laurel Townhomes: Generally identical to developer's submission of 07.03.2019 modified to reduce height to 30 ft. and set top floor back 15 ft.

Reference A10.01(two southernmost duplexes eliminated to preserve Historic green space),
A10.02(same comment), A10.03, A10.11(modified for height, setback and elimination of Duple 01 &
02), A10.12(same comment), A10.13(same comment), A10.21(same comment), A10.23(same comment), A10.24(same comment), A10.25(same comment).

As noted previously the two townhomes at the top of Laurel St. have been eliminated to preserve the green space. The height of the five remaining townhomes is lowered from 40 ft. to 30 ft. to be compatible with the 20 ft. homes on the west side of the Laurel St. block. Additionally, the third floor is set back 15 ft.

Mayfair Building: Generally identical to developer's 07/03/2019 submission: predominant references

A9.01, A9.02, A9.03, A9.04, A9.11, A9.12, A9.21, A9.22, A9.30, A9.60.

No underground parking garage.

Plaza A: Generally identical to developer's submission of 07.03.2019: references A2.00, A2.01, A2.02, A2.21(modified for the parking design), A2.22(same note on parking), A2.30, A2.41.

All retail gsf is converted to residential. As a result, the height of the building is lowered from 45 ft. to 40 ft., which allows it to comply with the existing height limit.

Plaza B: Same comments as to Plaza A above. Developer's submission of 07.03.2019: references A3.00(retail converted to residential), A3.01, A3.02, A3.03, A3.21(modified for the parking design), A3.22(same comment on parking), A3.24(retail converted to residential; building height adjusted accordingly), A3.25, A3.41, A3.42.

Walnut Building: The enhanced Walnut Building is re-designed to provide a 7-story residential building. As this building is flanked by the Main Building and the Credit Union and is opposite the approximately 65 ft. tall JCC, it is compatible with the character of its surroundings. The 48,050 square foot net footprint was determined from dimensions in Submittals of 03.06.2017 & 07.03.2019: references VAR 13, 14, 19.

General dimensions: Southside east-west 305ft; Northside east-west 240ft; North-south : 175ft.; Triangle at Credit Union: 155ft. base, 175ft. height. Adjusted for light-courts and setbacks.

Main Building/Center A&B: Use the developer's unit configurations and sizes from 03/03/2019:

predominant references A6.02, A6.03, A6.04, A6.05, A6.06, A6.07, A6.08, A6.09, A6.19(modified for Walnut Passage; no Levels 6 and 7), A6.21(modified for Walnut Passage; no levels 6 and 7), A6.22(no Levels 6 and 7), A6.30, A6.46(no Levels 6 and 7).

The Community Preservation Lookalike Variant, unlike the developer's, preserves the historic characteristics of the building and fully complies with the Secretary of the Interior's Standards for the treatment of historic properties.

The Draft EIR acknowledges that the developer's design would have a substantial adverse effect on the historic characteristics of the listed building and landscaping.

The developer proposes to cut a 40 ft. gap through all levels of the main building, thereby creating two separate structures and adding 2 and 3 new levels on top, thereby impairing the horizontality of the building.

The Community Preservation Lookalike Variant, in accordance with the SOISs, adds one set back level, Level 5, to the main building. As noted above, the developer would add Level 5, Level 6 and Level 7.

Walnut Passage: In order for the developer to create the 40 ft. wide Walnut Walk which would connect the north and south sides of the property in alignment with Walnut St., the developer proposes to bifurcate the building with a 40 ft cut through all existing levels of the building.

There is a better solution.

The Community Preservation Lookalike Variant design calls for a ground level, utilizing the same elevation as the developer, 15 ft high (Level 1) by 20 ft. wide entry/exit on the north and south sides of the building. This entry/exit would extend 35 ft. into the building where it would open up into a 35 ft. wide by 75 ft. long landscaped Center Court which also serves as a Light Court in the building. This design fully maintains the historic characteristics of the Main building while at the same time meeting

the developer's desire in alignment with Walnut Street for connectivity.

A case of form follows function.

Summary: Same number of units(744) in approx.. five years, more residential gsf than the developer's proposal, compliant with RM-1 zoning, historically compatible, neighborhood responsive.

COMMUNITY FULL PRESERVATION ALTERNATIVE VARIANT 2

OVERVIEW

The Community Full Preservation Alternative Variant 2 – CFPAV2 -would construct the same number of new housing units as the developer's proposed project variant (744 units) and would be completed in approximately four years rather than the 7-15 years requested by the developer to complete his proposals. The CFPAV2 would preserve virtually all of the character-defining features of the main building and its integrated landscaping, which are listed in the California Register of Historical Resources pursuant to Section 4851(a)(2) of the California Code of Regulations.

The CFPAV 2 would excavate for a single approximately two-level underground parking garage. In contrast, the developer proposes to excavate for four new underground garages, some consisting of three levels.

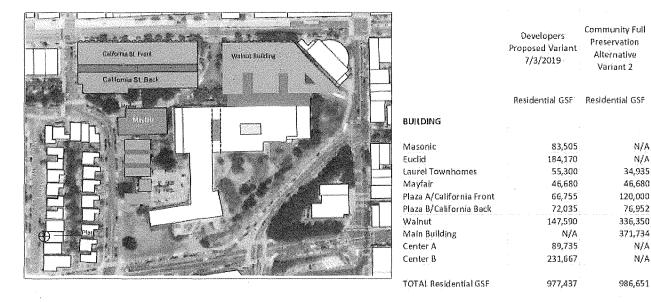
The Community Full Preservation Alternative Variant 2 would:

- (1) convert the interior of the main building to residential uses while retaining the existing 1,500 gsf cafe, 11,500 gsf childcare center, and 5,000 gsf of the existing office space (at the developer's option, this existing office space could be converted to residential use),
- (2) construct three new residential buildings (California Front, California Back, Walnut) along California Street where parking lots are now located, construct the Mayfair new residential building near the intersection of Mayfair Drive and Laurel Street, and construct five Laurel St. townhomes north of the Euclid Green
- (3) provide at least 64 flat-type family-sized units in the California Front Building, with affordable senior housing in the enhanced Walnut Building.
 - (4) Construct 5 Laurel St. Duplexes using the Developers' design and layouts,

except that the fourth story would be removed and the third story set back 15 feet at its front. See section "Summary of Building Calculations" in the last section.

- (5) excavate for approximately two levels of underground parking.
- (6) propose all freight loading and unloading to be conducted in the underground freight loading areas accessed from Presidio Avenue and all passenger loading and unloading to be conducted inside the site in turnarounds or in the underground parking garage.
- (7) retain the historically significant landscaping designed by the renowned landscape architects of Eckbo, Royston & Williams which is integrated with the window-walled main building, including without limitation the Eckbo Terrace and the existing landscaped green spaces along Euclid Avenue, Presidio Avenue and some of Laurel St. (see layout) which would be designated as community benefits in the development agreement,
- (8) preserve the majority of the 195 mature trees on the site which are comprised of 48 different tree species (Initial Study p. 16), and
- (9) maintain public vistas of the downtown and Golden Gate Bridge and the historically significant main building and integrated landscaping.

Figure 2: Community Full Preservation Alternative Variant 2



The CFPA Variant 2 would add units to the Walnut Building which could be used for senior housing and additional units within the other buildings. The CFPAV 2 would use all the new construction for residential use and would not rezone the site to permit the approximately 34,500 gsf of retail uses, as the developer proposes.

THE COMMUNITY FULL PRESERVATION ALTERNATIVE VARIANT 2 WOULD PROVIDE THE SAME AMOUNT OF NEW HOUSING UNITS IN APPROXIMATELY FOUR YEARS WITHOUT ADVERSELY IMPACTING A HISTORICALLY SIGNIFICANT RESOURCE.

The CFPAV 2 would preserve the character-defining features of the main building and integrated landscaping, which are listed in the California Register of Historical Resources pursuant to Section 4851(a)(2) of the California Code of Regulations. (Ex. A, confirmation of listing) The window-walled main building would be converted to primarily residential use. This CFPAV 2 would have the same number of residential units as the developer's proposed project Variant (744) and would be constructed in approximately four

years because the existing main building would be converted to residential use at the same time as the new residential buildings are constructed, to the greatest extent feasible pursuant to staging. The CFPAV 2 would entail far less excavation, as it would have only one new, approximately two level, underground parking garage along California Street and a total of approximately 558 on-site parking spaces. In contrast, the developers' variant proposes to construct four new underground parking garages, to provide a total of 873 parking spaces. The CFPAV 2 would excavate only under the existing parking lots along California St.- the easiest, least disruptive, quickest most efficient excavation- whereas the developer would carry out major excavation on all quadranta of the site including major excavations on Masonic, on Euclid (which entails a substantial portions of Laurel Hill), as well as under the existing parking lots along California St.

This CFPAV 2 would retain the existing Eckbo Terrace, the existing landscaped green spaces along Euclid Avenue, Presidio Avenue and some of Laurel St. (see layout). The existing Terrace would be designated as Privately-Owned, Publicly-Accessible Open Space in recorded deed restrictions and would be open to the public. A new ground level Walnut Passage would be constructed to connect Walnut and Masonic Avenue and be opened to the public.

The character-defining features of the existing main building that this CFPAV 2 would retain include all of the following:

Plan of the building with wings open along the sides to the immediate landscape and to views of the distant city.

Horizontality of massing.

Horizontallines of projecting edges of concrete floors.

Horizontal bands of nearly identical

window units.

Uninterrupted glass walls.

Brick accents and trim.

Wrought iron deck railings that match gates in the landscape.

The character-defining features of the existing landscape that this CFPAV 2 would retain include all of the following:

The Eckbo Terrace, which was designed to integrate the architecture of the building with the site and with the broader setting (through views of San Francisco), key character-defining features include its biomorphic-shaped (amoeba-shaped) lawn surrounded by a paved terrace and patio (paved with exposed aggregate concrete divided into panels by rows of brick), brick retaining wall and large planting bed around the east and north sides of the paved patio, custom-designed wood benches, and three circular tree beds constructed of modular sections of concrete.

In the two outdoor sitting areas on the east and west sides of the area now used as an auditorium, key character-defining features for the area on the west side include the pavement (exposed aggregate divided into panels by rows of bricks), circular tree bed constructed of modular sections of concrete, and metal benches; key character-defining features for the area on the east side include the pavement (concrete divided into panels by wood inserted into expansion joints).

All passenger loading, pick-ups and drop-offs are proposed to be internal to the site,

and turnarounds will be provided in front of the main building on California/Walnut. All freight loading and unloading is proposed to be conducted in the underground freight loading areas accessed from Presidio Avenue.

Vegetation features that help to integrate the character of the Fireman's Fund site with that of the surrounding residential neighborhoods that will be retained include (1) the large Cypress trees in the existing west parking lot area, (2) the lawns on the south and east sides of the property and portions of the west side, and (3) the planted banks along Masonic street.

In this CFPAV 2 the existing 1,500 gsf cafe and 11,500 gsf childcare center would remain in their present locations in the main building. Approximately 5,000 square feet of the existing nonconforming office space in the main building would remain, which the developer could continue to use for offices. At the developer's option, this existing office space could be converted to residential use.

In the CFPAV2, new residential buildings (California Front & Back and Walnut) would be constructed along California Street where parking lots are currently located, and a Mayfair building generally identical to the Developers' plan would also be constructed.

The new California Front building units would be designed for families, averaging 1,875gsf. This building would be designed to be compatible with both the main building and the existing buildings along the north side of California Street and would maintain the rhythm and scale of the townhouses across California Street. Each California Front building would be 40 feet tall, approximately 25 feet wide and 100 feet in length with 25% of that length consisting of a private rear yard. Approximately 16 new buildings containing 64 units would be built in the California Front building between Laurel Street and Walnut Street. Two adjacent residential units would share one elevator, a common stairway and one mechanical shaft. The

elevator would provide access to the underground garage constructed under these buildings.

The new California Street Back building would face inward toward the existing main building and be constructed with window walls designed to be compatible with the character-defining features of the windows in the existing main building. They would not have private rear yards. They would be sculpted to be a minimum of 42 ft. from the large Monterey Cypress trees that remain from the Laurel Hill Cemetery, so the lengths of the buildings would vary from approximately 35 to 72 feet long, and each unit would be approximately 25 feet wide. They would have 60 units, with the average unit size 1,283 gsf depending on location, and the buildings would be 40 feet tall and be constructed between Laurel Street and Walnut Street. Two adjacent residential units would share one elevator, a common stairway and one mechanical shaft.

In this CFPAV2, approximately 270 residential units would be provided in the existing main building, averaging 1,377gsf. The developer can configure the size of the units and/or eliminate the office use. Internal Light Courts similar to those described on Developer's August 17, 2017 plan sheets A6. 15 and A6. 16 will be located where feasible.

For these units, parking with direct access would be provided in the existing underground garage in the main building.

A new 70-foot tall Walnut Building would be built along California Street between Walnut Street and Presidio Avenue. This building would contain approximately 310 residential units with an average 1,085 gsf. The developer can configure the size of the units. For these units, parking with direct access would be provided in the new underground garage constructed under this building.

In the CFPAV2, a new 40-foot tall Mayfair Building, based on the Developers' design and layout, would be constructed approximately east of Mayfair Drive at Laurel Street. The Mayfair Building would have 30 residential units with an average size of 1,556 gsf. The Mayfair Building would not contain an underground parking garage. For these units, parking would be provided in the new underground garages constructed under the California Street Front and Back Buildings. The Mayfair Building would be constructed of window walls designed to be compatible with the character-defining features of the windows in the existing main building.

Under the CFPV2, all Truck Loading or Unloading is proposed to occur in the underground garage accessed on Presidio Avenue, and trucks and automobiles will have ingress and egress to these areas for loading, unloading, pick- ups, drop-offs and parking. Passenger vehicles and automobiles will also have ingress and egress to the site through the Walnut Gate at Walnut and California Streets and through the Mayfair Gate at Mayfair and Laurel streets. Passenger vehicles and automobiles will also have access to a turnaround for passenger loading and unloading through the Laurel Street gate and through the Walnut gate.

SUMMARY OF BUILDING CALCULATIONS

The Community Full Preservation Alternative Variant 2 re-purposes the historic main building and utilizes a combination of new designs and the developers design, unit configuration layouts, sizes, etc.

The Community Full Preservation Alternative Variant 2 preserves both the historic Eckbo
Terrace and the existing landscaped green spaces along Euclid Avenue and Presidio

Avenue and some of Laurel Street.

To this day the green spaces are used by families, friends, children, moon-watchers, etc..

The Community Full Preservation Variant 2 uses much of the DEIR Community Full Preservation Alternative Variant submitted in response to the Draft EIR with the following major changes: Developer's Laurel Hill Duplexes added(5); Developer's Mayfair Building adopted; Walnut Building enhanced; one level, Level 5, added to the core of the main building; ground level Walnut Passage created. California St. Front and Back Buildings remain unchanged.

There is no retail.

The Community Full Preservation Alternative Variant 2 is shown on pg. 3 above.

Masonic Building: Eliminated to preserve the historic green-space encompassing Eckbo

Terrace. Retaining this historic green space will provide a place for the public to host

resident events such as July 4 barbecues, etc. with views of the City.

No underground parking garage in this area.

Euclid Building: Eliminated to preserve the historic parklike greenspace and the historic main building that occupies Laurel Hill. It allows the childcare center and play area to remain in its present location in the sun as opposed to the developer's proposed heavily shadowed area alongside the Credit Union.

No underground parking garage in this area.

Laurel Duplexes: Similar to developer's submission of 07.03.2019 modified to reduce height to 30 ft. and top floor set back 15 ft. References: A10.01(two southernmost duplexes eliminated to preserve Historic Laurel Hill), A10.02(same comment), A10.03, A10.11(modified for height, setback and elimination of Duplex 01 & 02), A10.12(same comment), A10.13(same comment), A10.21(same comment), A10.23(same comment), A10.24(same comment), A10.25(same comment).

As noted previously the two townhomes at the top of Laurel St. have been eliminated to preserve this historic green space. The five remaining townhomes are lowered from 40 ft. to 30 ft. to better reflect the 20 ft. homes on the west side of Laurel St. Additionally the third floor is set back 15 ft.

Mayfair Building: Generally identical to developers' 07/03/2019 submission: predominant reference A9.01, A9.02, A9.03, A9.04, A9.11, A9.12, A9.21, A9.22, A9.30, A9.60.

No underground parking garage.

California St. Front: The 4-story townhome buildings occupy an approximately 400 ft. long by 75ft. deep (plus 25 ft backyard) section along California St. between Laurel St. and Walnut St. presently occupied by surface parking lots. Reference: Site Survey R0.00

PPA/EEA 03.23.2016; Draft EIR Fig. 2.23; DEIR Fig. 2.24. Building footprint 30,000gsf.

California St. Back: The 4-story townhome buildings occupy approximately 375 ft. of the rear portion of this section along California St. between Laurel St. and Walnut St. In order to preserve the historic Monterey Cypress trees the units vary in depth from 35 ft. to 72 ft. The footprint of these building is approximately 19,238gsf.

Walnut Building: The enhanced Walnut Building is re-designed to provide a 7-story residential building. As this building is flanked by the Main Building and the Credit Union and is opposite the 65 ft. tall JCC, it is compatible with the character of its surroundings. The 48,050 square foot net footprint was determined from dimensions in developer's Submittals of 03.06.2017 & 07.03.2019: reference VAR 13, 14, 19.

General dimensions: Southside east-west 305ft; Northside east-west 240ft; North-south: 175ft.; Triangle near Credit Union: 155ft. base, 175ft. height. Adjusted for light-courts and setbacks.

Main Building: The Community Full Preservation Alternative Variant 2, unlike the developer's Variant, does not destroy the historic characteristics of the building and fully complies with the Secretary of the Interior's Standards for the treatment of historic properties. The Draft EIR acknowledges that the developer's design would have a substantial adverse effect on the historic characteristics of the listed building and

landscaping.

The developer proposes to cut a 40 ft. gap through all levels of the main building thereby creating two separate structures, and adding two and three levels on top, thereby impairing the horizontality of the building.

The Community Full Preservation Alternative Variant 2, in accordance with the SOISs, adds one level, Level 5, to the main building. The developer would add add Level 5, Level 6 and Level 7.

Walnut Passage: In order to construct the developer's 40 ft. wide Walnut Walk which would connect the north and south sides of the property in alignment with Walnut St. the developer proposes to bifurcate the building with a 40 ft cut through all existing levels of the building.

There is a better solution.

The Community Full Preservation Alternative Variant 2 design calls for a new passageway through the first floor of the main building or higher portions of the main building if needed to accommodate the slope of the property. This passageway would beg 15 ft high (Level 1) by 20 ft. wide entry/exit on the north and south sides of the building. This entry/exit would extend 35 ft. into the building where it would open up into a 35 ft. wide by 75 ft. long landscaped Center Court which also serves as a Light Court in the building. This design fully maintains the historic characteristics of the Main building while at the same time meeting the developer's desire for connectivity in alignment with Walnut St.

A case of form follows function.

Summary: Same number of units (744) in less than 4 years, more residential gsf than the developer's proposal, compliant with RM-1 zoning, historically compatible, neighborhood responsive.

COMMUNITY FULL PRESERVATION ALTERNATIVE VARIANT 2

OVERVIEW

The Community Full Preservation Alternative Variant 2 – CFPAV2 -would construct the same number of new housing units as the developer's proposed project variant (744 units) and would be completed in approximately four years rather than the 7-15 years requested by the developer to complete his proposals. The CFPAV2 would preserve virtually all of the character-defining features of the main building and its integrated landscaping, which are listed in the California Register of Historical Resources pursuant to Section 4851(a)(2) of the California Code of Regulations.

The CFPAV 2 would excavate for a single approximately two-level underground parking garage. In contrast, the developer proposes to excavate for four new underground garages, some consisting of three levels.

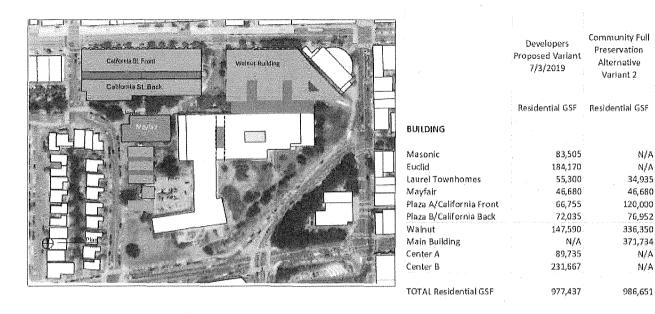
The Community Full Preservation Alternative Variant 2 would:

- (1) convert the interior of the main building to residential uses while retaining the existing 1,500 gsf cafe, 11,500 gsf childcare center, and 5,000 gsf of the existing office space (at the developer's option, this existing office space could be converted to residential use),
- (2) construct three new residential buildings (California Front, California Back, Walnut) along California Street where parking lots are now located, construct the Mayfair new residential building near the intersection of Mayfair Drive and Laurel Street, and construct five Laurel St. townhomes north of the Euclid Green
- (3) provide at least 64 flat-type family-sized units in the California Front Building, with affordable senior housing in the enhanced Walnut Building.
 - (4) Construct 5 Laurel St. Duplexes using the Developers' design and layouts,

except that the fourth story would be removed and the third story set back 15 feet at its front. See section "Summary of Building Calculations" in the last section.

- (5) excavate for approximately two levels of underground parking.
- (6) propose all freight loading and unloading to be conducted in the underground freight loading areas accessed from Presidio Avenue and all passenger loading and unloading to be conducted inside the site in turnarounds or in the underground parking garage.
- (7) retain the historically significant landscaping designed by the renowned landscape architects of Eckbo, Royston & Williams which is integrated with the window-walled main building, including without limitation the Eckbo Terrace and the existing landscaped green spaces along Euclid Avenue, Presidio Avenue and some of Laurel St. (see layout) which would be designated as community benefits in the development agreement,
- (8) preserve the majority of the 195 mature trees on the site which are comprised of 48 different tree species (Initial Study p. 16), and
- (9) maintain public vistas of the downtown and Golden Gate Bridge and the historically significant main building and integrated landscaping.

Figure 2: Community Full Preservation Alternative Variant 2



The CFPA Variant 2 would add units to the Walnut Building which could be used for senior housing and additional units within the other buildings. The CFPAV 2 would use all the new construction for residential use and would not rezone the site to permit the approximately 34,500 gsf of retail uses, as the developer proposes.

THE COMMUNITY FULL PRESERVATION ALTERNATIVE VARIANT 2 WOULD PROVIDE THE SAME AMOUNT OF NEW HOUSING UNITS IN APPROXIMATELY FOUR YEARS WITHOUT ADVERSELY IMPACTING A HISTORICALLY SIGNIFICANT RESOURCE.

The CFPAV 2 would preserve the character-defining features of the main building and integrated landscaping, which are listed in the California Register of Historical Resources pursuant to Section 4851(a)(2) of the California Code of Regulations. (Ex. A, confirmation of listing) The window-walled main building would be converted to primarily residential use. This CFPAV 2 would have the same number of residential units as the developer's proposed project Variant (744) and would be constructed in approximately four

years because the existing main building would be converted to residential use at the same time as the new residential buildings are constructed, to the greatest extent feasible pursuant to staging. The CFPAV 2 would entail far less excavation, as it would have only one new, approximately two level, underground parking garage along California Street and a total of approximately 558 on-site parking spaces. In contrast, the developers' variant proposes to construct four new underground parking garages, to provide a total of 873 parking spaces. The CFPAV 2 would excavate only under the existing parking lots along California St.- the easiest, least disruptive, quickest most efficient excavation- whereas the developer would carry out major excavation on all quadranta of the site including major excavations on Masonic, on Euclid (which entails a substantial portions of Laurel Hill), as well as under the existing parking lots along California St.

This CFPAV 2 would retain the existing Eckbo Terrace, the existing landscaped green spaces along Euclid Avenue, Presidio Avenue and some of Laurel St. (see layout). The existing Terrace would be designated as Privately-Owned, Publicly-Accessible Open Space in recorded deed restrictions and would be open to the public. A new ground level Walnut Passage would be constructed to connect Walnut and Masonic Avenue and be opened to the public.

The character-defining features of the existing main building that this CFPAV 2 would retain include all of the following:

Plan of the building with wings open along the sides to the immediate landscape and to views of the distant city.

Horizontality of massing.

Horizontal lines of projecting edges of concrete floors.

Horizontal bands of nearly identical

window units.

Uninterrupted glass walls.

Brick accents and trim.

Wrought iron deck railings that match gates in the landscape.

The character-defining features of the existing landscape that this CFPAV 2 would retain include all of the following:

The Eckbo Terrace, which was designed to integrate the architecture of the building with the site and with the broader setting (through views of San Francisco), key character-defining features include its biomorphic-shaped (amoeba-shaped) lawn surrounded by a paved terrace and patio (paved with exposed aggregate concrete divided into panels by rows of brick), brick retaining wall and large planting bed around the east and north sides of the paved patio, custom-designed wood benches, and three circular tree beds constructed of modular sections of concrete.

In the two outdoor sitting areas on the east and west sides of the area now used as an auditorium, key character-defining features for the area on the west side include the pavement (exposed aggregate divided into panels by rows of bricks), circular tree bed constructed of modular sections of concrete, and metal benches; key character-defining features for the area on the east side include the pavement (concrete divided into panels by wood inserted into expansion joints).

All passenger loading, pick-ups and drop-offs are proposed to be internal to the site,

and turnarounds will be provided in front of the main building on California/Walnut. All freight loading and unloading is proposed to be conducted in the underground freight loading areas accessed from Presidio Avenue.

Vegetation features that help to integrate the character of the Fireman's Fund site with that of the surrounding residential neighborhoods that will be retained include (1) the large Cypress trees in the existing west parking lot area, (2) the lawns on the south and east sides of the property and portions of the west side, and (3) the planted banks along Masonic street.

In this CFPAV 2 the existing 1,500 gsf cafe and 11,500 gsf childcare center would remain in their present locations in the main building. Approximately 5,000 square feet of the existing nonconforming office space in the main building would remain, which the developer could continue to use for offices. At the developer's option, this existing office space could be converted to residential use.

In the CFPAV2, new residential buildings (California Front & Back and Walnut) would be constructed along California Street where parking lots are currently located, and a Mayfair building generally identical to the Developers' plan would also be constructed.

The new California Front building units would be designed for families, averaging 1,875gsf. This building would be designed to be compatible with both the main building and the existing buildings along the north side of California Street and would maintain the rhythm and scale of the townhouses across California Street. Each California Front building would be 40 feet tall, approximately 25 feet wide and 100 feet in length with 25% of that length consisting of a private rear yard. Approximately 16 new buildings containing 64 units would be built in the California Front building between Laurel Street and Walnut Street. Two adjacent residential units would share one elevator, a common stairway and one mechanical shaft. The

elevator would provide access to the underground garage constructed under these buildings.

The new California Street Back building would face inward toward the existing main building and be constructed with window walls designed to be compatible with the character-defining features of the windows in the existing main building. They would not have private rear yards. They would be sculpted to be a minimum of 42 ft. from the large Monterey Cypress trees that remain from the Laurel Hill Cemetery, so the lengths of the buildings would vary from approximately 35 to 72 feet long, and each unit would be approximately 25 feet wide. They would have 60 units, with the average unit size 1,283 gsf depending on location, and the buildings would be 40 feet tall and be constructed between Laurel Street and Walnut Street. Two adjacent residential units would share one elevator, a common stairway and one mechanical shaft.

In this CFPAV2, approximately 270 residential units would be provided in the existing main building, averaging 1,377gsf. The developer can configure the size of the units and/or eliminate the office use. Internal Light Courts similar to those described on Developer's August 17, 2017 plan sheets A6. 15 and A6. 16 will be located where feasible.

For these units, parking with direct access would be provided in the existing underground garage in the main building.

A new 70-foot tall Walnut Building would be built along California Street between Walnut Street and Presidio Avenue. This building would contain approximately 310 residential units with an average 1,085 gsf. The developer can configure the size of the units. For these units, parking with direct access would be provided in the new underground garage constructed under this building.

In the CFPAV2, a new 40-foot tall Mayfair Building, based on the Developers' design and layout, would be constructed approximately east of Mayfair Drive at Laurel Street. The Mayfair Building would have 30 residential units with an average size of 1,556 gsf. The Mayfair Building would not contain an underground parking garage. For these units, parking would be provided in the new underground garages constructed under the California Street Front and Back Buildings. The Mayfair Building would be constructed of window walls designed to be compatible with the character-defining features of the windows in the existing main building.

Under the CFPV2, all Truck Loading or Unloading is proposed to occur in the underground garage accessed on Presidio Avenue, and trucks and automobiles will have ingress and egress to these areas for loading, unloading, pick- ups, drop-offs and parking. Passenger vehicles and automobiles will also have ingress and egress to the site through the Walnut Gate at Walnut and California Streets and through the Mayfair Gate at Mayfair and Laurel streets. Passenger vehicles and automobiles will also have access to a turnaround for passenger loading and unloading through the Laurel Street gate and through the Walnut gate.

SUMMARY OF BUILDING CALCULATIONS

The Community Full Preservation Alternative Variant 2 re-purposes the historic main building and utilizes a combination of new designs and the developers design, unit configuration layouts, sizes, etc.

The Community Full Preservation Alternative Variant 2 preserves both the historic Eckbo

Terrace and the existing landscaped green spaces along Euclid Avenue and Presidio

Avenue and some of Laurel Street.

To this day the green spaces are used by families, friends, children, moon-watchers, etc..

The Community Full Preservation Variant 2 uses much of the DEIR Community Full Preservation Alternative Variant submitted in response to the Draft EIR with the following major changes: Developer's Laurel Hill Duplexes added(5); Developer's Mayfair Building adopted; Walnut Building enhanced; one level, Level 5, added to the core of the main building; ground level Walnut Passage created. California St. Front and Back Buildings remain unchanged.

There is no retail.

The Community Full Preservation Alternative Variant 2 is shown on pg. 3 above.

Masonic Building: Eliminated to preserve the historic green-space encompassing Eckbo

Terrace. Retaining this historic green space will provide a place for the public to host

resident events such as July 4 barbecues, etc. with views of the City.

No underground parking garage in this area.

Euclid Building: Eliminated to preserve the historic parklike greenspace and the historic main building that occupies Laurel Hill. It allows the childcare center and play area to remain in its present location in the sun as opposed to the developer's proposed heavily shadowed area alongside the Credit Union.

No underground parking garage in this area.

Laurel Duplexes: Similar to developer's submission of 07.03.2019 modified to reduce height to 30 ft. and top floor set back 15 ft. References: A10.01(two southernmost duplexes eliminated to preserve Historic Laurel Hill), A10.02(same comment), A10.03, A10.11(modified for height, setback and elimination of Duplex 01 & 02), A10.12(same comment), A10.13(same comment), A10.21(same comment), A10.23(same comment), A10.24(same comment), A10.25(same comment).

As noted previously the two townhomes at the top of Laurel St. have been eliminated to preserve this historic green space. The five remaining townhomes are lowered from 40 ft. to 30 ft. to better reflect the 20 ft. homes on the west side of Laurel St. Additionally the third floor is set back 15 ft.

Mayfair Building: Generally identical to developers' 07/03/2019 submission: predominant reference A9.01, A9.02, A9.03, A9.04, A9.11, A9.12, A9.21, A9.22, A9.30, A9.60.

No underground parking garage.

California St. Front: The 4-story townhome buildings occupy an approximately 400 ft. long by 75ft. deep (plus 25 ft backyard) section along California St. between Laurel St. and Walnut St. presently occupied by surface parking lots. Reference: Site Survey R0.00

PPA/EEA 03.23.2016; Draft EIR Fig. 2.23; DEIR Fig. 2.24. Building footprint 30,000gsf.

California St. Back: The 4-story townhome buildings occupy approximately 375 ft. of the rear portion of this section along California St. between Laurel St. and Walnut St. In order to preserve the historic Monterey Cypress trees the units vary in depth from 35 ft. to 72 ft. The footprint of these building is approximately 19,238gsf.

Walnut Building: The enhanced Walnut Building is re-designed to provide a 7-story residential building. As this building is flanked by the Main Building and the Credit Union and is opposite the 65 ft. tall JCC, it is compatible with the character of its surroundings. The 48,050 square foot net footprint was determined from dimensions in developer's Submittals of 03.06.2017 & 07.03.2019: reference VAR 13, 14, 19.

General dimensions: Southside east-west 305ft; Northside east-west 240ft; North-south: 175ft.; Triangle near Credit Union: 155ft. base, 175ft. height. Adjusted for light-courts and setbacks.

Main Building: The Community Full Preservation Alternative Variant 2, unlike the developer's Variant, does not destroy the historic characteristics of the building and fully complies with the Secretary of the Interior's Standards for the treatment of historic properties. The Draft EIR acknowledges that the developer's design would have a substantial adverse effect on the historic characteristics of the listed building and

landscaping.

The developer proposes to cut a 40 ft. gap through all levels of the main building thereby creating two separate structures, and adding two and three levels on top, thereby impairing the horizontality of the building.

The Community Full Preservation Alternative Variant 2, in accordance with the SOISs, adds one level, Level 5, to the main building. The developer would add add Level 5, Level 6 and Level 7.

Walnut Passage: In order to construct the developer's 40 ft. wide Walnut Walk which would connect the north and south sides of the property in alignment with Walnut St. the developer proposes to bifurcate the building with a 40 ft cut through all existing levels of the building.

There is a better solution.

The Community Full Preservation Alternative Variant 2 design calls for a new passageway through the first floor of the main building or higher portions of the main building if needed to accommodate the slope of the property. This passageway would beg 15 ft high (Level 1) by 20 ft. wide entry/exit on the north and south sides of the building. This entry/exit would extend 35 ft. into the building where it would open up into a 35 ft. wide by 75 ft. long landscaped Center Court which also serves as a Light Court in the building. This design fully maintains the historic characteristics of the Main building while at the same time meeting the developer's desire for connectivity in alignment with Walnut St.

A case of form follows function.

Summary: Same number of units (744) in less than 4 years, more residential gsf than the developer's proposal, compliant with RM-1 zoning, historically compatible, neighborhood responsive.

Major, Erica (BOS)

From: Gina Symczak <gdonati@sbcglobal.net>

Sent: Wednesday, October 16, 2019 12:35 PM

To: Major, Erica (BOS); Peskin, Aaron (BOS); Safai, Ahsha (BOS); Haney, Matt (BOS); Board of

Supervisors, (BOS); Stefani, Catherine (BOS); Mar, Gordon (BOS); Ronen, Hillary; Yee, Norman (BOS); Mandelman, Rafael (BOS); Fewer, Sandra (BOS); Brown, Vallie (BOS);

Walton, Shamann (BOS)

Cc: Mario Donati

Subject: public comment on 3333 California St. --record number

2015-014028CUA/PCA/MAP/DVA

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hello,

We currently live in Cow Hollow and Lone Mountain, respectively, and have plans to move back into our family home in Laurel Heights within the next few years when we retire. Our family has lived in Laurel Heights for almost 70 years, so we know, understand and treasure the neighborhood.

We respectfully ask that you carefully listen to and consider the Laurel Heights community of neighbors, like our family, as you evaluate the plans for 3333 California Street.

We strongly oppose the Developer's plans for 3333 California, and instead support the Laurel Heights community alternatives proposed by the neighbors which allow for the same number of residential units while preserving the iconic and historical green space. We oppose it, in particular, for the following reasons:

- The green space with mature trees provides much-needed access to nature and open space for the neighborhood which includes low-income residents, as well as many senior residential communities (Jewish Family Services/Community Center, Sagebrook, On Lok and smaller residential facilities), and residents of the many flats and apartment buildings that don't have yards or green space
- The 15 year construction period is ridiculous and will negatively impact —possibly permanently---the vital retail provided by Laurel Village, Trader Joes and nearby Sacramento Street merchants and Target Mall. The Community Plan Alternatives can be realized more quickly (7 years) because they involve less excavation and demolition. People live and work here—this can't afford to become another Stockton Street subway debacle.

As you consider this request, please also consider NOT allowing the following that would forever change the character of our neighborhood:

- Retail operation after 11pm
- Night-time "Adult" Business

- Massage establishments
- Gambling and arcade businesses
- tattoo parlours
- short term residential occupancy of less than 60 days
- homeless navigation center

Thank you very much for your consideration of the perspective and needs of the Laurel Heights community of neighbors.

Gina Donati Symczak Mario Donati

Major, Erica (BOS)

From:

victoria underwood <victoria.underwood@att.net>

Sent:

Wednesday, October 16, 2019 11:42 AM

To:

Major, Erica (BOS); Peskin, Aaron (BOS); Safai, Ahsha (BOS); Haney, Matt (BOS); Board of Supervisors, (BOS); Mar, Gordon (BOS); Ronen, Hillary; Yee, Norman (BOS); Mandelman,

Rafael (BOS); Fewer, Sandra (BOS); Brown, Vallie (BOS); Stefani, Catherine (BOS); Walton,

Shamann (BOS); laurelheights2016@gmail.com

Subject:

3333 California Street – Land Use & Zoning

Subjects Files Nos. 190844 and

190845

Attachments:

3333 California Street - Land Use Public Hearing - 10-21-2019.docx

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Commissioners,

Attached please find my comments with respect to the upcoming hearing regarding the above-referenced proposed redevelopment site and proposed use and zoning changes.

Thank you for your review in advance.

Victoria Underwood

Angela Calvillo, Clerk of the Board Land Use and Transportation Committee City Hall 1 Dr. Carlton B Goodlett Place, Room 244 San Francisco, CA 94102

Re: Laurel Heights Partners, LLC Developer 3333 California Street – Land Use & Zoning Subjects Files Nos. 190844 and 190845

Dear Committee Members:

Our District Supervisor along with the Project Developer have introduced new land use and zoning changes for your approval. The Community has by and large continued to object to the massive scope of the Developer's Proposed Project, so much so, that the LHIA submitted a Community Preservation Lookalike Alternative Variant Plan and a Variant 2 Plan for serious review and consideration to the City Planning. Neither of the two Variant plans includes office or retail but does provide the same number of residential housing units the Developer has agreed to build (744). I am not a member of the LHIA. However, I support the referenced plans and other efforts put forth by the LHIA to also Preserve the Historical Fireman's Fund Building and designed site landscaping.

Supervisor Stefani has introduced zoning changes that the Community does not embrace because Flexible Retail is not permitted in an NC-S District (Planning Code Section 713), District 2, or in the Sacramento Street Neighborhood Commercial District (Planning Code Article 7).

"<u>Flexible Retail Legislation</u>" File 180806 under Katy Tang was drafted principally as a permitted use in <u>District 4</u>.

Under the Flexible Retail, any business that applies for a Flexible Retail Use would need to have at least 2 of the uses listed at any given time. There would be a grace period of 60 days to allow a business to search for another business tenant that falls under the Flexible Retail use definition. But, if a new tenant is not identified within this period, the Flexible Retail Use is abandoned, and the business would re-establish its underlining use. There is no reason to include this in the Redevelopment.

Not only would it <u>NOT</u> require neighborhood notifications it would increase the traffic to the site. The retail component of this massive redevelopment was sold to the community as a must have to provide for the demand of the proposed 744 new residential units into the existing community. We have never bought into that thought process as I will explain.

We don't support retail/commercial/office as part of this Redevelopment Project because we believe those 744 residential units will bring much needed struggling independent and small businesses a steady flow of patrons and revitalize the area as a result.

Laurel Village has four financial institutions in one strip center; WFB, Union Bank, Old Republic Bank, Bank of America, and a Charles Schwab Financial Investment Services Office across the street. There are two beauty supply retailers i.e., Sephora and Mercury. Then there is Walgreens that also sells more and more high-value retail make-up and beauty products. They too sell products like those in Laurel Village. We have Susie's Cupcakes that sells cupcakes and cakes but so do Bryan's Market and Cal-Mart. We are lucky enough to have Books Inc., Chico's, an ACE Hardware for all the home supplies (along with the card store Papyrus), gift cards and wrapping paper, school and holiday supplies. We recently lost two restaurants; Osteria at Sacramento and Presidio and Beautiful, the endcap tenant at Laurel Village at Laurel and California. We have Peets and Starbucks and two family-style restaurants.

Whole Foods went in at the Target Center a block away from the Redevelopment site and Trader Joes is even closer and one of the most profitable stores they have. We need to stimulate the independent and small businesses that are here like the Vogue Movie Theater, the interior designers and specialty firms like Sue Fisher King, antique shops and the restaurants and other shops on Sacramento and Presidio Avenue. There are more restaurants east on California and on Fillmore. The proposed office and retail will always be questionable as these services go more toward virtual in the future. Such a change to the allowable zoning uses will making it worse for the neighborhoods surrounding the site.

The Developer <u>should not</u> be able to add the types of retail uses under these descriptions and thereby avoid public notice and neighborhood comments in the process as the Legislation was written. <u>This is not something District 2 constituents</u> and, more specifically, our neighborhood wants.

We have already objected to the following uses proposed by our District Supervisor because they do not reflect the nature or hours of operation in our neighborhood.

The EIR failed to evaluate impacts on traffic, noise and air quality from multiple, flexible retail uses sharing the same retail space because the EIR only evaluated single use retail. The Flexible Retail is not allowed anywhere else in District 2 or in the Sacramento or Fillmore Street commercial districts. The EIR also did not evaluate Social Service or Philanthropic Facilities which is include public uses. We ask that you reject it for District 2. Period. Especially, for this Redevelopment Project which, as proposed is too large and disruptive to the neighborhoods that surround it already.

LIMIT HOURS OF RETAIL OPERATION TO 6 AM TO NO LATER THAN 11 PM. DO NOT ALLOW ANY BUSINESS/RETAIL TO OPERATE UNTIL 11:00 PM (no exceptions)

PROHIBIT OUTDOOR AMPLIFIED SOUND

PROHIBIT THE FOLLOWING NON-RESIDENTIAL USES:

Entertainment, Nighttime Adult Business

Massage Establishment Massage, Foot, Chair

Tattoo Parlors

Internet gambling or other gambling Amusement Game Arcade Restaurant,

Fast Foods

Student Housing

Motel

Short term residential occupancy of 60 days or less such as Air B&B

Shared Work-Space, i.e. "WeWork" or equivalent

Homeless Navigation Center

It is not my suggestion that the Developer would embark on such a major project only to backfill the retail component with these types of uses but we want to ensure that no one can operate any of the above-referenced uses at this site. Additionally, adding Flexible Retail uses will introduce more retail into the site and to make it more of a destination and change the occupancy which was never intended; not to mention these are not value-added uses in our neighborhoods.

The suggestion that such zoning is even being introduced makes me wonder what level of standing the Developer may be thinking for these added retail uses into our mostly residential neighborhood. The Project will house seniors and families with children. This site is directly across the street from the JCC Senior Living Residential Facility and their Pre-School Daycare. Why would these uses even be considered something we'd want in our neighborhood?

We assume that the Developer's interest in building at this location is based on it being strategically located next to San Francisco's old-money neighborhoods and political leaders which supply plenty of demand for the retail component. That too is a double-edged sword to be met with caution as not to draw away customers away from other areas from Fillmore Street to downtown or outprice the average resident in the neighborhood from shopping in their own neighborhood.

Small businesses are failing because rents are so high. That cost gets passed through to the customers. The result is that only those who can afford to patron those businesses do. Business owners aren't short of available customers to purchase goods and services; just those who can afford and sustain repeat business and still pay the operating costs which surely will not decline. We need the residential units to infuse the neighborhood; not more retail and commercial.

We supported housing but not retail. We urge the City Agencies to strike a balance here in a neighborhood that is primarily residential with struggling small and independent businesses on California and Sacramento Streets and on Presidio Avenue. Laurel Village is next to the Redevelopment site at northwest corner of the Project and Geary Street, with every imaginable major retail and commercial service you can think of one to two blocks away from the Project from Euclid. There are also four major hospitals within one block of Geary Street in the immediate area. There are restaurants that exist now that can benefit with no new shopping areas being built. Building more will just reduce the chances for successful retailing.

Affordable Housing has been a frustrating subject. The Academy of Art School was one of the abusers of gobbling up housing. They absorbed buildings and gobbling up hotels and apartment buildings, charging high housing costs to student families, taking much needed housing off the market which would have otherwise been available to residents in San Francisco.

Then, the Air BNB craze. This has creating a revolving door in neighborhood communities like ours. This has taken much needed housing units off the availability market. These apartments and condos are needed for live-work residents which has only exacerbated the housing crisis in San Francisco. Instead owners move outside the City or wherever and sign up with Air BNB. The hotels lose and the City loses. And, the community loses. It's not about building more, it's about properly and thoughtfully managing the product you have.

Relative to the drafted Development Agreement, there are public concerns which include, but are not limited to, what looks like to the lay person at least, that the Development Agreement that would allow the developer to build 386 MR housing units and then renege on its responsibility to build the affordable and senior housing by transferring the Walnut Parcel and to the City. There should not be an out on this.

Community support is high when residents believe affordable housing will be built. And, when it turns out to be a bait and switch for the community, bad feels continue long past the completion of a development project.

Please keep in mind, there will be a number of other redevelopment projects to be underway around the same time as the 3333 California Project. The TMG CPMC Redevelopment Project consisting of <u>240 new high-end homes</u> across <u>37 buildings</u> has a new start date of Spring 2020. Demolition is scheduled to start just as UCSF moves

out of 3333 California. All the housing units in this project are 100% at Market Rate, no retail/office and parking for all residents inside the Project. No street parking needed or taken. This Project is two blocks away from 3333 California Street and will impact traffic on California Street.

There is a Mixed-Use Project on Sacramento within the same block on the backside of CPMC that will start 2021 or early 2022. The Project includes demolition of the three existing buildings including an off-street parking garage on the project site, and construction of a four-story, 40-foot tall (an increase of 7 feet from the existing building), mixed-use building containing retail/commercial use, medical offices and 18 residential units comprised of 12 two-bedroom units, and 6 one-bedroom units. Zero- Affordable Housing Units.

- 64 parking spaces on three below-grade levels consisting of 45 short-term public parking spaces on the first and second levels (13 retail spaces and 32 medical spaces)
- 6,555 square feet of New Retail Space
- 18 residential parking spaces on the third level (one per unit), and one car share space.
- The garage would also provide 21 Class 1 bicycle parking spaces and 14 Class 2 bicycle parking spaces on Sacramento Street. The Project includes a dwelling unit mix consisting of 12 two-bedroom units, and 6 one-bedroom units.
- Includes approximately 2,700 gross square feet of common open space via the ground floor rear yard, and 53 square feet of a private deck.
- The garage would also provide 21 Class 1 bicycle parking spaces and 14 Class 2 bicycle parking spaces on Sacramento Street.
- The project includes a dwelling unit mix consisting of 12 two-bedroom units, and 6 one-bedroom units.

The former Copper Penny site at 2670 Geary should also be starting in late 2020 or early 2021. This site is at the high-traffic corner of Geary and Masonic which runs behind 3333 California Street. The site design has been supersized to 10 stories with 95 apartments of different sizes, a 16-car garage and 22 units out of the 95 will be BMR.

It will be up to 3333 California to deliver on the affordable/senior housing component and not get to do in lieu of fees or a transfer of the Walnut Parcel to the City of San Francisco.

Former District 2 Supervisor and Mayor, Mark Farrell, was quoted as saying in the S.F. Business Times at the time that, "Developers will need to show that their plans do not further clog California Street traffic. It's going to be monumental over time. It's a

combination of being exciting and a burden that it happens in the right way." We concur! All these projects are going to cripple all the main arteries in our area. And, there will be frustrated drivers peeling down streets trying to get away or trying to find new ways to commute. Is anyone even remotely thinking about the residents who live in the immediate area of all the upcoming projects or drive through it?

The LHIA presented two Community Preservation Lookalike Alternative Variant Plans that would save the existing green spaces at Presidio/Pine/Masonic and Euclid/Masonic intersections, along with the right-most lanes that reduce backed up traffic now during commute times, and would save existing mature street trees and limit the removal of on-site trees to building three; not 13 buildings on this site. The community surrounding this site believes that less is more and that MORE is just MORE and comes at a terrible price in an established 115-year residential neighborhood.

Taxpayers are invested in the communities and neighborhoods in which they live and have an expectation that the City's governing agencies will plan well, utilize taxes revenues in a smart, productive, responsible and thoughtful way. The hope is that the City will not look at development in a one size fits all or that one project should be targeted to carry more of the burden than another. And, that the City Government will understand and share the crucial concerns relating to these sorts of land use and zoning proposals to <u>not</u> interfere with the framework of existing neighborhoods or the quality of life enjoyed by existing residents. We continue to ask the City to hit pause and take a serious look at what LHIA has proposed for this site.

Thank you for your time and serious consideration of all neighborhood comments. Unfortunately, so far, too many that stand up at these Hearings are either paid to do so or don't live in the immediate neighborhood and, therefore, have no vested interest in the outcome.

When considering the future, please remember the neighborhoods that currently thrive and exist around this site.

Respectfully submitted,

Victoria Underwood 510 Presidio Avenue (@California Street) San Francisco, CA 94115

Victoria.underwood@att.net

Cc:

Erica.major@sfgov.org

Aaron.Peskin@sfgov.org

Ahsha.Safai@sfgov.org

Matt.Haney@sfgov.org

Board.of.Supervisors@sfgov.org

Gordon.Mar@sfgov.org

Hillary.Ronen@sfgov.org

Norman.Yee@sfgov.org

Rafael.Mandelman@sfgov.org

Sandra.Fewer@sfgov.org

Vallie.Brown@sfgov.org

Catherine.Stefani@sfgov.org

Shamann.Walton@sfgov.org

laurelheights2016@gmail.com

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

September 11, 2019

Planning Commission Attn: Jonas Ionin 1650 Mission Street, Ste. 400 San Francisco, CA 94103

Dear Commissioners:

On September 3, 2019, Supervisor Stefani submitted the following proposed legislation:

File No. 190844-2

Ordinance amending the Planning Code to add Section 249.86 to create the 3333 California Street Special Use District and amending Sectional Maps SU03 and HT03 of the Zoning Map; and making environmental findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

File No. 190845-2

Ordinance approving a Development Agreement between the City and County of San Francisco and Laurel Heights Partners, LLC, a Delaware limited liability company, for the development of an approximately 10.25-acre site located at California Street at Presidio Avenue with various public benefits, including 25% affordable housing, a child care center comprised of approximately 14,665 square feet, and approximately 4.47 acres of open space; making findings under the California Environmental Quality Act, findings of conformity with the General Plan, and the eight priority policies of Planning Code, Section 101.1(b); approving certain development impact fees for the project, and waiving certain Planning Code fees and requirements; and confirming compliance with or waiving certain provisions of Administrative Code, Chapter 56, and ratifying certain actions taken in connection therewith, as defined herein.

The proposed ordinances are being transmitted pursuant to Planning Code, Section 302(b), for public hearing and recommendation. The ordinances are pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

By: Erica Major, Assistant Clerk

Land Use and Transportation Committee

c: John Rahaim, Director
Scott Sanchez, Acting Deputy Zoning Administrator
Corey Teague, Zoning Administrator
Lisa Gibson, Environmental Review Officer
Devyani Jain, Deputy Environmental Review Officer
AnMarie Rodgers, Director of Citywide Planning
Dan Sider, Director of Executive Programs
Aaron Starr, Manager of Legislative Affairs
Joy Navarrete, Environmental Planning
Don Lewis, Environmental Planning

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO:

Tom Hui, Director, Department of Building Inspection

John Rahaim, Director, Planning Department

Kate Hartley, Director, Mayor's Office of Housing and Community

Development

Shireen McSpadden, Executive Director, Department of Aging and Adult

Services

FROM:

Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE:

September 11, 2019

SUBJECT:

LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Stefani on September 3, 2019:

File No. 190844

Ordinance amending the Planning Code and Zoning Map to create the 3333 California Street Special Use District; and making environmental findings, findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public convenience, necessity, and welfare under Planning Code, Section 302.

File No. 190845

Ordinance approving a Development Agreement between the City and County of San Francisco and Laurel Heights Partners, LLC, a Delaware limited liability company, for the development of an approximately 10.25acre site located at California Street at Presidio Avenue (3333 California Street), with various public benefits, including 25% affordable housing, a child care center comprised of approximately 14,665 square feet, and approximately 2.87 acres of privately owned, publicly accessible open space; making findings under the California Environmental Quality Act, and findings of conformity with the General Plan, and the eight priority policies of Planning Code, Section 101.1(b); approving certain development impact fees for the project, and waiving certain Planning Code fees and requirements; confirming compliance with or waiving certain provisions of Administrative Code, Chapter 56; ratifying certain actions taken in connection with the Development Agreement, as described herein; and authorizing certain actions to be taken under the Development Agreement, as described herein.

Referral from Board of Supervisors Land Use and Transportation Committee Page 2

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: erica.major@sfgov.org.

c: William Strawn; Department of Building Inspection
Carolyn Jayin, Department of Building Inspection
Scott Sanchez, Planning Department
Corey Teague, Planning Department
Lisa Gibson, Planning Department
Devyani Jain, Planning Department
AnMarie Rodgers, Planning Department
Dan Sider, Planning Department
Aaron Starr, Planning Department
Joy Navarrete, Planning Department
Don Lewis, Planning Department
Eugene Flannery, Mayor's Office of Housing and Community Development
Bridget Badasow, Department of Aging and Adult Services

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

August 5, 2019

Planning Commission Attn: Jonas Ionin 1650 Mission Street, Ste. 400 San Francisco, CA 94103

Dear Commissioners:

On July 30, 2019, Supervisor Stefani submitted the following proposed legislation:

File No. 190844

Ordinance amending the Planning Code to add Section 249.86 to create the 3333 California Street Special Use District and amending Sectional Maps SU03 and HT03 of the Zoning Map; and making environmental findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

File No. 190845

Ordinance approving a Development Agreement between the City and County of San Francisco and Laurel Heights Partners, LLC, a Delaware limited liability company, for the development of an approximately 10.25-acre site located at California Street at Presidio Avenue with various public benefits, including 25% affordable housing, a child care center comprised of approximately 14,665 square feet, and approximately 4.47 acres of open space; making findings under the California Environmental Quality Act, findings of conformity with the General Plan, and the eight priority policies of Planning Code, Section 101.1(b); approving certain development impact fees for the project, and waiving certain Planning Code fees and requirements; and confirming compliance with or waiving certain provisions of Administrative Code, Chapter 56, and ratifying certain actions taken in connection therewith, as defined herein.

The proposed ordinances are being transmitted pursuant to Planning Code, Section 302(b), for public hearing and recommendation. The ordinances are pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

By: Erica Major, Assistant Clerk

Land Use and Transportation Committee

c: John Rahaim, Director
Scott Sanchez, Acting Deputy Zoning Administrator
Corey Teague, Zoning Administrator
Lisa Gibson, Environmental Review Officer
Devyani Jain, Deputy Environmental Review Officer
AnMarie Rodgers, Director of Citywide Planning
Dan Sider, Director of Executive Programs
Aaron Starr, Manager of Legislative Affairs
Joy Navarrete, Environmental Planning
Don Lewis, Environmental Planning

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO:

Tom Hui, Director, Department of Building Inspection

John Rahaim, Director, Planning Department

Kate Hartley, Director, Mayor's Office of Housing and Community

Development

Shireen McSpadden, Executive Director, Department of Aging and Adult

Services

FROM:

Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE:

August 5, 2019

SUBJECT:

LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Stefani on July 30, 2019:

File No. 190844

Ordinance amending the Planning Code to add Section 249.86 to create the 3333 California Street Special Use District and amending Sectional Maps SU03 and HT03 of the Zoning Map; and making environmental findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

File No. 190845

Ordinance approving a Development Agreement between the City and County of San Francisco and Laurel Heights Partners, LLC, a Delaware limited liability company, for the development of an approximately 10.25-acre site located at California Street at Presidio Avenue with various public benefits, including 25% affordable housing, a child care center comprised of approximately 14,665 square feet, and approximately 4.47 acres of open space; making findings under the California Environmental Quality Act, findings of conformity with the General Plan, and the eight priority policies of Planning Code, Section 101.1(b); approving certain development impact fees for the project, and waiving certain Planning Code fees and requirements; and confirming compliance with or waiving certain provisions of Administrative Code, Chapter 56, and ratifying certain actions taken in connection therewith, as defined herein.

Referral from Board of Supervisors Land Use and Transportation Committee Page 2

If you have comments or reports to be included with the files, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: erica.major@sfgov.org.

c: William Strawn, Department of Building Inspection
Carolyn Jayin, Department of Building Inspection
Scott Sanchez, Planning Department
Corey Teague, Planning Department
Lisa Gibson, Planning Department
Devyani Jain, Planning Department
AnMarie Rodgers, Planning Department
Dan Sider, Planning Department
Aaron Starr, Planning Department
Joy Navarrete, Planning Department
Don Lewis, Planning Department
Eugene Flannery, Mayor's Office of Housing and Community Development
Bridget Badasow, Department of Aging and Adult Services

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

NOTICE OF PUBLIC HEARING

BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO

LAND USE AND TRANSPORTATION COMMITTEE

NOTICE IS HEREBY GIVEN THAT the Land Use and Transportation Committee will hold a public hearing to consider the following proposals and said public hearing will be held as follows, at which time all interested parties may attend and be heard:

Date:

Monday, October 21, 2019

Time:

1:30 p.m.

Location:

Legislative Chamber, Room 250, located at City Hall 1 Dr. Carlton B. Goodlett Place, San Francisco, CA

Subjects:

File No. 190844. Ordinance amending the Planning Code and Zoning Map to create the 3333 California Street Special Use District; and making environmental findings, findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public convenience, necessity, and welfare under Planning Code, Section 302.

File No. 190845. Ordinance approving a Development Agreement between the City and County of San Francisco and Laurel Heights Partners, LLC, a Delaware limited liability company, for the development of an approximately 10.25-acre site located at California Street at Presidio Avenue (3333 California Street), with various public benefits, including 25% affordable housing, a child care center comprised of approximately 14,665 square feet, and approximately 2.87 acres of privately owned, publicly accessible open space; making findings under the California Environmental Quality Act, and findings of conformity with the General Plan, and the eight priority policies of Planning Code, Section 101.1(b); approving certain development impact fees for the project, and waiving certain Planning Code fees and requirements; confirming compliance with or waiving certain provisions of Administrative Code, Chapter 56; ratifying certain actions taken in connection with the Development Agreement, as described herein; and authorizing certain actions to be taken under the Development Agreement, as described herein.

In accordance with Administrative Code, Section 67.7-1, persons who are unable to attend the hearing on these matters may submit written comments to the City prior to the time the hearing begins. These comments will be made part of the official public records in these matters, and shall be brought to the attention of the members of the Committee. Written comments should be addressed to Angela Calvillo, Clerk of the Board, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102. Information relating to these matters are available in the Office of the Clerk of the Board. Agenda information relating to these matters will be available for public review on Friday, October 18, 2019.

fr Angela Calvillo, Clerk of the Board

Print Form

Introduction Form

By a Member of the Board of Supervisors or Mayor

I hereby submit the following item for introduction (select only one):

PECEIVED 9/3/19@5:39pm

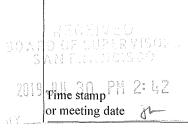
Time stamp or meeting date

1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).	
2. Request for next printed agenda Without Reference to Committee.	
3. Request for hearing on a subject matter at Committee.	
4. Request for letter beginning: "Supervisor	inquiries"
5. City Attorney Request.	
6. Call File No. from Committee.	
7. Budget Analyst request (attached written motion).	
8. Substitute Legislation File No. 190845	
9. Reactivate File No.	
10. Topic submitted for Mayoral Appearance before the BOS on	
Small Business Commission Youth Commission Ethics Commission Planning Commission Building Inspection Commission Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Forestee (a)	
Sponsor(s): Stefani	ACCUMANTAL VALUE AND
Subject:	
Development Agreement - Laurel Heights Partners, LLC - 3333 California Street Project - California Presidio Avenue	a Street at
The text is listed:	P#####################################
Ordinance approving a Development Agreement between the City and County of San Francisco and Partners, LLC, a Delaware limited liability company, for the development of an approximately 10.25	I
at California Street at Presidio Avenue, with various public benefits, including 25% affordable housi center comprised of approximately 14,665 square feet, and approximately 2.87 acres of privately ow accessible open space; making findings under the California Environmental Quality Act, and finding with the General Plan and the eight priority policies of Planning Code, Section 101.1(b); approving a development impact fees for the project, and waiving certain Planning Code fees and requirements; a compliance with or waiving certain provisions of Administrative Code, Chapter 56; ratifying certain connection with the Development Agreement, as described herein; and authorizing certain actions to the Development Agreement, as described herein.	ng, a child care ned, publicly s of conformity certain and confirming actions taken in

Print Form

Introduction Form

By a Member of the Board of Supervisors or Mayor



Signature of Sponsoring Supervisor: